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INDIA

Punitive use of preventive detention legislation in Jammu and Kashmir

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SUMMARY

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At a time when new anti-terrorist legislation is under consideration in India, Amnesty International is urging the Government of Jammu and Kashmir to repeal the Public Safety Act (PSA), a preventive detention law in force in Jammu and Kashmir. While it remains in force, the organization calls on the Government to amend the Act to ensure its consistency with international human rights standards. The law has been used by the Government of Jammu and Kashmir to arbitrarily detain political activists in Jammu and Kashmir.

People held in preventive detention in Jammu and Kashmir include those who have not committed any offence and have not used or advocated violence, as well as those who may have used violence and committed offences. Some amongst both groups may have been charged with criminal offences but the state uses preventive detention legislation to detain them when it anticipates their release on bail granted by a court. All are held on the purported presumption that they may in the future commit acts that are harmful to the state.

Amnesty International believes that those who are held solely for the peaceful expression of their politically held views ought not to be detained at all. The organization considers them to be prisoners of conscience and calls for their immediate and unconditional release. If there are sufficient grounds to believe that a person has committed a recognizably criminal offence they should be promptly charged in accordance with law and given a prompt and fair trial in a regular court of law. The organization opposes all arbitrary detention and denial of the right to a fair trial.

Among those who are currently being held under the PSA for the peaceful exercise of their politically held views are 25 members of the All Parties Hurriyat [Freedom] Conference (APHC) who were arrested between late August and early November 1999.

Amnesty International believes that the conditions of their detention and statements by Jammu and Kashmir Chief Minister Dr Farooq Abdullah would seem to indicate that their preventive detention has the sole intent of punishing them. On 8 October, the Chief Minister publicly said that he would "let them rot" in Jodhpur Jail where "nobody would be able to meet them".

The report describes in its first part cases which illustrate how preventive detention legislation has been used to stifle and punish political dissent in Jammu and Kashmir. This intention becomes evident when one examines case studies which show how political activists have been held alternately under preventive detention legislation and on a range of criminal charges despite the quashing of detention orders and bail being granted by courts with respect to the very same individuals. Some of the detainees have been in continued detention since the early 1990s without charge or trial. The report also describes conditions of detention and the difficulties of assessing the number of people held under the PSA.

The second part of the report describes preventive detention legislation, particularly the Jammu and Kashmir Public Safety Act (PSA) and the arguments which have been advanced by local lawyers to challenge the Act in the courts. It then describes the hurdles to challenging specific PSA orders in the courts and the disregard displayed by the Government of Jammu and Kashmir to court orders. The paper concludes with a set of recommendations to the Government of Jammu and Kashmir.

KEYWORDS: ADMINISTRATIVE DETENTION / LEGISLATION /
CONSTITUTIONAL CHANGE / PRISONERS OF CONSCIENCE / TRIALS /
ARMED CONFLICT / POLITICAL PRISONERS / TORTURE/ILL-TREATMENT /
MEDICAL TREATMENT

This report summarizes a 33- page document : INDIA Punitive use of preventive detention legislation in Jammu and Kashmir (AI Index: ASA 20/10/00) issued by Amnesty International in May 2000. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email: <http://www.amnesty.org/news/emailnws.htm>

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INDIA

Punitive use of preventive detention legislation in Jammu and Kashmir

1. Introduction

At a time when new anti-terrorist legislation is under consideration¹ in India, Amnesty International is urging the Government of Jammu and Kashmir to repeal the Public Safety Act (PSA), a preventive detention² law in force in Jammu and Kashmir. While it remains in force, the organization calls on the Government to amend the Act to ensure its consistency with international human rights standards. The law has been used by the Government of Jammu and Kashmir to arbitrarily detain political activists in Jammu and Kashmir.

People held in preventive detention in Jammu and Kashmir include those who have not committed any offence and have not used or advocated violence, as well as those who may have used violence and committed offences. Some amongst both groups may have been charged with criminal offences but the state uses preventive detention legislation to detain them when it anticipates their release on bail granted by a court. All are held on the purported presumption that they may in the future commit acts that are harmful to the state.

Amnesty International believes that those who are held solely for the peaceful expression of their politically held views ought not to be detained at all. The organization considers them to be prisoners of conscience and calls for their immediate and unconditional release. If there are sufficient grounds to believe that a person has committed a recognizably criminal offence they should be promptly charged in accordance with law

¹The Terrorist and Disruptive Activities (Prevention) Act [TADA] lapsed in May 1995 and was not renewed following widespread criticism by national and international human rights activists. (See below in chapter on legislation allowing for preventive detention) A bill reintroducing some of its features was discussed in 1995, but did not proceed through to parliament. In November 1999, it was learnt that the Law Commission of India was considering the Criminal Law Amendment Bill, 1999 which seeks to reinstate many of the features of TADA. It is expected to be brought before parliament in 2000.

²'Administrative' or 'preventive detention' refers to the situation when a person is deprived of their liberty and held in custody though they have not been charged with a recognizably criminal offence or tried within a reasonable time. The term encompasses detention pursuant to national legislation as well as detention carried out without any legal basis. It does not include pre-trial detention of persons held on genuine criminal charges.

and given a prompt and fair trial in a regular court of law. The organization opposes all arbitrary detention and denial of the right to a fair trial.

Among those who are currently being held for the peaceful exercise of their politically held views are 25 members of the All Parties Hurriyat [Freedom] Conference (APHC) who were arrested between late August and early November 1999. Amnesty International believes that the conditions of their detention (see below) and statements by Jammu and Kashmir Chief Minister Dr Farooq Abdullah would seem to indicate that their detention has the sole intent of punishing them. On 8 October, the Chief Minister publicly said that he would "let them rot" in Jodhpur Jail where "nobody would be able to meet them". Alleging that they had used violent means to enforce an election boycott, he added, "I am sending them to a place where they will see no hope".

This report describes in its first part cases which illustrate how preventive detention legislation has been used to stifle and punish political dissent in Jammu and Kashmir. This intention becomes evident when one examines case studies which show how political activists have been held alternately under preventive detention legislation and on a range of criminal charges despite the quashing of detention orders and bail being granted by courts with respect to the very same individuals. Some of the detainees have been in continued detention since the early 1990s without charge or trial. The report also describes conditions of detention and the difficulties of assessing the number of people held under the PSA.

The second part of the report describes preventive detention legislation, particularly the Jammu and Kashmir Public Safety Act (PSA) and the arguments which have been advanced by local lawyers to challenge the Act in the courts. It then describes the hurdles to challenging specific PSA orders in the courts and the disregard displayed by the Government of Jammu and Kashmir to court orders. The paper concludes with a set of recommendations to the Government of Jammu and Kashmir.

2. Background: Recent political developments in Jammu and Kashmir

The chances for an eventual settlement of the Kashmir issue appeared bright when the prime ministers of India and Pakistan met in Lahore in February 1999, but the intrusion of Pakistani fighters shortly afterwards in the Kargil area of Jammu and Kashmir resulted in an at least temporary setback. The security situation in the state has since then undergone significant changes.

Some local observers as well as members of government believe that well-trained, well-equipped and strongly motivated armed groups slipped into the state from Pakistan

while Indian armed forces were engaged in the defence of Kargil; they operate as 'suicide squads' which directly target security forces and official installations.³

Killings of security personnel have risen accordingly. According to data of the Jammu and Kashmir police, whereas in 1997 a total of 160 security force personnel were killed, in 1998 the corresponding figure was 152, but by October 1999 it had already reached 204.

It is reported that on 13 July 1999 three armed men attacked a Border Security Force (BSF) camp near Srinagar, killing four personnel, including a senior officer; they took 12 hostages and were eventually killed by security forces. On 7 August a military unit specially trained in counter-insurgency operations was ambushed and four of its members killed. On 28 October the Civil Secretariat in Srinagar was attacked. Again on 3 November armed men stormed the maximum security 15 Corps headquarters in Badami Bagh on the outskirts of Srinagar and killed seven army personnel including the army public relations officer. A similar commando-style strike occurred on 2 December 1999 when the fortified military camp in Baramulla district was attacked and an army officer killed.

Assessments as to whether separatist insurgency in the state is now primarily sustained by mercenaries who have infiltrated Kashmir from outside vary widely as do estimates of their numbers. Director General of the Border Security Force, E.N. Rammohan said that nearly 700 armed men had crossed into the state since the Kargil conflict of whom 53% are from Pakistan, 40% from Azad Jammu and Kashmir, 5% from Afghanistan and two per cent from Sudan, Yemen and Kazakhstan.⁴ Defence Minister of India, George Fernandes on 2 December 1999 stated in the Lok Sabha that an estimated 1,200 to 2,000 Pakistan-sponsored fighters are operating in the state. APHC Executive Committee member Yasin Malik argues that government authorities overstate the proportion of foreign combatants to create the impression that local opposition is negligible and that the state has effectively curbed dissent.

While Indian President Narayanan on 23 February 2000 spoke of the need for a two-pronged approach to counter increased violence in Jammu and Kashmir involving a deepening of the democratic process, accelerating economic development, isolating foreign

³Indian President K.R. Narayanan in his address to parliament on 23 February 2000 said that "terrorist violence" targeted especially at the security forces had sharply increased after the clashes at Kargil in mid-1999. Director General of Police, Gurbachan Jagat publicly stated that the armed groups had switched from quick strikes on soft targets to assaults on army camps in a bid to bolster their own forces' morale after the Kargil conflict.

⁴"BSF fears more attacks after Pakistan coup", *The Asian Age*, 1 December 1999.

mercenaries and taking pro-active steps to 'neutralize' them, the Union Government on 18 January reportedly issued a directive to the security forces in Jammu and Kashmir to ensure that suicide squads did not get back alive if they dared attack any military installations. Outlining the government's pro-active approach, Union Home Ministry officials were quoted as saying, "We want to make it real suicide for Pakistani mercenaries' so-called suicide squads ... if we have to blow up even our own buildings, we would do so as we don't want the militants to go back alive".⁵

Newspapers have described this approach in practice to consist of security forces 'increasingly opting for the safer alternative of throwing cordons around places under attack and bombarding them with awesome firepower, frequently killing their own personnel'.⁶ The security forces have also responded to the direct threats to them with more cordon and search operations, crackdowns and human rights abuses against the civilian population.

The civilian population which experienced abuses by the state and the armed groups have reportedly developed a sense of bitterness and yearning for normality leading to a "sharp decline in the Kashmiri-speaking people component among the militants".⁷ This may be changing according to many local observers. As armed groups appear to target civilians less frequently and have reportedly abandoned previously known patterns of extortion, harassment and other forms of abuse, their standing in society seems to be improving. Economic stagnation in the state, perceived nepotism and corruption as well as the alienation of the general population from the political process evident from the steadily decreasing voter participation reported in the Indian media, which cuts across all sections of society⁸, have combined to feed a sense of frustration resulting in growing local support for armed groups. Increasing numbers of Kashmiri youths appear to be supporting and joining armed groups. As one observer from the state put it, "Without local support, no sophisticated weapons, no armed training can help militants succeed in any region".⁹

Armed groups appear to have increasingly targeted members of the Hindu minority over the last two years. Four members of a Hindu family, including two women and two

⁵*The Hindustan Times*, 18 January 2000.

⁶*The Asian Age*, 13 January 2000.

⁷"The Talebanization of Kashmir" in: *Communalism Combat*, November 1999.

⁸For instance voter participation in Srinagar was reported to have been 35% in parliamentary elections in 1996, 30% in 1998 and 12% in 1999; around 9-12% of votes were invalid in the state.

⁹"The Talebanization of Kashmir", in: *Communalism Combat*, November 1999.

children were killed in Harni village in Poonch district on 28 February 2000. Only hours later, five Hindu truck operators were separated from among a group of truck drivers and shot dead at point blank range near Qazigund on the Jammu-Srinagar highway.

The targeted killing of Hindus is seen by local observers to be intended to create religion driven strife and to derive from a "more standardized version of Islam".¹⁰ Some observers also fear a sharpening of the social and cultural loss which had begun with the displacement of the Kashmiri Pundits and a diminishing of 'Kashmiriat', the specific Kashmiri identity which embraces different religions and cultures of the state.¹¹

With political violence in Jammu and Kashmir escalating once more, several of the political parties in Jammu and Kashmir have stressed the need for dialogue to end the bloodshed. The APHC reportedly made repeated attempts to initiate a dialogue with the Union Government about the future of Kashmir.¹² Former chairman of the APHC, Mirvaiz Umar Farooq is reported to have offered that the APHC negotiate a cease-fire with the armed groups to facilitate a dialogue.

The human rights situation in Jammu and Kashmir has been grim in the last two years. Amnesty International has been informed of an increase in unlawful killings of people believed to be connected with armed groups carried out by security forces, often apparently in reprisal against targeted killings of security forces by armed groups. More people appear to be deliberately killed by security forces rather than arrested and arbitrary arrests and detention of those peacefully voicing political dissent appears to have become more widespread. Torture in custody sometimes leading to custodial deaths remains endemic. People continue to "disappear" after arrest; the non-compliance of the state with court orders makes legal redress unobtainable.¹³

Amnesty International recognizes that security forces in Jammu and Kashmir operate in a very difficult environment and that the state has the right and duty to protect

¹⁰"The Talebanization of Kashmir", in: *Communalism Combat*, November 1999.

¹¹Religious differences may also be enhanced by the government-supported proposal of the Regional Autonomy Committee which suggests a partition of the state along communal lines. See: Praveen Swami, "A growing toll", in: *Frontline*, 26 November 1999.

¹²"The Hurriyat has made repeated offers of unconditional talks with the union government pointing out that the people of Kashmir should also be involved in the dialogue about their future", *The Asian Age*, 9 December 1999.

¹³See: "India: 'If they are dead, tell us': 'Disappearances' in Jammu and Kashmir", AI Index: ASA 20/02/99.

its citizens from violence. However, this situation may never be used as a justification for committing unlawful killings or other human rights violations.

Amnesty International has repeatedly expressed its concern to armed groups about breaches of international humanitarian law which prohibits, among other things, hostage-taking, torture and the deliberate or indiscriminate killing of people taking no active part in the hostilities.¹⁴

3. Arbitrary arrest and detention of political activists in Jammu and Kashmir

Hundreds of people have over the past decade been arbitrarily detained in Jammu and Kashmir. Under international human rights law, no one may be subjected to arbitrary arrest, detention or imprisonment. Article 9 of the Universal Declaration says: "Everyone has the right to life, liberty and security of the person." Article 9(1) of the ICCPR spells this out in greater detail: "Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law."

An arrest or detention which is lawful under national law may nonetheless be arbitrary under international standards, for example if the law under which the person is detained is vague, over-broad, or is in violation of other fundamental standards such as the right to freedom of expression. In addition, detainees who were initially arrested lawfully, but who are held after their release has been ordered by a judicial authority, are arbitrarily detained.

The Human Rights Committee¹⁵ has explained that the term 'arbitrary' in Article 9(1) of the ICCPR is not only to be equated with detention which is 'against the law', but is to be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability.¹⁶

The Inter-American Commission identified three forms of arbitrary detention: extra-legal detention (detention which has no legal basis, including detention ordered by the executive or detention by paramilitary groups with the consent or acquiescence of the security

¹⁴See: "India: Appeal to armed opposition groups in Jammu and Kashmir to abide by humanitarian law", AI Index: ASA 20/38/97 and several press releases including AI Index ASA 20/1/98 and ASA 20/09/96.

¹⁵The Human Rights Committee is a treaty body consisting of experts who monitor compliance with and implementation of the International Covenant on Civil and Political Rights by states parties.

¹⁶Albert Womah Mukong v. Cameroon, (458/1991), 21 July 1994, UN Doc. CCPR/C/51/D/458/1991, p.12.

forces)¹⁷; detention which violates the law; and detention which, although carried out in conformity with the law, constitutes an abuse of power.¹⁸

Many of those arbitrarily detained in Jammu and Kashmir have been deprived of their freedom without reference to any legal grounds for detention at all; many others have been held under preventive detention legislation of the state, the Public Safety Act (PSA) which falls short of international standards and some have been arrested on criminal charges only to be repeatedly re-arrested on some other charges when courts ordered them released on bail. Many are detained under a combination of these different methods of detention.

The state government's disregard for court orders quashing detention orders or granting bail is particularly disconcerting as courts are the only resort for anyone seeking legal redress. The function of the judiciary to uphold and protect human rights is undermined in this process. The pattern that has emerged is one of harassment, intimidation and deliberate disregard for the civil and political rights of those who are critical of the government. The government uses preventive detention legislation to silence critics and punish dissent.

Those arbitrarily arrested under the preventive detention law include political activists of all political hues. Its most recent victims have included almost the entire leadership of the All Parties Hurriyat Conference and other peaceful campaigners for political change like Shabir Ahmed Shah, president of the Jammu and Kashmir Democratic Freedom Party.

Shabir Ahmed Shah who since the beginning of his political life in 1968 advocated the right to self-determination of Kashmiris, spent some 22 years of his life in jail, about half of this in preventive detention. The grounds for his various detention orders include calling for strikes, issuing leaflets calling for Kashmir's independence and for boycotting

¹⁷Inter-American Commission, Report on the Situation of Human Rights in Argentina, 1980, OEA/Ser.L/V/II.49, doc. 19, at 140: indefinite detention ordered by the executive; Annual Report of the Inter-American Commission, 1980-1981, OEA/Ser.L/V/II.49, doc. 9 rev. 1, 1981, p. 117 and Annual Report of the Inter-American Commission, 1981-1982, OEA/Ser.L/V/II.57, 1982, Bolivia: detention by paramilitaries linked to the security forces.

¹⁸Inter-American Commission, Report No. 13/96, Case 11.430, Mexico, 15 October 1996: an army General faced 16 preliminary inquiries and eight criminal actions over seven years, which were all closed or dismissed, in what the Commission described as "an unreasonable succession of cases, which taken together constitute an 'abuse of power'".

India's independence day. These are non-violent activities involving the peaceful expression of his views.

In 1999, Shabir Shah was repeatedly arrested. After several weeks under house arrest in mid-1999, he was arrested on 22 September while launching an awareness program and asking people to boycott elections. He was charged with the illegal possession of arms and in anticipation of his possible release on bail, held in preventive detention. After two months in detention in different detention centres, much of it in solitary confinement, he was released on 26 November and all charges were dropped. He was again arrested along with five associates on 10 December when they attempted to peacefully demonstrate on International Human Rights Day - all demonstrations on this day in Srinagar were banned. The six men were not charged and were released three days later.

In September and October 1999, almost the entire leadership of the APHC was arrested and, after being charged with alleged criminal offences, detained under the PSA in anticipation that they might obtain release on bail. The detention period noted on the detention orders of the 25 men ranged from one to two months; after this was completed, the detention period was omitted from their detention orders on the direction of the Jammu and Kashmir Government. In November 1999 the detention of all the detainees was extended to two years from the date of arrest. The detainees have not used violence in the pursuit of their political aims but were being held solely for the peaceful exercise of their right to freedom of expression. Amnesty International considers them prisoners of conscience and has repeatedly urged the Government of India and the Government of Jammu and Kashmir to immediately and unconditionally release them.

Arbitrary detention in Jammu and Kashmir has a long history. The findings of the Basic Rights Protection Committee under its chairman Justice Farooqi in 1994 are still valid today. It noted the arbitrary detention of people even after their release ordered by designated courts and said that fresh detention orders were served on people immediately after they were shown to have been set free either on court orders or after completing their term of detention. It observed that young men were picked up and held in detention centres "for weeks, months and sometimes even for years before detention orders under the Public Safety Act are served on them; they are booked under the Terrorist and Disruptive Activities (Prevention) Act [TADA] even as they may not be applicable on facts". It said that of a total of 865 of detainees then in Kot Balwal Jail, 560 detainees had "neither been served detention orders under PSA nor booked under TADA".

Similarly a Jammu and Kashmir High Court judge ruling on a public interest petition alleging torture and arbitrary detention, noted in October 1994: "The Police agencies and the administration appear to have thrown to winds the rule of law. All sorts of illegalities are being committed by them and even criminals and terrorists may be

ashamed of them. The High Court is replete with such complaints ... many of which stand substantiated. Hundreds of cases have been brought to my notice where the detainees are in illegal detention. Despite the strong directions of this court they are not be[ing] released. ... Scores of cases are pending wherein the detainees have been allegedly done away with after arrest. For years the detainees are languishing in jails/Sub-Jails and interrogation centres without any legal authority. In short, there is a total break down of law and order machinery ... even this court has been made helpless by the so-called law-enforcing agencies. Nobody bothers to obey orders of this court ...”

3.1. Cases of arbitrary arrest and detention

3.1.a. The APHC leaders arrested in the autumn of 1999

The All Parties Hurriyat [Freedom] Conference (APHC) comprises some 23 political, social and religious organizations in Jammu and Kashmir which under its constitution of 1993 works for the *“peaceful struggle to secure for the people of the State of Jammu and Kashmir the exercise of the right of self-determination in accordance with the UN Charter and the resolutions adopted by the UN Security Council ... [and] to make endeavours for an alternative negotiated settlement of the Kashmiri dispute amongst the three parties to the dispute, viz. (a) India, (b) Pakistan, (c) People of the state of Jammu and Kashmir under the auspices of the UN or any other friendly country ...”*. The organization uses peaceful means to pursue its purpose of solving the dispute by involving all the parties in dialogue with the ultimate aim of securing the right to self-determination to Kashmiris.

After the state of Jammu and Kashmir ceased to be governed under Governor's rule in 1996, the APHC called for a boycott of all elections at the national and the state level, arguing that the need for a plebiscite in Jammu and Kashmir could not be replaced by elections within the existing framework. Consequently, the organization lobbied for a boycott of parliamentary elections in April-May 1996, followed by assembly elections later in the same year, and parliamentary elections in 1998 and 1999. Poll participation in Jammu and Kashmir dropped to its lowest level ever in August-September 1999 as was noted in the Indian press. During this period, when the APHC leaders toured the 16 districts of Jammu and Kashmir asking people in some 200 meetings not to take part in elections, they faced considerable harassment. Their residences and offices were repeatedly searched and relatives intimidated; their movements were hampered by police erecting barricades and blocking access roads to meeting places; “renegades”, former members of armed groups who have joined the government side, on several occasions reportedly issued threats against them; and several of the APHC leaders were repeatedly arrested or placed under house arrest causing some of them to go into hiding for short periods of time. While focussing in

particular on the APHC leaders, workers of the party conglomerate were also harassed and several of them arrested and detained for varying lengths of time.

In August 1999, Election Commissioner G.V.G. Krishnamurthy publicly stated that it is lawful under the Constitution of India to call for a boycott of elections and that this was a legitimate form of dissent.

When the phased elections in Jammu and Kashmir were almost over, the arrest and detention of almost the entire top leadership of the APHC began (see the list of detainees with place and date of arrest in the appendix). Among the 25 APHC leaders arrested were all the members of the APHC Executive Committee, the highest policy making body of the APHC, except its former chairman, Mirvaiz Moulvi Umar Farooq, who plays an important spiritual role in the state. They were arrested in small groups between 26 August and early November and held in different police stations where criminal complaints were lodged against them; most were transferred from police station to police station or to jails which made it difficult for their families to trace them. At this stage, lawyers had no access to them. Detention orders under the Public Safety Act were served on most of the detainees around 25 September 1999 by the Jammu and Kashmir government, in most cases ordering detention for a period of one or two months.

The detention orders of the APHC leaders stated that since they were likely to obtain bail in connection with these criminal complaints brought against them, and as "you will not refrain from continuing such illegal anti-national and subversive activities in future ... which are prejudicial to the security of the state ... as such in order to deter you from continuing such activities your detention under the provisions of the PSA has become imperative".¹⁹

In early October they were transferred in small groups to their eventual places of detention. Fifteen detainees have since been held in Jodhpur, Rajasthan, five in Udhampur in Southern Jammu and Kashmir and five in Kot Balwal in Jammu.

Jammu and Kashmir Chief Minister Dr Farooq Abdullah on 8 October publicly said that India and Pakistan could resolve the Kashmir issue without participation by Kashmiris or any other third party. He stated, "as for the Hurriyat leaders, they can frame their future course of action in the Jodhpur jail where they will have to spend the next three years". He called it "a place from where there is no possibility to return". Alleging that they had violently interfered in the election process, he is reported to have said, "I am determined to crush the militants, even if I have to call in more Indian army". Chief Minister Dr Farooq

¹⁹Identical wording in all the PSA detention orders of the 25 APHC leaders.

Abdullah's claims that they had used violent means to enforce an election boycott conflicts with reports in the Indian media that violence witnessed during the elections was of Kashmiris being forced to vote at gunpoint by security forces.²⁰

Under Indian law, detainees have a right to be detained in conditions commensurate with their social and economic status. In Jodhpur, the detainees, most of whom are religious scholars, former legislators and political leaders in Jammu and Kashmir, are held under C class conditions of detention. Detainees in C-class receive only minimum facilities. For instance, the daily expenditure for food, medicines and clothing per day is Rs. 17 (approximately £0.25). (See also chapter on conditions of detention)

Several of the detainees completed their detention period under the PSA on 24 October but were not released. An order from the Government of Jammu and Kashmir merely directed that the detention period in the detention order be omitted; the detention orders remained in force. On 18 November 1999, after several of the detainees in Jodhpur Jail had been presented to the Advisory Board (for composition and functions of the Advisory Board see chapter 4.1), the Home Department of the Government of Jammu and Kashmir confirmed their detention under the PSA and extended the period of their detention to 24 months from the date of arrest, without giving any reason for this extension.

Petitions challenging the detention of the APHC leaders were filed in the Jammu and Kashmir High Court in the first week of October; they challenge their detention on three sets of grounds and aim at the quashing of the detention orders:

- the detention orders suffer from procedural flaws as the order of detention and grounds of detention were not communicated to the detainees within the required period; the time of serving the detention order and the grounds of detention were not recorded; supporting material was not given either to the detainees or the detaining authority thus failing to give the detainees the opportunity to make adequate representation to the government; and detainees were not informed if the government approved the detention order within the statutory period;
- and substantive flaws as they failed to establish grounds for detention under the PSA; the petitions argue that the orders provided no evidence that the detainee would act in a manner prejudicial to the security of the state in future and that the activities alleged did not fall within the purview of section 8 of the PSA;
- detention of the APHC leaders in Jodhpur is unlawful; the detention orders stated that the detainees be lodged in Central Jail Srinagar. The petition also argues that the state legislature cannot make laws with application outside the state, hence the amendment made to section 10 PSA is unconstitutional (for details of the law see chapter 4.1).

²⁰--"Valley victims" in: *Asiaweek*, 24 December 1999.

Hearings of the petitions in the Jammu and Kashmir High Court started in December 1999. In February 2000 Amnesty International was informed that the Government of Jammu and Kashmir applied for the petitions to be transferred to the bench of the High Court in Jammu. Amnesty International is not aware of the reasons given for the request of transfer, and a transfer, if granted, may delay further hearings. Meanwhile, the petitions came up for a hearing on 14 March 2000 in the Srinagar bench of the Jammu and Kashmir High Court; the Advocate General sought adjournment till 18 April which was granted by the High Court.

3.1.a.a. Ghulam Ahmed Dar

Ghulam Ahmed Dar, alias Gulzar, (43), the Secretary General of the Jammu and Kashmir Peoples Conference, a constituent part of the APHC, and a member of the APHC Executive Council, was arrested in 1990 for his political activities and detained under the PSA in different jails outside the state of Jammu and Kashmir. Released in 1992, he was rearrested in August 1993 and was held under criminal charges till end-February 1995 when he was released. In 1996, he was arrested during a protest march in New Delhi and released in 1997.

Following weeks of peaceful protests by the APHC in late 1997 which Ghulam Ahmed Dar helped organize, he was picked up in the night of 17/18 February 1998 during a search of his house by Special Operations Group (SOG) of Special Task Force (STF) of the police and taken to their headquarters at Cargo Complex Haftchinar (Sherghari), Srinagar. During the 10 days of his detention there, Dar was not brought before a magistrate nor allowed to contact a lawyer. His father was allowed to see him from a distance on the third day but not to talk to him. He reported that his son could hardly stand and walk. On 26 February 1998, he was shifted to police station Sadar, Srinagar. A First Information Report²¹ (FIR No 68/1998) was lodged on that day on the basis of a letter by the Superintendent of Police of SOG Special Force according to which Ghulam Ahmed Dar had confessed to being a commander of an armed group, *Al Barq*, and involved in 'militancy related activities' and had called on people to boycott elections. He was alleged to be guilty of sedition under section 121-A Rambir Penal Code.

On 3 March 1998, Dar was granted bail with respect to FIR No 68/1998 by the sessions judge of Budgam who stated in his bail order that *'the main accusation against the accused is that he intended to disrupt the elections and prevent peaceful voting in the*

²¹ A First Information Report is the registration of a complaint with police who then investigate the complaint and submit a report of their findings within 14 days to a judicial authority; on the basis of their findings the judicial authority then dismisses the complaint or frames charges.

parliamentary elections which are by and large now over ... Further detention of the accused in the police custody would amount to serious violation of liberty of the accused and as such cannot be permitted. In these circumstances the accused is entitled to bail."

However, instead of being released from police station Sadar, he was arrested and detained under section 54 (arrest without warrant on suspicion of committing an offence) of the Code of Criminal Procedure (Cr PC) in connection with FIR 315/1994, a complaint filed in 1994 under TADA. On 10 March 1998, the sessions judge Budgam granted bail to Dar with reference to this complaint, noting that the detainee had been '*roped in in another open FIR which has been kept open and operational for justifying the detention of undesired persons under section 54 of the CrPC. ... Had the accused been found involved in any specific offence under TADA, the report would have been categorically given to indicate the involvement of the accused under the relevant provisions of TADA. This is precisely what the record does not reflect. Therefore I do not find any disability to proceed to protect the liberty of a person who is merely detained under section 54 of CrPC.*' Dar was, however, not released from custody but rearrested and transferred to police station Rajbagh, Srinagar where FIR 11/1998 alleging offences under sections 121-A, 120-B, 565 and 171-F Penal Rambir Code and section 125 Peoples Representatives Act, citing the same grounds as in the previous FIR, was lodged against him.

On 16 March 1998, the Chief Judicial Magistrate granted him bail on this case as well. Again Ghulam Ahmed Dar was immediately rearrested. He was taken to police station Shaheed Gunj and held under FIR 71/1994 alleging offences under sections of TADA. On 19 March 1998, the Additional Designated Court for TADA granted bail in connection with this complaint. Once again, Ghulam Ahmed Dar was not released.

Instead, he was transferred to police station Sadar, Srinagar and detained under a PSA detention order (PSA/DMB/98/37) dated 19 March 1998 for a period of 15 months, issued by the District Magistrate Budgam. He was transferred to Central Jail Srinagar on 21 March 1998. A *habeas corpus*²² petition (No 224/98) challenging the PSA detention was filed on 6 May 1998. The petition remained pending in the Jammu and Kashmir High Court for over one year as the state on over a dozen occasions failed to respond to averments made in the petition. On 1 June 1999, the Jammu and Kashmir High Court quashed the PSA order; it had not examined the merits of the grounds of detention but found several formal flaws in it. These included the fact that the detention order had not been served on the detainee nor had the grounds of detention been communicated to him, which effectively deprived him of the right to make an adequate representation against his detention. The

²² *Habeas corpus* is a writ requiring a person to be brought before a judge or court, especially to test the legality of his or her detention.

court order also recorded that the state had consistently failed to respond to the averments made in the *habeas corpus* petition challenging the detention order. Although the High Court ordered his release, Ghulam Ahmed Dar continued to be detained. A further *habeas corpus* petition was filed which pointed to a directive of the Home Department of the state government to jail authorities in Jammu and Kashmir not to release detainees irrespective of court orders. He was eventually released on court orders on 19 July 1999.

Ghulam Ahmed Dar was once more arrested on 8 September 1999 along with Syed Ali Shah Geelani, in connection with FIR 176/1999 under section 188 and 121B Rambir Code and section 13 of the Unlawful Activities Act and held in police station Soura. A PSA detention order was issued on 20 September 1999, under which Dar was to be detained for six months in district jail Udhampur. Among the grounds for detention the district magistrate cites Dar being 'an active hard core and dedicated member of All Parties Hurriyat Conference', his alleged role in *Al-Barq*, 'unlawfully established in the state of J&K [Jammu and Kashmir] to carry out armed activities along with other militant outfits' and his 'directing people to boycott the parliament elections and challenge accession of [the] state with Union of India openly...'. It said that since he was likely to be set free on bail with respect to FIR 176/1999 and since he would not desist from illegal anti-national and subversive activities, prejudicial to the security of the state, the PSA was being applied to detain him. Ghulam Ahmed Dar was subsequently transferred to the Jodhpur jail along with other APHC members; his detention period was ordered extended to 24 months.

3.1.b. Noor Mohammad Kalwal

Noor Mohammad Kalwal, a member of the Jammu and Kashmir Liberation Front (JKLF) was arrested by the Central Reserve Police Force (CRPF) on 8 September 1991; several months later, during which time it is not known if he was charged with any criminal offence, on 27 February 1992, he was served a PSA detention order for one year and lodged in Udhampur subjail. After the expiry of the detention period, he was neither released nor charged with any offence nor produced in any court. On 26 February 1993, he was transferred to the Joint Interrogation Centre at Kot Balwal, Jammu. A petition (387/93) challenging his continued detention was filed but despite his being transferred to subjail Rangreth in Srinagar so he could be produced in court in Srinagar, he was not actually brought before the High Court.

In early 1994, a complaint was brought against Kalwal on two counts under TADA, on both of which the Additional Designated Court, Srinagar granted him bail. When Kalwal was not released, the Designated Court directed police authorities, including the Director General of Police (DIG) to bring the detainee to court. The authorities failed to respond at the first date of hearing in February 1994. On 8 June 1994, police authorities and the Counter Intelligence Kashmir (CIK) moved an application in the court for a new date as,

due to non-availability of police escort, the detainee had not been brought to court. On the new date set by the High Court, 14 June 1994, police authorities did not appear nor was the detainee brought to court. The Additional Judge of the Designated Court, Srinagar stated: *"It is quite strange that the law executing authorities are not giving due regard to the orders passed by the Court for which the authorities are meant ... In this case, not to speak of the execution of the orders by superior officer of the rank of DIG, he has not even cared to send a few lines to this court in respect of compliance with the orders of this court."*

It is not known to Amnesty International what happened to Noor Mohammad Kalwal between June 1994 and early 1996 except that he was not released. He was detained under a new PSA detention order (DMS/PSA/415/96) of 26 February 1996 for one year. A petition (107/97) challenging this new detention order was filed in the Jammu and Kashmir High Court which quashed it on 10 November 1997 and ordered his release. He was not released. Instead he was arrested on a charge under TADA which referred to an FIR (No 128/92) registered in 1992 relating to his alleged unlawful possession of a revolver claimed to have been recovered from him at the time of his arrest in 1992 -- when he had already been in detention for several months, having been arrested in September 1991. The designated TADA court granted bail to Noor Mohammad Kalwal on 17 July 1999. At the time of the bail petition hearing, the prosecution showed the presiding judge a letter from Counter Intelligence Kashmir (CIK) which stated that the detainee should not be released; but in case of release, the CIK should be notified immediately. The prosecution also reportedly showed a letter from CIK to Central Jail Srinagar instructing jail authorities to inform CIK of any imminent releases.

As Noor Mohammad Kalwal was about to be released from Central Jail Srinagar, he was re-arrested at the jail gate by CIK. Two days later he was transferred to Khanyar police station. He was then served another PSA one-year detention order (DMS/BSA/58 dated 30 July 1999, signed by the District Magistrate Srinagar), alleging that he was an 'active, dedicated and staunch member of the JKLF', had been involved in crimes including firing on security forces which resulted in the death of a child and activities prejudicial to the security of the state. Noor Mohammad Kalwal has since then been held in Central Jail Srinagar. He was reportedly shifted to Udampur Jail on 8 February 2000.

Members of Amnesty International writing about the continued arbitrary detention of Noor Mohammad Kalwal to Jammu and Kashmir Minister of Law, P.L. Handoo in October 1997 received his reply, assuring them that all relevant facts would be collected by the ministry and communicated to Amnesty International. He assured Amnesty International: *"The requirement of a fair and impartial trial is a basic feature of our criminal jurisprudence and I assure you there shall be no departure from this practice and any aberration in this regard will certainly be taken serious note of."*

3.1.c. Abdul Aziz Dar

Abdul Aziz Dar, a former commander of the Hizbul Mujahideen who around 1992 joined the Jamaat-e-Islami, has been repeatedly detained under the PSA. Dar was arrested in September 1991 and detained under the PSA for one year; ordered released by the High Court in 1992, he was again arrested on 1 February 1993 and detained under a new PSA order (PSA/DI/IS/129/93) of 28 May 1993 for one year. On the expiry of this detention period on 27 May 1994 he was arrested and detained under a string of FIRs numbered 1/92, 1/93, 1/94, 1/95, 6/93. It appears that he was held under the same FIR (1/92) twice and twice obtained bail (on 7 November 1996 and 25 June 1997). A High Court judge ordering his release on bail in February 1997 said that "*any detention after a bail order having been served will be wrongful in the eye of law.*" It is not known to Amnesty International on what grounds he is currently being held.

3.1.d. Sheikh Abdul Aziz

Sheikh Abdul Aziz, from Namblabal, Pampora, district Pulwama, was in August 1998 elected chairman of the Jammu and Kashmir People's League and in this capacity became a member of the APHC Executive Council. He spent around five years in jail between 1968 and 1988 on a variety of preventive detention orders.

Sheikh Abdul Aziz has been in continued detention since 21 June 1993 on a series of FIRs and PSA detention orders. The PSA detention orders include order No 146/DAP/1993 of 5 November 1993 for a period of 18 months spent in Srinagar Central Jail; PSA order HOME/DET/759/1995 of 21 June 1995 for a period of two years to be spent in Central Jail Jullundar, Punjab and PSA order HOME/DET/1521/1995 of 20 October 1995 for two years. He was served another PSA detention order (DAM/PSA/154/00) on 17 January 2000 for a period of two years.

In the period between his arrest on 21 June 1993 and the issuing of the first PSA order on 5 November 1993, between the end of the first detention period on 4 May 1995 and the second detention period stating on 21 June 1995 and after the completion of his third detention period on 19 October 1997, Sheikh Abdul Aziz was held under several FIRs, including 3/90, 4/90, 5/90, 1/91, 6/93, 1/94, 6/94 - with respect to all of which he was reportedly granted bail by the relevant courts and ordered to be released.

3.2. Conditions of detention of those held under the PSA

People held in custody are entitled under international human rights law to prompt access to families, lawyers, doctors, a judicial official, and in the case of foreign nationals to

consular staff. Most of these rights have been denied to people held in arbitrary detention in Jammu and Kashmir.

Experience shows that access to the outside world is an essential safeguard against human rights violations such as "disappearances", torture or ill-treatment. The UN Special Rapporteur on torture²³ has noted, "torture is most frequently practised during incommunicado detention [detention without access to the outside world]. Incommunicado detention should be made illegal and persons held in incommunicado detention should be released without delay. Legal provisions should ensure that detainees be given access to legal counsel within 24 hours of detention."²⁴ The Human Rights Committee has stated that the practice of incommunicado detention may violate Article 7 of the International Covenant on Civil and Political Rights which prohibits torture and ill-treatment, and Article 10 which contains safeguards relating to people deprived of their liberty.²⁵

As most people detained under the PSA are for long periods denied access to lawyers and family members, they run a high risk of being subjected to torture or ill-treatment. Torture is widely used in police stations and interrogation centres in Jammu and Kashmir to extract confessions or information, to humiliate or punish detainees, leading to dozens of reported deaths in custody.

Amnesty International has been informed of severe torture and ill-treatment of some detainees held under the PSA. Ghulam Ahmad Dar stated that in February 1998, during his 10-day detention in the headquarters of the Special Task Force, he was given electric shocks every few minutes, with water poured over the feet to which electrodes were attached. On 20 February he was stripped, laid on a wooden bench and his legs tied to the bench. Wooden rollers were rolled over his thighs for about 45 minutes. Electric wires were attached to his stomach and current passed through till he lost consciousness. He was then dragged to his cell. On the next day, his hands were repeatedly hit with a pistol butt, apparently to extract a confession from the victim.

In some cases incommunicado detention in the context of preventive detention appear to have been used to conceal a possible death in custody which may have resulted

²³The mandate of the Special Rapporteur on torture is primarily based on the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which guarantee the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment.

²⁴UN doc. E/CN.4/1995/434, para 924(d).

²⁵UN doc. CCPR/C/51/D 458/1991 and CCPR/C/50 D/1990.

from unlawful use of force or torture. Mushtaq Ahmed Chacha, a member of the Jammu and Kashmir Liberation Front (JKLF), was arrested on 9 July 1995 by the 41 bn. Border Security Force (BSF) and detained under FIR 4/95 dated 10 July 1995. According to the BSF he escaped from their custody on 15 July 1995 while leading them to a hideout of armed fighters. He has not been seen since then and is by local observers believed to have in fact been killed in custody. This opinion gains strength from the fact of an apparent official attempt to conceal his fate and to pretend that he continued to be detained. On 27 September 1995 -- over two months after his alleged escape -- the District Magistrate Srinagar issued a PSA detention order for one year against Chacha stating as a reason that "you may be released on bail which will defeat the purpose of deterring you from indulging in subversive activities".

While all the APHC activists detained in Rajasthan are reported to suffer from the change in climate -- the desert climate of Rajasthan is very different from the mountain climate of Jammu and Kashmir -- some of the elderly and ailing APHC leaders currently held in Jodhpur jail have reportedly been denied adequate medical attention for their ailments.

Mohammad Yasin Malik underwent open heart surgery at the All India Institute of Medical Sciences in New Delhi in 1993 for heart valve replacement and has since had to consult his cardiologist every month for checkups and to monitor his anti-coagulant therapy. These facilities are not available in Jodhpur Jail and his requests to consult his cardiologist have so far been ignored. The cardiologist treating Yasin Malik stated that he suffers from "rheumatic heart disease, with aortic valve replacement which was carried out in 1993. He needs life long anti-coagulant therapy along with a periodic assessment of the function of the prosthetic valve. Like in any other prosthetic valve case, the doses of anti-coagulants are critical and hence he needs follow up by a trained cardiologist preferably in a cardiology unit with all the facilities for carrying out diagnostic and therapeutic interventions." It should be noted that Yasin Malik was granted bail in 1998 on health grounds by a designated TADA court before which some criminal charges are pending against him.

Similarly, 71-year-old APHC chairman Syed Ali Shah Geelani, a religious scholar and former member of the Legislative Assembly, is a chronic heart patient who had a pacemaker installed in 1997 at Escorts Heart Institute in New Delhi. The treatment to which he was subjected during several arrests and re-arrests in the summer of 1997 and his latest detention under the PSA have grossly ignored that he is elderly and ailing.

Syed Ali Shah Geelani was arrested along with nine colleagues on 8 September at Kralgund, tehsil [administrative unit] Handwara while addressing a public meeting. On the following day they were transferred to Baramulla sub jail and a criminal complaint was

brought against him; on 10 September Geelani was granted bail. Instead of being released he was transferred to police station Uri in Baramulla district, on 11 September to police station Nagin, district Srinagar, on 15 September to police station Rajbagh, Srinagar. On 25 September, a detention order under PSA for one month was issued and Geelani was shifted to the Central Jail in Srinagar. As he suffered severe chest pain, Geelani was shifted on 27 September to the Institute of Medical Sciences, Soura, Srinagar, and on 28 September was admitted to the All India Institute of Medical Sciences in New Delhi. On 6 October he was transferred to the Central jail in Jodhpur.

Syed Ali Shah Geelani has to consult his cardiologist every six months; at the end of October 1999 such a visit was due. Instead, Geelani was taken by jail authorities in early November to the All India Institute of Medical Sciences in New Delhi. A constitutional petition filed on 30 November 1999, noting that "on 4 November 1999 the detainee was examined in the Emergency Ward of the Institute and ... at the intervention of the authorities he was not hospitalised and this was done against the advice of the concerned doctors", requested arrangements for his admission to specific hospitals equipped for cardiac diseases. He was again taken on 10 December for a medical checkup to New Delhi accompanied by a prison doctor and Jodhpur police and returned at night to Jodhpur.

The APHC leaders detained under the PSA have been denied prompt and regular access to family members and lawyers. In the first few weeks of detention, while they were shifted from police station to police station, they were held incommunicado.

Access to the detainees in Jodhpur has been difficult both due to the long distance from Jammu and Kashmir and the restrictions arbitrarily imposed on visits. The over 1,500 km long journey between Jammu and Kashmir and Jodhpur is expensive, time consuming and for elderly relatives taxing. Moreover, once they reach Jodhpur it is by no means certain that they will be able to see their detained relatives. Family members have to have an affidavit stating their identity endorsed in Rajasthan. Amnesty International has received reports that close relatives have been turned away even after fulfilling all the formal requirements. Amina, sister of Yasin Malik, who had her affidavit endorsed by a Jodhpur court, was not permitted to see her brother in February when prison authorities said only close blood relations, a father, mother, daughter or wife would be allowed access - Yasin Malik has none and Amina is his only living next of kin. Given that many of the detained APHC leaders are old and have no living parent or only old parents unable to travel, this restriction appears intended to increase the harassment of the detainees. A sworn affidavit by a lawyer of the detainees states: "... no relation of the detainees has since 3.12.1999 been allowed interview by the J&K Government and Rajasthan State and the Home Department of Government of India with the detainees lodged in Central Jail Jodhpur". Amnesty International was informed that several of the detainees, including Syed Ali Shah Geelani

and Abdul Gani Bhat, were allowed to meet close relatives in March 2000. Mohammad Yasin Malik spoke to a friend while being brought to a court in New Delhi from Jodhpur Jail where a criminal complaint against him was heard on 13 March; he said that he was passing blood in his urine and was losing weight.

The detainees have not been permitted to regularly meet their lawyers either. A lawyer for the detainees in Jodhpur in an affidavit described the nature of the few meetings he was permitted to have with his clients. He stated that on his first visit on 13 October 1999, he was denied access but was given the signature of the detainees on the letter authorizing him to represent them. On 27 October, he met the detainees "inside the jail while standing and in the presence of S.P. Intelligence Bureau and the jail staff and other unidentified intelligence personnel. I could not speak in Kashmiri with some detainees who only understand Kashmiri ...". The next visit on 3 December followed the same pattern but with other security personnel present. On 2 February the High Court in Srinagar passed an order allowing a named lawyer access to the detainees but on 4 February 2000, he made the journey in vain as he was refused access to the detainees without being given any reason. On 23 February, he said "I was allowed inside the jail premises and was asked by jail officials to talk to the detainee across two iron fences and a stone wall. Two officers of intelligence agencies were present seated between the two iron fences and the detainees could not be seen because they were supposed to be behind the wall ... the interview and the communication with my clients was not possible as I could not recognize the voices from across the wall and the sanctity of privileged communication would have been harmed."

Amnesty International calls on the Government of Jammu and Kashmir to provide all detainees held under the PSA with prompt and regular access to family members and lawyers and to ensure that adequate medical is provided throughout the period of detention. The Human Rights Committee, examining India's third periodic report in July 1997 recommended the "mandatory notification of relatives of detainees without delay; ... that the right of detainees to legal advice and assistance and to have a medical examination be guaranteed".²⁶

3.3. The number of people held under the PSA

The number of people held under the PSA at present is not clear. Amnesty International has been told that some 15 to 20 percent of inmates in jails in Jammu and Kashmir are held under the PSA. An unknown number of detainees are being held outside the state. A recent article in *The Times of India* speaks of "over 250 persons detained under the PSA in the

²⁶UN doc. CCPR/C/79/Add.81, para 23.

Kashmir zone".²⁷ Jammu and Kashmir police stated that in 1998, 514 persons were held under the PSA; it is not known if this figure relates to new detention cases or the total number of people held under the PSA.

In 1999, a Kashmiri lawyer, Syed Tassaduq Hussain filed a petition challenging the constitutionality of the PSA (see below); the petition mentions media reports of "eight to ten thousand people ... languishing in various jails in the state and outside the state in various jails in India". Local observers believe that several hundred people may currently be held under the PSA. The fact that the number of such detainees is not known speaks itself for the lack of transparency surrounding detention that prevails in the state.

There have been several attempts in the past to establish numbers and identity of detainees but they have not led to permanent transparency. In 1991, the Jammu and Kashmir High Court directed that the Jammu and Kashmir home ministry furnish lists of all detainees held inside and outside the state. Following a similar directive by the National Human Rights Commission (NHRC) after its visit to Jammu and Kashmir in June 1994, the state government provided such a list, which showed that at the time 1,367 people were being held under TADA and 1,640 under the PSA. The NHRC asked state authorities that the list be published in every district and tehsil headquarters so that relatives and friends of detainees could ascertain their whereabouts. In response to another public interest petition by human rights activist Jalil Andrabi, the Jammu and Kashmir High Court on 17 October 1994 issued a comprehensive order directing state authorities to set up committees in every district consisting of the district and sessions judge, the district magistrate, the district superintendent of police and the chief medical officer to visit every place of interrogation and detention in order to *inter alia* prepare comprehensive lists of detainees, which were to include the complaints on account of which they had been arrested, the period of detention and the facilities provided to them. Only very few visits are reported to have taken place before the scheme was discontinued.

4. Legal and judicial aspects of preventive detention in Jammu and Kashmir

4.1. Legislation allowing for preventive detention in Jammu and Kashmir

The Constitution of India explicitly allows for preventive detention. Article 22 proclaims justiciable fundamental rights that provide protection from arbitrary arrest and detention. Article 22(1 and 2) obliges the authorities to bring anyone who is arrested before a magistrate within 24 hours of arrest and to permit them to consult a lawyer of their choice.

²⁷ *The Times of India*, 22 February 2000.

However, article 22(5) lays down that these rights do not apply "to any person who is arrested under any law providing for preventive detention".

India has a plethora of preventive detention laws; the *Preventive Detention Compendium* published in 1996 (All India Reporter), for instance, lists 85 current national and state laws under which a person may be placed in administrative detention.

The main law relating to preventive detention in Jammu and Kashmir is the Jammu and Kashmir Public Safety Act, 1978 (PSA) which permits administrative detention for a period of up to one year if a person is to be prevented from acting in a manner deemed "prejudicial to the maintenance of public order" or up to two years if his actions are likely to be "prejudicial to the security of the State" (section 8). The Act defines 'acting in any manner prejudicial to the maintenance of public order' to mean,

- (i) *promoting, propagating, or attempting to create, feelings of enmity or hatred or disharmony on grounds of religion, race, caste, community or region;*
- (ii) *making preparations for using or attempting to use, or using, or instigating, provoking, or otherwise abetting the use of force where such preparations ... disturb or is likely to disturb public order;*
- (iii) *attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of mischief ... where the commission of such mischief disturbs or is likely to disturb public order;*
- (iv) *attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more, where the commission of such offence disturbs, or is likely to disturb public order...*

Once a Divisional Commissioner or a District Magistrate has issued a PSA detention order he is to inform the state government together with the grounds for making the order; the government has to approve the order within 12 days of receipt as it will otherwise lapse. A person may be detained under the PSA anywhere: the detainee may be "detained in such place and under such conditions including conditions as to the maintenance of discipline and punishment for breaches of discipline as the Government may ... specify" (section 10); he can be transferred "from one place of detention to another place of detention by order of the Government". The original wording of the PSA, 1978 had read: "...from one place of detention to another in the State"; this restriction was omitted by Governor's Act No 1 of 1990 which was replaced by the Jammu and Kashmir Laws (Amendment) Act, 1992 (President's Act No 3 of 1992). The detainee is to be informed of the grounds of detention as soon as may be, but within five days (in exceptional cases 10 days) to give him the opportunity to challenge the order. However, the duty to inform the detainee of the grounds for his detention does not "require the authority to

disclose facts which it considers to be against the public interest to disclose" (section 13(2)).

Detention orders under the PSA may be challenged in the High Court. An Advisory Board consisting of three members under the chairpersonship of a person who is or has been a judge of the High Court, is to review the detention order, all relevant materials are to be placed before it within four weeks of detention. A detainee may apply to be heard in person by the board but not with the assistance of legal counsel. The Advisory Board is to give its opinion as to whether there are valid grounds for detention within eight weeks of detention. If it has found valid reasons for detention, the government may then "continue the detention of the person concerned for such period as it thinks fit" (section 17(1)); if not, it "shall revoke the detention order and cause the person to be released forthwith" (section 17(2)). The Government may at any time "revoke or modify" a PSA detention order (section 19) or release a detainee on bond (section 20). Finally, the Act confers immunity on anyone acting in good faith under the PSA: "no suit, prosecution or any other legal proceedings shall lie against any person for anything done or intended to be done in good faith in pursuance of the provisions of this Act" (section 22).

The Armed Forces (Special Powers) Act, 1958 has been applied to Jammu and Kashmir since 1990; it gives armed and paramilitary forces sweeping powers which facilitate arbitrary arrest and detention and extrajudicial executions and reinforce the impunity of those responsible for enforcing its provisions. The Act allows security forces in areas declared 'disturbed' (section 3) to "arrest without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest", including the power to shoot to kill (section 7). Although the Act provides for the arrested person to be handed over to the nearest police station "with the least possible delay" and despite the fact that the courts -- and more recently the NHRC -- have issued directives that this provision should be interpreted to mean "within 24 hours", members of the security force have routinely ignored this directive and held people in their custody for longer periods of time before handing them over to police. However, as the Act does not allow for long term preventive detention, it will not be considered here in detail.

One of the most notorious laws applied in Jammu and Kashmir is the Terrorism and Disruptive Activities (Prevention) Act, 1987 (TADA) which gave security forces special

powers in the use of force, arrest and detention.²⁸ Following intense national and international lobbying, it was not renewed when it lapsed in 1995. However, cases can still be filed under TADA under section 14 which provides that it should be applied to active trials in various courts before its expiry and to defendants tried in future in connection with offences alleged to have been committed before its lapse. As several cases described in this report indicate, the practice of arresting people under TADA on the allegation that they committed offences before 1995 still continues in Jammu and Kashmir. It is not known to Amnesty International how many people from Jammu and Kashmir are currently being held under TADA either in or outside the state. The Attorney General of India stated before the Human Rights Committee in July 1997 that at that time less than 1,600 people were in detention under TADA in India.²⁹ TADA also provides for preventive detention: section 7 states that the Central Government may confer powers of a police officer, including powers of arrest and investigation on any officer of the central government for the purpose of preventing terrorist and disruptive acts as defined by the Act in sections 3 and 4. Amnesty International is not aware of anyone being held under the preventive detention aspect of TADA.

4.2. Challenges to the PSA

The PSA has been challenged in court mainly on the two grounds given below ; neither of these challenges have so far been decided.

The definitions used in the Act including terms in the notion 'acting in a manner prejudicial to the security of the state or the maintenance of public order' are too vague and imprecise to be legally relevant. Kashmir lawyer Syed Tassaduq Hussain in 1999 raised this point in a Social Action Litigation (No.677/99); this petition was admitted in the Jammu and Kashmir High Court but may be sent to a larger bench which could delay the hearing.

²⁸For an analysis of TADA provisions and its contribution to human rights violations in the state, see: India: The Terrorist and Disruptive Activities (Prevention) Act: The lack of 'scrupulous care'. AI Index: ASA 20/39/94. Indian human rights activists such as the South Asia Human Rights Documentation Centre (SAHRDC) have pointed out that of over 76,000 individuals detained under TADA, less than one percent were eventually convicted. Moreover, the Act did not prove an effective tool to curb terrorist activities. Comparing the situation in some northeastern states of India, SAHRDC found that in Nagaland where TADA was not imposed, the situation did not deteriorate, whereas in Manipur and Assam where it was imposed, the situation did not improve.

²⁹According to *The Times of India* of 22 February 2000, some 20,000 cases were filed over time in Jammu and Kashmir but none of the accused were convicted. Some 778 cases involving 1,504 persons are still pending.

The same petition also argues that sections 10 and 11 of the PSA which permit the transfer of a detainee to jails outside the state wrongly ascribes to legislators in the state the power to enact laws having extra-territorial effect. The right to transfer detainees to jails outside the state had already been challenged in the early 1990s by Justice Farooqi. This petition had apparently been transferred to a full bench but had then never been heard and decided. More recently lawyers have also pointed out that all legal changes effected during President's rule in the state (1990 to 1996), including amendments to the PSA, lapsed a year after the elected government took office, unless confirmed by the state legislative assembly. To Amnesty International's knowledge, President's Act No 3 of 1992 has not been confirmed by the Jammu and Kashmir Legislative Assembly and would appear to be void since October 1997.

The transfer of detainees to distant jails had earlier been stopped on the consideration for the dignity of the detainee. In November 1995, the Jammu and Kashmir High Court had directed that no detainee should be transferred to jails outside the state in response to a public interest litigation initiated by Jalil Andrabi. He had argued *inter alia* that detainees have the right to a life with human dignity, to contact family and friends, wear their own clothes and consult and be defended by a lawyer of their own choice. Such conditions are only fulfilled if detainees are held close to their homes.³⁰

4.3. Challenging specific PSA orders in court

Dozens of PSA detention orders have been challenged in the High Court over the years. However, to do so is not within the reach of every detainee; it presupposes the detainee's knowledge of this mechanism, actual access to a lawyer by the detainee or his relatives and the financial means to sustain the process of seeking redress. The fact that the detaining authorities may in the public interest withhold facts relevant to detention (section 13(2) PSA) also hampers the detainees' ability to challenge the legality of detention orders.

Hearings of petitions challenging detention orders often take a very long time as the state often fails to respond to court directions to appear and to reply to the petitioners' arguments. As a result petitions are sometimes still pending when detainees have completed their detention. According to the Jammu and Kashmir High Court Bar Association, of some 19,000 *habeas corpus* petitions filed in detention cases in the past few

³⁰The Guwahati High Court similarly ordered on 27 March 1998 that detainees held under the National Security Act, TADA and other legal provisions in jails outside Assam were to be returned to the state. Detention outside the state had been challenged by local lawyer Shantanu Bharali as *inter alia* allowing insufficient contact of the detainees with their lawyers. Several activists from Assam detained under TADA for over a year in Jodhpur were in late April 1998 returned to Assam.

years, only 2,000 were heard and the rest had become irrelevant ['infructuous' in the terminology of the courts] because of the expiry of the period of detention.³¹

However, some detention orders have been quashed, usually on formal grounds. The following case shows how thoroughly the legal requirements of the PSA are sometimes ignored revealing the intention of the detaining authorities to stifle dissent at any cost. Javed Ahmed Kathwari (21) described as a member of the Hizbul Mujahideen which advocates the accession of Kashmir to Pakistan, was arrested by the CIK Srinagar on 8 January 1995 under TADA in connection with FIR 1/1994 filed in police station CIK, Srinagar, according to which he had been found with arms and ammunition and was alleged to have murdered Sohan Lal Mahra of Gogjibagh in September 1993. As the state anticipated that he would be released on bail, a PSA detention order (DMS/PSA/137/95) for 24 months was issued by the District Magistrate Srinagar on 5 July 1995. He was directed to be detained in subjail Gupkar, Srinagar, as his activities were declared to be "highly prejudicial to the security of the state". The grounds for his detention included that "there is every likelihood that you may get released on bail which will defeat the purpose to deter you from continuing your subversive activities".

Contrary to the magistrate's order, Kathwari was transferred to Sangroor jail outside the state, then to Kot Balwal jail in Jammu. In September 1995, Vijay Kumar Mehra, son of the alleged victim of the detainee, submitted an affidavit in the High Court at Srinagar stating that his father had died a natural death in Amritsar in 1965, i.e. seven years before Kathwari was born.

The expectation that this disclosure would lead to the immediate quashing of the charge and the detention order proved premature. A petition challenging the detention order filed in September 1995 alleged that most of the legal requirements of the PSA had been ignored: the detainee had not been given a detention order, had not been informed of the grounds of detention, or shown relevant material, had not been informed of his right to make representation against his detention, nor had the case been referred to an Advisory Board in the stipulated time, nor had the government confirmed the detention order upon obtaining the opinion of the Advisory Board. Moreover, the detainee had not applied for bail so that the very basis of the detention order was non-existent. On 6 February 1996, the High Court quashed the PSA detention order ordering Kathwari's release while noting that the state "did not care to respond [to the petitioner's arguments] after having been duly served" notice. It had "not followed due course of law in depriving the petitioner of his

³¹ Cited by Rajindar Sachar in "Uneasy times in Kashmir" in: *The Hindustan times*, 23 December 1999.

liberty, guaranteed to him under the constitution". It is not known to Amnesty International if Javed Ahmed Kathwari was in fact released.

In other cases, too, detention orders were issued when the persons concerned were already in detention on a criminal charge in connection with which they had not sought release on bail. In November 1998, the Jammu and Kashmir High Court at Jammu quashed a PSA detention order against Altaf Ahmed Wani issued on 1 October 1997 for a period of 24 months while he was already in detention on the basis of an FIR (65/1997) of 17 August 1997. Justice Sharma said that the detaining authorities had not considered if the detainee had or was likely to move a bail application and as such the detention order lacked any basis.

Only in very rare cases have detainees been awarded compensation for illegal detention when their detention orders were quashed. In August 1997, the Jammu and Kashmir High Court quashed 12 detention orders, ordered the release of those who were detained under these orders and ordered the state to pay Rs. 10,000 to each of the detainees. They were also advised that they could sue the state for damages in a civil court.

4.4. Disregard of the Jammu and Kashmir government for court orders

The quashing of a detention order and a court direction to release a detainee does not necessarily mean that the detainee will in fact be released. Amnesty International is aware of many instances in which court directives have been ignored by state authorities. The pattern of arbitrary detention described in this report, in which detention periods under the PSA are alternated with detention under strings of FIRs in cases for which the accused often obtained bail without ever being released, indicates the intent of the authorities to detain activists critical of the government irrespective of whether courts consider detention legal or not.

The practice of not releasing detainees who completed their detention, whether preventive detention or detention following conviction and sentence, is not new. The Jammu and Kashmir Bar Association on 7 October 1993 filed a petition in the Jammu and Kashmir High Court in which it brought several human rights matters to the attention of the High Court, including inadequate provision of food, drinking water and medical attention in the Joint Interrogation Centres (JIC) Hariniwas and Rangreth in Srinagar. It also said: "there are also a lot of people unlawfully detained at JIC Rangreth, where period of detention has expired and instead of being released, they have been held up for no fault of theirs. People against whom detention orders have been passed by various authorities are also not being shifted to their places of lodgement without any justification. Similarly persons whose interrogation is complete and investigation reports are ready, are also neither

being released from JIC Hariniwas nor are they shifted to judicial lockup. The condition of all the detainees lodged at Hariniwas is critical for each one of them is treated inhumanely." It asked the High Court to ensure the release of all detainees languishing in the two joint interrogation centres without any legal justification. Amnesty International is not aware of what action was taken in this matter.

Amnesty International has also been told by Kashmir lawyers that some 45 to 50 persons who have completed their detention, either under preventive detention legislation or after sentencing, may still be held in different interrogation centres. Abdul Rashid Lone was served a PSA detention order for 18 months on 20 January 1997 (Order no. PSA/DMU/97/70) after having been in detention since 1995 without Lone being aware of any grounds for detention. A *habeas corpus* petition (petition no. 638/97) filed at the time lapsed as the court did not make a decision within the 18 months of his detention. Despite a court release order on 23 February 1999, he continued to be detained. When a second *habeas corpus* petition (petition no. 31/99) was heard in the Jammu and Kashmir High Court, the state informed the detainee that he was detained under FIR 20/92 under TADA -- of which the detainee was not aware till then. The designated TADA court in Jammu granted bail on 25 September 1999 but Lone was not released. His new writ petition (no. 44/99) is currently pending in the Jammu and Kashmir High Court.

Mushtaq-ul-Islam was arrested on 18 June 1991 and taken to the Interrogation Centre at Badami Bagh, then transferred to Border Security Force (BSF) custody, in December 1991 he was transferred to Kot Balwal Jail in Jammu, then to the Joint Interrogation Centre in Jammu, then to the district jail in Jammu. A *habeas corpus* petition (No. 531/1991) was allowed by the Jammu and Kashmir High Court in May 1992; the detention was declared illegal and his release was ordered. Instead, he was transferred to the Interrogation Centre in Jammu on the basis of a criminal complaint (FIR 145/1990); other complaints were registered (FIRs 18/91, 14/91, 17/91, 1/92, 2/92, 3/92) against him alleging incitement to violence while in custody. When he obtained bail with respect to these complaints, a PSA detention order for two years was issued, the grounds cited being his threatening the security of the state. In February 1993, he was transferred to Jodhpur Jail, in September 1993 to Tihar Jail in Delhi. When the PSA detention period was over, he was brought to Central Jail in Jammu in the context of a complaint (FIR 145/90); trial by a TADA court led to his acquittal in late 1995. He was then rearrested on a complaint (FIR 654/87). Amnesty International is not aware of the reasons for his detention between 1996 and early 2000, when on 17 January a new PSA detention order (DMS/PSA/153) was issued to him, for a period of two years. He is currently being detained in Kot Balwal Jail.

The refusal to release detainees contrary to court orders is by no means a matter of subjective decisions of prison authorities but was shown to be a matter of state policy when

several directives of the government of Jammu and Kashmir were recently revealed to the public. These government directives included:

-- A government communication No 6089-6105, issued by the Additional Director General Prisons and Fire Services, Jammu and Kashmir of 20 October 1997 and based on a consultation with the Law Secretary to the Government, directed superintendents of district jails not to release any detainee whose detention order had expired or been quashed by the High Court or subordinate courts, without informing police authorities. It says *inter alia* that the "*Hon'able MOS Home [Minister of State, Home Department] has taken a strong exception to the conduct of some of the Supdt. [superintendents] jails releasing the militants from custody without the knowledge/information ... [of] the police authorities. It is hereby directed that all the Supdts. shall henceforth hand over all the militants released to verify his [sic] involvement in different crimes or otherwise by the police and if not involved his release could be effected by the police authorities...*"

-- In order No CIK/98-92-98 of 4 January 1998, the Additional Superintendent of Jails Crime Investigation Department CIK Srinagar instructed the superintendents of the Central Jail Srinagar and of district jail Baramulla of decisions taken a day earlier among various officials, not to release detainees whose detention orders had expired or been quashed by a court or who had obtained bail, directly from jail but handed over to the CIK "*so that cases pending against them with CIK are finalized and submitted to the courts for judicial determination...*"

-- A directive faxed on 19 March 1999 by the Principal Secretary of the Home Department, Jammu and Kashmir Government, reference number HOME/DET/Gen/M/98/J sent to the Superintendent Central Jail Srinagar and copied to the Additional Director General Prisons Jammu and Kashmir, the Additional Director General Police Crime Investigation Department (CID), Jammu and Kashmir and the In charge Detention Section, Home Department, Camp Srinagar said:

"It has been reported that some detenues have been released from PSA detention on quashment of their detention orders by the Hon'able High Court, without obtaining clearance from Home Department as well as Addl. DPG CID resulting the government could not file LPA in those cases. ... You are as such directed not to release any PSA detainee on quashment of their detention orders by the Hon'able High Court without obtaining clearance from Home Department and CID. Further a list of detenues be provided to this department through Incharge Detention, Home Department Camp Srinagar who have been released on court orders since last two years giving particulars/ECP number/date of detention/period of detention/date of court order and date of release from

jail. Matter most urgent. For In charge Detention section, Home Department Camp Srinagar only. He may obtain the list from Central Jail Srinagar immediately."

In 1999, the Jammu and Kashmir High Court Bar Association filed a writ petition challenging these orders, paramount among them the latest one, in the Jammu and Kashmir High Court. The High Court in its order of 13 August 1999 impugned the order adding the "further prayer to restrain the respondents from acting on the direction contained in the message". It noted the Home Department instruction to the Superintendent Central Jail in a letter, reference number HOME/DET/M/99/589 of 1 June 1999 to treat the object [of the earlier fax message] ... as withdrawn" and that "the court order(s) be implemented in letter and spirit, consistent to the court verdict". The writ petition was thereby dismissed but some lawyers are reportedly currently pursuing the contempt charge against those responsible for the order.

5. Amnesty International's concerns and recommendations

Amnesty International agrees with the sentiment expressed by the Human Rights Committee and the National Human Rights Commission of India that even in difficult security situations fundamental rights must not be violated; it believes that special laws operative in areas affected by conflict which facilitate abuses of fundamental rights should be repealed or, failing outright repeal, should be reviewed thoroughly with a view to amending and/or striking off those provisions which are inconsistent with international human rights standards.

Examining India's third periodic report in July 1997, the Human Rights Committee stated that it remained "concerned at the continuing reliance on special powers under legislation such as the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious human rights violations ... committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups. the Committee endorses the views of the National Human Rights Commission that the problems in areas affected by terrorism and armed insurgency are essentially political in character and that the approach to resolving such problems must also, essentially, be political, and emphasizes that terrorism should be fought with means that are compatible with the Covenant [the International Covenant on Civil and Political Rights]."³²

Amnesty International believes that detention under the PSA violates a number of international commitments made by India, including several provisions of the International

³²UN doc. CCPR/C/79/Add.81, para 18.

Covenant on Civil and Political Rights (ICCPR) to which India became a state party in 1979.

The suspension of legal safeguards relating to arrest and detention violates article 9 of the ICCPR.³³ Article 9 of the ICCPR states: *"Everyone has the right to liberty and the security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."*

Article 9(2) of the ICCPR states: *"Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."* The PSA does not involve the laying of charges at all; however it requires that the authorities inform the arrested person of the grounds for arrest within 5 days (maximum 10 days) but clause 3(2) of the Act permits the authorities to withhold any facts for reason of 'public interest'. Lawyers in the state report that this provision has been very broadly interpreted and that it is indeed common practice not to inform detainees of the grounds of their detention at all.

Article 9(4) of the ICCPR states: *"Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention"*

³³When ratifying the ICCPR, India made a declaration with respect to articles 9 and 13 of the Covenant; however, Amnesty International considers the effect of the declaration is to remove the autonomous meaning of the Covenant obligations under article 9. *General Comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant*, General Comment No. 24 (52) 1, E/1995/49, 13 April 1995, para 19 states: "Nor should interpretive declarations or reservations seek to remove an autonomous meaning to covenant obligations, by pronouncing them to be identical, or to be accepted only in so far as they are identical, with existing provisions of domestic law."

When examining India's periodic report in July 1997, the Human Rights Committee also said with respect to the declaration in relation to article 9: "The Committee regrets that the use of special powers of detention remains widespread. While noting the State party's reservation to article 9 of the covenant, the Committee considers that this reservation does not exclude, *inter alia*, the obligation to comply with the requirements to inform promptly the person concerned of the reason for his or her arrest, the Committee is also of the view that preventive detention is a restriction on the liberty imposed as a response to the conduct of the individual concerned, that the decision as to continued detention must be considered as a determination falling within the meaning of article 14, paragraph 1, of the covenant, and that proceedings to decide the continuation of detention must, therefore, comply with that provision. Therefore: the Committee recommends that the requirements of article 9, paragraph 2, of the covenant be complied with in respect of all detainees. The question of continued detention should be determined by an independent and impartial tribunal constituted and operating in accordance with article 14, paragraph 1 of the Covenant." UN doc. CCPR/C/79/Add.81, para 24.

is not lawful." The right to *habeas corpus* is constitutionally secured in India; however, in practice, approaching the High Court in the state to ascertain the lawfulness of a detention order under the PSA is a long process which rarely leads to satisfactory results. The state frequently does not co-operate with court orders for court appearances or requests for documentary evidence and does not necessarily honour courts' decisions.

The ICCPR further lays down in Article 9(5): *Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.* The Criminal Law (2nd Amendment) Bill introduced in parliament in August 1995 provides for compensation in cases of arbitrary detention but has not to Amnesty International's knowledge been passed yet.

In so far as the suspension of legal safeguards relating to arrest and detention under the PSA facilitates torture and cruel, inhuman or degrading treatment, the Act also *de facto* facilitates the perpetration of torture which is also prohibited in the Covenant. However, the prohibition of torture is absolute: Article 4 lays down that no derogation from this article may be made under any circumstances, not even in times of national emergency.

The use of vague and ambiguous definitions used in the PSA such as the 'security of the state' is contrary to the principle of security of the person as laid down in Article 3 of the Universal Declaration of Human Rights. The Human Rights Committee³⁴ has declared this right contained in Article 9(1) of the ICCPR to apply to all other rights and therefore also to the right not to be arbitrarily detained. In addition, the United Nations (UN) Special Rapporteur on the independence of judges and lawyers has stated that vague and imprecise definitions are contrary to general conditions established in international law.³⁵

Amnesty International believes that all political prisoners must be charged with a recognizably criminal offence and promptly tried in a regular court of law in accordance with internationally accepted standards for fair trial or else released. Amnesty International recommends that the authorities in Jammu and Kashmir urgently review the appropriateness and necessity of maintaining the practice of preventive detention without charge or trial and urgently considers its repeal in law.

³⁴Communication No.195/95

³⁵UN doc. E/CN.4/1998/39/Add.1, para 129

Notwithstanding the organization's firm belief that the PSA should be repealed, Amnesty International recommends that while the PSA remains in force a number of measures be taken to lessen the risk of abuse:

- Judicially review the cases of all detainees currently held under the PSA; immediately and unconditionally release all those held solely for their non-violent political opinions or activities whom Amnesty International considers prisoners of conscience; all other political prisoners should be promptly charged with a recognizably criminal offence and promptly tried in accordance with international standards for fair trial, or, failing that, be released;
- Ensure that detainees are promptly informed of all the reasons for their arrest and detention to enable them to effectively present their case when seeking legal redress;
- Ensure that relatives of detainees are promptly notified of detention and all transfers of detainees;
- Ensure that prompt and regular access of detainees to lawyers, family members and medical care be made mandatory under the law; ensure its implementation;
- Ensure that no one is subjected to torture and cruel, inhuman or degrading treatment or punishment while in detention;
- Maintain central and regional registers of all detainees under preventive detention, including date of order of arrest and detention and authority issuing such orders, all transfer and release orders; provide public access to such registers;
- Ensure that court orders are fully, promptly and meticulously obeyed;
- Consider withdrawing reservations and declarations to the ICCPR.

Appendix: Names and places of detention of APHC leaders currently in detention:

The following 15 APHC leaders are held in Jodhpur:

1. Syed Ali Shah Geelani, arrested on 8 September 1999 in Handwara;
2. Prof. Abdul Bani Bath, arrested on 14 September in Wazirbagh;
3. Mohammad Yasin Malik, arrested on 4 October in Rajbagh;
4. Moulana Abbas Ansari, arrested on 30 August in Khankhahi;
5. M. Ashraf Sehrai, arrested on 8 September in Handwara;
6. Javed Ahmed Mir, arrested on 4 October in Zaina Kadal;
7. Ghulam Ahmed Dar, arrested on 8 September in Handwara;
8. Ghulam Mohammad Sankar, arrested on 8 September in Handwara;
9. Abdul Ahad Waza, arrested on 8 September in Handwara;
10. Musarat Alam, arrested on 8 September in Handwara;
11. Mohammad Maqbool, arrested on 8 September in Handwara;
12. Abdul Rashid Shigan, arrested on 8 September in Handwara;
13. Khazir Mohammad, arrested on 8 September in Handwara;

- 14. Abdul Ahad Doontho, arrested on 8 September in Handwara;
- 15. Azad Ahad Bangroo, arrested on 8 September in Handwara.

The following detainees are held in Udampur jail:

- 16. Qazi Ahadullah, arrested on 30 September in Srinagar;
- 17. G.M. Hubbi, arrested on 29 September in Jawaharnagar;
- 18. Ghulam Nabi Sumji, arrested on 4 October in Rajbagh;
- 19. Shakeel Ahmed Bakshi, arrested on 26 August in Srinagar;
- 20. Aga Syed Hassan, arrested on 26 August in Srinagar.

The following detainees are held in Kot Balwal Jail in Jammu:

- 21. Bashir Ahmed Tota, arrested on 1 November in Rajbagh, Srinagar;
- 22. Aftab Ahmed Hilali, arrested on 1 November in Rajbagh;
- 23. Mohammad Yousuf Majahid;
- 24. Abdul Samad Inqlabi;
- 25. Mohammad Ayub Naikoo; in the last three cases it is not known when and where they were arrested.

INDIA Punitive Use of
Preventive Detention
● Legislation in Jammu and
Kashmir
AI INDEX: ASA 20/10/00

EMBARGO:
● **1930 GMT 16 MAY 2000**

Two press statements have been included in this week's mailing which have been issued by the India team over the last three weeks in response to the unfolding events in Jammu and Kashmir. Several of the prisoners discussed in the above report have been released on a sporadic and adhoc basis over the past weeks. A statement of the current situation will be attached to the report when it is published on 17 May 2000.

5 May 2000

India/Kashmir: Remaining prisoners of conscience should be released immediately

Following the recent release of seven more leaders of the All Parties Hurriyat Conference (APHC), Amnesty International today called on the Government of Jammu and Kashmir to release the remaining 11 immediately.

Those recently released were among 25 leaders of the APHC detained last September and October under the Jammu and Kashmir Public Safety Act (PSA). Amnesty International has regarded the APHC leaders as prisoners of conscience since their detention which followed their call for a boycott of elections.

During their detention the APHC leaders have been denied prompt and regular access to medical attention, family members and lawyers. In the first few weeks of detention, while being shifted from police station to police station, they were held incommunicado.

Amnesty International is particularly concerned that there are many cases of political activists being held for years without recourse to the judicial process. As most people detained under the PSA are denied prompt and regular access to lawyers and family members, they also run a high risk of being subjected to torture or ill-treatment.

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News Service 065/00
AI INDEX: ASA 20/13/00
5 April 2000

India: Abuse of the Public Safety Act in Jammu and Kashmir

Following the release of three leaders of the All Parties Hurriyet Conference (APHC), Amnesty International today called on the Government of Jammu and Kashmir to either immediately release the other 22 leaders or charge them with a recognizable criminal offence and try them in a regular court of law.

Recently released Syed Ali Shah Geelani, Abdul Gani Bhat and Maulana Abass Ansari, were among 25 leaders of the APHC detained last September and October under the Jammu and Kashmir Public Safety Act (PSA). They were detained after calling for a boycott of elections.

The arbitrary arrest and detention of those peacefully voicing dissent appears to have become more widespread in Jammu and Kashmir with the PSA increasingly being used to punish those who speak out against the government.

Those still in detention include Muhammad Yasin Malik who suffers from a heart condition and high blood pressure and is denied regular access to specialized medical attention. The APHC leaders have also been denied prompt and regular access to family members and lawyers. In the first few weeks of detention, while being shifted from police station to police station, they were held incommunicado.

Amnesty International is particularly concerned that the terms of detention under the PSA are made open-ended without explanation and that there are many cases of activists being held for years without recourse to the judicial process. As most people detained under the PSA are denied access to lawyers and family members, they also run a high risk of being subjected to torture or ill-treatment.

Background

The justification provided for the detention of the APHC leadership under the PSA, was that it would be a deterrent to carrying out "illegal anti-national and subversive activities in the future ... which were prejudicial to the security of the state".

The Jammu and Kashmir Public Safety Act of 1978 is the main law relating to preventive detention in Jammu and Kashmir and permits administrative detention without trial for a period of up to one year if a person is to be prevented from acting in a manner deemed "prejudicial to the maintenance of public order" or up to two years if their actions are likely to be "prejudicial to the security of the State". The detention orders of the APHC leadership brought under the PSA cited grounds of activities being anti-national, subversive or prejudicial to the security of the state.

Twenty-five writ petitions were filed in the High Court in Srinagar during the first week of November which challenge the legality of the detention orders. The next hearing is reportedly to be held in the High Court of Jammu and Kashmir in Srinagar on 18 April 2000.

ENDS.../

For more information please call Amnesty International's press office in London,