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India: Cease Wrongful Detentions in Jammu and Kashmir - Public Safety Act Used to Hold over 400; Detention Orders issued against Children

(Delhi) - Authorities in Jammu and Kashmir should end the use of the Jammu and Kashmir Public Safety Act (PSA) to arbitrarily detain people, including children, Amnesty International India, Human Rights Watch, and the International Commission of Jurists (ICJ) said today. The PSA violates international due process standards and should be repealed, the groups said.

Between July 9 – when protests and violent clashes broke out in the state following the killing of a leader of the armed group Hizbul Mujahideen – and October 6, authorities have detained over 400 people, including children, under the PSA, according to media reports. The PSA is an administrative detention law that allows detention without charge or trial for up to two years in some cases. Following an amendment in 2012, the PSA expressly prohibits the detention of anyone under 18.

“The use of the PSA to detain people, particularly children, violates a range of human rights, and its increasing use in recent weeks undermines the rule of law and further entrenches impunity in Kashmir,” said Sam Zarifi, ICJ Asia Director. “Police should end the use of the PSA; if people are suspected of committing offences, they should be properly charged and given fair trials.”

On September 16, Rayees Ahmad Mir, who is 16 years old according to his school records, was arrested in Baramulla district under ordinary criminal procedure for allegedly throwing stones at security forces. Two days later, an executive official passed an order to detain him under the PSA, to preclude his release on bail. The order incorrectly stated that he was 18 years old. Rayees Mir's family challenged the order before the Jammu and Kashmir High Court, producing documents that proved he was only 16. On October 7, the court stated that Rayees Mir should be treated according to juvenile justice rules, as there was prima face evidence that he was a minor, and ordered his transfer to a juvenile home. The PSA detention order has not yet been quashed. An official at the Kot Bhalwal jail said on October 14 that the prison authorities had not yet transferred Rayees Mir, as they had not received a copy of the court order.

Mir Shafqat Hussain, a lawyer representing many PSA detainees, said, “In a number of cases the families have not been informed about the grounds of detention. Arresting minors and booking them under PSA is definitely going to have an effect on their psyche. From schools and colleges, these boys end up in jails where they will be kept together with adults. It is definitely going to have an adverse effect on them.”

On August 18, Waheed Ahmed Gojree, who is 16 according to his school records, was arrested in Kupwara district and detained at a police station. According to his family, the police at first told them he would be

released the next day, but then said that he had been detained under the PSA. He was first taken to a jail in Baramulla, and then to the central jail in Jammu. An official at the central jail confirmed that he had been detained under the PSA. The family has not yet received a copy of the detention order, or been formally informed about the grounds of Waheed Gojree's detention. The authorities appear to have not taken his age into account before issuing his detention order.

"The government has a responsibility to address violence during protests, but indefinitely detaining people without charge only adds to the lawlessness," said Meenakshi Ganguly, South Asia Director, Human Rights Watch. "Detaining children under the PSA is not only unlawful, but could have negative repercussions for years."

The *Indian Express* newspaper has reported that hundreds of people have been placed in administrative detention under other laws as well. Senior police and government officials in the state, including the Director-General of Police, the Home Secretary and the Law Minister, have not responded to queries for details of the arrests from the organizations.

The United Nations Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights – to which India is a state party – has stated that administrative detention in the name of security "presents severe risks of arbitrary deprivation of liberty" and "would normally amount to arbitrary detention as other effective measures addressing the threat, including the criminal justice system, would be available". Amnesty International India, Human Rights Watch, and the ICJ oppose all such systems of administrative detention, as they invariably circumvent the protections of the ordinary criminal procedure.

The PSA contains vague and overbroad terms such as "security of the state" and "public order" that are not precisely defined, and therefore do not meet the requirement of legality under international law. The PSA does not provide for judicial review of detentions. It also protects officials from legal proceedings for anything "done or intended to be done in good faith", which is inconsistent with the right to remedy for arbitrary detention or other human rights violations. The law has often been used to detain people on vague grounds for long periods, ignoring regular criminal justice safeguards.

Under international law, anyone under the age of 18 is a child, and should be tried in accordance with internationally accepted juvenile justice standards. The UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Standard Minimum Rules for the Administration of Juvenile Justice say that the detention before trial of children shall be avoided to the extent possible and limited to exceptional circumstances. Detention must be carried out under procedures established by the law, children must not be kept in the same facility as adults, and untried detainees should be separated from convicted children. In the past, the UN Working Group on Arbitrary Detention has held that certain detentions under the PSA amount to arbitrary detentions.

In November, 2014, Indian Vice-President Hamid Ansari said the use of laws like the PSA to commit human rights violations "reflects poorly on the State and its agents". The UN Special Rapporteur on the situation of human rights defenders has stated that laws such as the PSA allow the state to wrongfully target human rights defenders, and called for the repeal of the law.

Amnesty International India, Human Rights Watch, and the ICJ believe that anyone detained under the PSA must either be charged promptly with a recognizable criminal offence or prosecuted in a fair trial, or else be released. Not prosecuting people suspected of committing offences can also violate the human rights of the victims of these offences.

The Jammu and Kashmir government is led by the People's Democratic Party (PDP) in coalition with the Bharatiya Janata Party, which also leads the central government. The PDP had criticized the PSA earlier, but the use of the law has continued under its administration.

"The central and state governments have spoken about following the principle of *insaniyat*, or humanity, in dealing with the crisis in Jammu and Kashmir," said Aakar Patel, Executive Director at Amnesty International India. "But detaining children under the PSA is neither humane nor lawful."

Over 90 people, most of them protestors, have been killed and thousands injured in the violence in Jammu and Kashmir since July. Security force personnel have been injured by stone-throwing protestors. Security forces have fired pellets from shotguns, teargas, live ammunition, and chemical irritant weapons.