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STILL A 'LAWLESS LAW'

DETENTIONS UNDER THE JAMMU AND KASHMIR PUBLIC SAFETY ACT, 1978

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1. INTRODUCTION

On 10 August 2011, authorities in the state of Jammu and Kashmir (J&K) detained 40-year old Javaid Akbar Sheikh from Pulwama district under the J&K Public Safety Act, 1978 (PSA) for the first time. According to his PSA detention order, Javaid Akbar Sheikh was detained to prevent him from acting in a manner prejudicial to the security of the state, and because it was believed that he posed a severe threat to public order.[1] Javaid Akbar Sheikh challenged his detention in the J&K High Court. In February 2012, the J&K High Court quashed the detention order against him "for lack of application of mind", finding that the detaining authority had failed to perform its statutory obligations. According to the J&K High Court, the fact that the grounds of detention "*at one place, state[s] that the activities of the detenue are prejudicial to the security of the State and at another place of the same proceedings, state[s] that the activities are prejudicial to public order*" could not be legally sustained.[2] While authorities released Javaid Akbar Sheikh following the J&K High Court's direction, they detained him again three months later. The new PSA detention order, dated 4 May 2012,[3] contained the same grounds of detention as the order that was quashed by the High Court in February 2012. Javaid Akbar Sheikh is currently in detention again, while a petition against his new detention order is pending before the J&K High Court.

This case is only one example of the widespread use of the PSA by authorities in J&K to detain individuals without charge or trial. Only in 2011, the chief of police in Kashmir Division, S M Sahai, acknowledged that "around 15,600 people" were detained under the PSA without charge or trial in the last two decades.[4] Javaid Akbar Sheikh's case is an example of 'revolving door detentions', that is, the practice of detaining individuals, releasing them, and then immediately re-detaining them under the PSA. Such 'revolving door detentions' are one of the many ways in which the PSA and its implementation involve systematic resort to arbitrary detention and violate India's obligations under international human rights law.

In March 2011, Amnesty International published the report '*A Lawless Law'* on administrative detentions under the PSA.[5] The report documented the various ways in which the use of the PSA violated international human rights law. This new briefing reviews the impact of the PSA on the human rights of individuals in J&K since the publication of that report. It finds that despite legal and policy developments, Amnesty International's key human rights concerns with the PSA and its application remain unchanged: the PSA is still a 'lawless law'.[6]

Methodology. Amnesty International conducted the research for this briefing over two visits to J&K in April and July 2012. This included trips to Srinagar, Anantnag, Pulwama, Kupwara and Baramulla. Amnesty International delegates analysed 110 PSA detention orders and conducted interviews with nine families where a family member had been detained under the PSA. Amnesty International also interviewed members of the state police, representatives of the J&K Bar Association and the J&K State Human Rights Commission, media persons, lawyers and civil society organizations.

2. UNDERSTANDING THE PUBLIC SAFETY ACT

The status of the state of J&K has been politically controversial for decades. Since 1989, there has been a turbulent political movement in the Kashmir Valley for self-determination and independence,[7] alongside a conflict between state forces and armed separatist groups, in which both sides have committed acts of violence against civilians. In this context, the state police and security forces are permitted to use broad powers under laws such as the PSA and Armed Forces Special Powers Act to maintain "public order" or the "security of the state". More specifically, the PSA allows for administrative detention of up to two years "in the case of persons acting in any manner prejudicial to the security of the State," and for administrative detention of up to one year where "any person is acting in any manner prejudicial to the maintenance of public order".[8] Amnesty International acknowledges the right, indeed the duty of the state to defend and protect its population from violence. However, this must be done while respecting the human rights of all concerned.

Under section 8 of the PSA, a Divisional Commissioner or a District Magistrate may issue a detention order to prevent any person from acting in a manner prejudicial to the "security of the State or the maintenance of the public order". Once a person has been detained, the detaining authority must inform him or her of the grounds of detention within five to 10 days of detention. However, the authority is not required to disclose any facts "which it considers to be against the public interest to disclose".[9] The detained person must also be given an opportunity to make a representation against his or her detention to the government. All detention orders and any representation made by the detained person must be placed before an Advisory Board within four weeks from the date of the detention order. The Advisory Board is a government-appointed three-member body, composed of High Court judges or individuals qualified to be judges of a High Court. The Advisory Board is responsible for reviewing the detention order, representation by the detained person, and any other information it considers necessary, to determine whether or not there is sufficient cause for the detention of the person.[10] The government must act in accordance with the Advisory Board's conclusions in either confirming or revoking the detention order. As per section 22, no "suit, prosecution or any other legal proceeding shall lie against any person for anything done or intended to be done in good faith" under the PSA. This, briefly, is the process by which the PSA allows authorities to detain persons for up to two years without charge or trial.

In 2011, Amnesty International's *'Lawless Law'* report revealed that, given the political context in J&K, the PSA was used to detain, among others, political leaders, lawyers, and individuals who challenged the state through political action or peaceful dissent. The report found that the PSA provides for arbitrary detention, which violates the right to liberty under human rights law binding on India. Furthermore, the report found that state authorities also used the PSA to facilitate other

human rights violations, including incommunicado detentions, torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) in custody, and detention on vague grounds. Amnesty International found that, in some instances, the PSA was used as an informal justice system, that is, to secure the long-term detention of individuals instead of charging and prosecuting them in a court of law. Based on these findings, the report called on the Government of J&K to repeal the PSA, abolish the administrative detention system, either release those held under the PSA or charge them with a recognised criminal offence, and to try them in a regular court in proceedings which meet international standards of fairness.

The *'Lawless Law'* report was submitted to the Indian Ministry of Home Affairs, the J&K state government, the Group of Interlocutors and civil society groups in the state. The J&K Chief Minister responded by announcing in the State Legislative Assembly that "the Amnesty report would be studied thoroughly and the suggestions made in it would be worked on. It's an important report and has lessons to be learnt".[11] Between April and May 2011 Amnesty International issued three Urgent Action appeals on the cases of Faizan Rafiq Hakeem, Murtaza Manzoor and Zaffar Shafi Hakeem. Faizan (detained when he was 14 years old) and Murtaza (detained when he was 17 years old) have since been released. In September 2011, Amnesty International also wrote to members of the J&K State Assembly, calling for the repeal of the PSA.[12]

Protests against detentions in Srinagar, 2010 © Amnesty International

3. KEY DEVELOPMENTS SINCE 2011

Since 2011, there have been several key developments in J&K, including visits by UN Special Procedures, the release of the report of the Group of Interlocutors, and amendment of the PSA.

3.1 VISITS BY UN SPECIAL PROCEDURES

Recent visits by UN Special Procedures have emphasized the human rights concerns associated with the PSA in J&K. In 2011, Margaret Sekaggya, the UN Special Rapporteur on the situation of human rights defenders, conducted a fact-finding mission to India. After visiting Srinagar, she noted the "arbitrary application of security laws at the national and state levels," and specifically urged state authorities to repeal the PSA.[13] Later, in September 2011, the Indian Government extended an open invitation to all Special Procedures of the UN. Following this, in March 2012, Christof Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, visited India. On visiting Srinagar, he recommended the immediate repeal of laws providing for immunity from prosecution of the police and the armed forces.[14] This recommendation is relevant to section 22 of the PSA which provides for such impunity from prosecutions.

3.2 THE REPORT OF THE GROUP OF INTERLOCUTORS

In 2010, more than 100 persons were killed in police firings on protestors in the Kashmir valley.[15] Some of these protestors had thrown stones at police and security forces. In this context, in September 2010, the Government of India announced the appointment of a three-member Group of Interlocutors to "begin the process of a sustained dialogue with all sections of the people of Jammu & Kashmir". The Interlocutors were given the mandate to "hold wide-ranging discussions with all sections of opinion in Jammu and Kashmir in order to identify the political contours of a solution and the roadmap towards it".[16]

The Interlocutors' report, titled *A New Compact for the People of Jammu and Kashmir*, was released on 24 May 2012. In their report, while the Interlocutors argued that that "[t]he PSA is being used less frequently",[17] they recommended that "the Act's sweeping powers make it open to misuse, and [it] should be amended accordingly".[18] The Interlocutors also recommended that the period for approval of detentions be reduced from 12 days to four days, that juveniles should not be held

under the PSA, and that the PSA should distinguish between offences when it came to the detention period. "Given the fact that disturbance of public order can range from minor to major acts, the detention period should range from one week for minor offences to one month for major offences, but no longer",[19] the Interlocutors said. Similarly, they said that "three months' detention should be ample" for actions prejudicial to the security of the State.

Amnesty International welcomes the Interlocutors' observations regarding misuse of the PSA, which echo the organisation's findings. However, the Interlocutors have not addressed the fact that several other provisions in the PSA violate international human rights law (see Part IV below). The Interlocutors have also not provided any evidence for their claim that the PSA is being used less frequently. The government has not released any data on numbers of detentions since 2010, and activists on the ground have reported recently that the extent of use of the PSA has not changed.[20]

3.3 AMENDMENTS TO THE PUBLIC SAFETY ACT

In April 2012, the J&K Government amended the PSA through the Jammu and Kashmir Public Safety (Amendment) Act, 2012. Notably, the amendments provided that persons below the age of 18 should not be detained under the PSA.

2012 AMENDMENTS TO THE PSA

The following five amendments to the PSA came into force on 18 April 2012.

Section 8 of the PSA was amended to provide that no person under the age of 18 may be detained under the PSA for offences under sections 8(a) and (a-1) of the PSA.

Section 13 was amended to add that the grounds of detention have to be communicated to the detainee within 10 days from the time of arrest and in a language that he or she understands.

Section 14 was amended to introduce a maximum term of office for the Chair and members of the Advisory Board. Now, they can hold office for a maximum of three years, which will be extendable for a further period of two years. Prior to the amendments, there was no maximum term.

Following the amendment to section 16, the Advisory Board must submit its report to the Government within a period of six weeks from the date of detention. They had eight weeks to do so prior to the amendments.

Section 18 was amended to reduce the maximum period of detention under the PSA. This was reduced from 12 months to three months, extendable to 12 months, in the case of persons "acting in any manner prejudicial to public order". It was reduced from two years to six months, extendable to two years, in the case of persons acting in "any manner prejudicial to the security of the state".

The J&K Law and Parliamentary Affairs Minister, Ali Mohammad Sagar has described these amendments as a "remarkable achievement".[21]

Amnesty International welcomes the repeal of the powers to detain children under the PSA, and believes that the amendments, if applied in practice, would improve the current situation. However, Amnesty International reiterates that the amendments are far from adequate in their present form.[22] As part IV of this briefing indicates, several provisions in the PSA still do not comply with India's international law obligations. Notably, the amendments do not even go as far as the recommendations made by the Interlocutors in their report.

4. THE PSA VIOLATES INTERNATIONAL HUMAN RIGHTS LAW

In the 2011 report, Amnesty International explained in detail how the PSA violates India's obligations under international human rights law. In particular, the PSA is inconsistent with provisions of the International Convention of Civil and Political Rights (ICCPR).[23] Despite the amendments to the PSA in 2012, these concerns remain outstanding. The following is a summary of Amnesty International concerns as detailed in the 2011 report.

India acceded to the ICCPR on 10 April 1979, and is therefore bound by this treaty. The PSA violates several provisions of article 9 of the ICCPR, which protect the right to liberty. At the time of accession, India made a reservation to article 9 of the ICCPR, declaring that it "shall be so applied as to be in consonance with the provisions of clauses (3) to (7) of article 22 of the Constitution of India." Articles 22(1) and 22(2) of the Constitution provide robust protections for persons arrested in India. However, article 22(3) weakens these protections for persons subject to administrative (or "preventive") detention. The rights to be produced before a magistrate within 24 hours of arrest and to consult and be represented by a lawyer of choice are thus available to persons ordinarily arrested in India, but are unavailable to persons under administrative detention.

Under international law, India's reservations to the ICCPR, including its reservation to article 9, must not be "incompatible with the object and purpose of the treaty."[24] Amnesty International has shown how India's reservation to article 9 of the ICCPR is incompatible with the object and purpose of the ICCPR as it denies key article 9 protections from persons in administrative detention.[25] The UN Human Rights Committee has clarified that to reserve the right "to arbitrarily arrest and detain persons" would be incompatible with the object and purpose of the ICCPR.[26] Similarly, in 2008, the UN Working Group on Arbitrary Detention concluded that 10 individuals detained under the PSA in J&K had been arbitrarily detained in violation of articles 7, 9, 10 and 11(1) of the Universal Declaration of Human Rights and Articles 9 and 14 of the ICCPR.[27] The Working Group called on the government to bring its laws in conformity with international human rights law.

Provisions of the PSA violate international human rights law because:

- According to article 9(1) of the ICCPR "[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." In the context of national security laws, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has made reference to the principle of legality, and stated that legal provisions "must be framed in such a way that: the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct."[28] The PSA does not define "security of the state", and provides a vague and over-broad understanding of what "public order" is.[29] Thus the PSA violates the principle of legality, and seriously compromises the ability of detained persons to contest their detentions.

- According to article 9(2) of the ICCPR "[a]nyone 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 UN Human Rights Committee has stated that this must also apply to preventive and administrative detentions.[30] Section 13 of the PSA allows the detaining authority to not communicate grounds of detention for up to 10 days of detention, and also to withhold any information that it considers "to be against the public interest to disclose".

- According to article 9(4) of the ICCPR, all persons deprived of their liberty, whether arrested or detained must be "entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." The PSA makes no provision for the ordinary judicial review of detentions. Instead, an Advisory Board reviews all orders, which, Amnesty International has argued previously, is not an adequate replacement for fair judicial procedures.[31] The Advisory Board is not independent of the government, it provides for no opportunity to appeal, there is a bar on legal representation for the detained person, and the report of the Advisory Board is confidential.

- Articles 14(3)(b) and (d) of the ICCPR provide for the right to communicate with and be represented by counsel of one's choice. However, Section 16(5) of the PSA explicitly stipulates that legal counsel cannot represent a detained person before the Advisory Board.

- All individuals have the right to a remedy under article 2(3) of the ICCPR. Section 22 of the PSA provides a complete bar on criminal, civil or "any other legal proceedings...against any person for anything done or intended to be done in good faith in pursuance of the provisions of this Act". By protecting officials, even when provisions of the PSA might be abused, this section enables impunity and prevents individuals from accessing their right to a remedy.

The vague and over-broad provisions of the PSA further facilitate a range of human rights violations in practice. In 2011, Amnesty International reported that state authorities used the PSA to detain individuals who challenged the state through political action or peaceful dissent, thus violating their right to free speech and expression. Authorities also used the PSA to detain individuals who participated in 'stone-throwing' protests in 2010, instead of charging them with criminal offences and prosecuting them. Amnesty International noted its concern that the PSA is being used as an 'informal justice system' in J&K, that is, used to secure the long-term detention of individuals instead of charging and prosecuting them in a court of law. In facilitating this failure to prosecute individuals openly and fairly, systems of administrative detention like the PSA deprive victims of

justice, circumvent the safeguards of a fair trial, and undermine the rule of law.[32] As this briefing will next demonstrate, many of these concerns persist.

Furthermore, victims of armed attacks or a human rights or humanitarian law violation have the right to effective access to justice and reparation. In its 2005 Basic Principles covering the right to reparation, the UN General Assembly has emphasised that states have the duty to "investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him".[33] Similarly, in his recent report, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has developed Framework Principles for Securing the Human Rights of Victims of Terrorism.[34] He recommended that states secure the human rights of victims of terrorism by, amongst other things, ensuring that "criminal proceedings, including the exhaustion of any ordinary appeal procedures, [are] conducted with reasonable expedition" and by giving "serious and urgent consideration to implementing a system for effective victim participation" in these criminal proceedings.

When the PSA is used as an informal justice system, persons suspected of, and sometimes charged with violating human rights or committing acts of violence, are detained for long periods of time without being prosecuted through a fair trial in a court of law. Where such administrative detention replaces proper investigations and trial, the risk of the real perpetrators remaining free is much greater. This also violates the rights of victims to see the person responsible for violations against them promptly and duly prosecuted and punished, and denies them the right to participate in this process.

While Amnesty International continues to recommend immediate repeal of the PSA, it takes no position on the guilt or innocence of those detained under the PSA. Instead, it argues that all detained persons must be charged with recognised criminal offences and promptly tried by a court that meets international fair trial standards, or else be released.

During an operation for detaining persons under PSA in Srinagar, 2011 © Amnesty International

5. IMPLEMENTATION OF THE PSA VIOLATES INTERNATIONAL HUMAN RIGHTS LAW IN PRACTICE

In addition to the fact that provisions in the PSA violate international human rights law, the manner in which the PSA is implemented by J&K authorities in practice also raises several human rights concerns.

5.1 ARBITRARY DETENTION OF CHILDREN

Amnesty International's 2011 report documented cases of children, that is, persons below the age of 18, who were detained under PSA. Post-2011, an apparent drop in the number of 16 and 17 year olds being detained under the PSA was noted.[35] However, during its visits in April and July 2012, Amnesty International found that in at least three cases authorities detained children by falsely recording their age as being above 18. Both Mohammad Rafiq Sheikh and Murtaza Manzoor Panzoo were detained when they were 17,[36] but their grounds of detention stated that they were 19.[37] The J&K High Court eventually quashed their detentions and they were released. In Mohammad Rafiq Sheikh's case, the J&K High Court considered the fact that he was 17 years old while quashing the detention order, stating that "[t]he position of the detenue being a minor has not been taken note of, which in turn shows non-application of mind on the part of detaining authority".[38] However, in Murtaza Manzoor Panzoo's case, the court quashed the order on the ground of non-supply of material to the detained person.[39] It did not mention the wrongly recorded age.

In another case, a PSA detention order was issued against 15-year-old Umar Farooq Sheikh, a resident of Srinagar, on 29 March 2012. At the time the order was issued, the 2012 amendments repealing the power to detain children under the PSA were being discussed in the J&K Legislative Assembly. Umar Farooq Sheikh had already been arrested twice in 2012 alone. First he was arrested on 3 February 2012 on charges of rioting, rioting armed with deadly weapons, endangering human life or the personal safety of others, and attempting to murder and assault or use of criminal force to deter a public servant from discharge of his duty. When the J&K High Court granted him bail on these charges, authorities arrested him again and charged him for the offence of "singing obscene

songs".[40] On 27 February 2012 the J&K High Court granted him bail in this case as well, and he was released. Umar Farooq Sheikh's PSA detention order of 29 March 2012 claimed that he was 19 years old, and accused him of involvement "in anti-social activity aimed at disturbing public peace and tranquility" and "acts aimed at keeping the state on boil and thereby bringing about secession of J&K from Union of India" but gave no further explanation. However, before state authorities could detain the child, his family challenged the order at the J&K High Court. The family's petition noted that Umar Farooq Sheikh was not 19 as claimed by the detention order but a 15-year-old school student.[41] On 24 July 2012, the J&K High Court quashed this detention order stating, amongst other things, that Umar Farooq Sheikh was a child when the order of detention was passed and under the amended PSA, a child cannot be detained.

The 2012 amendments clearly disallow the detention of children, and it is too early now to evaluate the full impact of the amendments. However, if state authorities continue to detain children by falsely registering their ages as above 18, this practice may not be eradicated by the amendments alone. Under the Convention on the Rights of the Child, which India ratified in 1992, states are required to establish laws, procedures, authorities and institutions specifically applicable to children. Children suspected of criminal offences must be subject to these rules.[42] The J&K Juvenile Justice Act 1997 contains provisions for the bail, custody and trial of children suspected of committing an offence. However, as Amnesty International has noted previously, many provisions in the J&K Juvenile Justice Act 1997 are not in compliance with India's international law obligations.[43] Amnesty International has therefore recommended that the J&K Juvenile Justice Act be amended to make it compatible with the UN Convention on the Rights of the Child.

5.2 COMMUNICATION OF THE GROUNDS OF DETENTION

The PSA requires the detaining authority to communicate the grounds of detention to the detained individual within 10 days of detention. The detainee then has the opportunity to make a representation to the Advisory Board against this order. The 2012 Amendments have added that the grounds of detention must be conveyed to the detained person "in the language which is understandable to him". In this context, the J&K High Court has also held that "the Constitutional and Statutory safeguards, guaranteed to a person detained under preventive detention law, are meaningless unless and until the detenue is made aware of and furnished all the material that weighed with the Detaining Authority while making detention order". Therefore, in addition to the order and grounds of detention, detained persons are also entitled to all the documents relied upon by the detaining authority while making the detention order. According to the J&K High Court, "the failure on the part of Detaining Authority to supply material relied at the time of making detention order to detenue, renders detention order illegal and unsustainable."[44]

In practice, Amnesty International found that authorities often disregarded the requirement in the PSA to provide grounds of detention to detained persons within 10 days of their detention, and did not provide the order and grounds of detention to them at all.[45]

5.3 REVIEW BY THE ADVISORY BOARD

Interviews with former detainees indicated that they are often not given the opportunity of being heard by the Advisory Board.[46] Senior Advocate of the J&K High Court and President of the J&K High Court Bar Association, Mian Abdul Qayoom told Amnesty International that he has been detained three times under the PSA in 2010 and 2011.[47] But he has never been taken before an Advisory Board.

The only legal avenue open to the families of those detained continues to be filing a *habeus corpus* petition in the High Court. However, even this process is far from simple. Delays in hearings are a major problem. The J&K Case Flow Management Rules, 2009, which guide the process of hearings in the High Court, state that *habeas corpus* petitions "shall be invariably disposed off within a period of 15 days". In actual practice, notes Mian Abdul Qayoom, these petitions are never decided within 15 days. Court hearings are adjourned several times and it takes months before the *habeus corpus* petitions are even officially listed. According to Mian Abdul Qayoom, this is a delaying tactic. Another such tactic, he says, is that state counsel often asks for adjournments on PSA cases on the ground that they were not aware that the case was listed for hearing and, as a consequence, they did not have the relevant files with them.[48]

5.4 REVOLVING DOOR DETENTIONS

In its 2011 report, Amnesty International demonstrated the common practice of 'revolving door detentions' under the PSA, that is, the practice of detaining persons, then releasing and re-detaining them under the PSA.[49] As a result, individuals often remain in the custody of the police for long periods of time. In its recent research, Amnesty International found evidence that this practice is continuing. Revolving door detentions are one way by which administrative detentions are used by the police as an informal justice system, and the regular criminal justice system is by-passed. Authorities use multiple detention orders to keep individuals in detention, instead of charging and prosecuting individuals through the regular criminal justice system.

Khalid Farhat Shah, a medical representative and resident of Sopore, was first taken to an interrogation centre by the Kashmir Special Operations Group (SOG) in 2009. According to his petition to the J&K High Court, he was tortured and then transferred to police custody for several days, and charged under the Arms Act, 1959. Despite being granted bail by a lower court, he was not released. Instead the authorities charged him with another offence. He once again applied for bail and was successful but he was not released. Instead, Khalid Farhat Shah was kept illegally in detention throughout 2010. In January 2011,[50] the authorities formally passed a detention order under the PSA against him, but in June 2011, the J&K High Court quashed it.[51] However, the authorities did not release him, but transferred him to the Counter-Intelligence Kashmir (CIK), Srinagar, and subsequently to police custody. The state authorities passed another PSA detention order against him on the same grounds as the one previously quashed by the High Court.[52] He successfully challenged the second detention order in the High Court and was released from Kupwara district jail where he had been detained.[53]

Mohammad Rafiq Mohnad's situation is not very different. In July 2010, the state police arrested him and filed a First Information Report (FIR) under the Arms Act, 1959. While he was in custody,

the state authorities passed a PSA detention order against him on 19 August 2010.[54] The J&K High Court quashed this order on 8 April 2011. However, the authorities did not release him. He was kept in Srinagar central jail as a person awaiting trial in relation to another case that had been filed against him. He was granted bail in this case. Instead of releasing him, authorities shifted him to the CIK, and then to the police station in Zainpora, where he was kept illegally in detention until 21 May 2011. A second PSA detention order was passed against him on the same grounds as the previous detention order.[55] The state government then revoked the order and Mohammad Rafiq Mohnad was released.

In its 2011 report, Amnesty International documented the case of Masarat Alam Bhat, the Chairman of the Jammu and Kashmir Muslim League.[56] Masarat Alam Bhat has been charged by state police for offences under the Ranbir Penal Code such as rioting, endangering the public safety of others, threatening police officers, and for offences under the Enemy Agents Ordinance and Officials Secrets Act. Media reports have indicated that Masarat Alam Bhat is suspected of being involved in the protests in Kashmir in the summer of 2010, which involved stone-throwing and police violence. He is often referred to as a 'militant commander turned separatist leader' in mainstream media, and reports have linked him to the armed group Hizbul Mujahideen.[57] Between October 1990 and July 2005, Masarat Alam Bhat was detained for a total of over nine years. More recently, authorities prepared a dossier against him in 2009, detailing the reasons why Masarat Alam Bhat should be detained under the PSA. Based on this dossier, a PSA detention order was passed by the Executive Magistrate in 2010. The authorities detained him based on this order in February 2011 – one year after it was passed, and two years after the dossier was prepared. The J&K High Court quashed this order in August 2011, and he was released. Following this, the authorities detained Masarat Alam Bhat again in September 2011, under a fresh PSA detention order issued on the same grounds as the previous order that had been quashed by the J&K High Court. In February 2012, the J&K High Court quashed this second detention order as well. He was nevertheless not released and the authorities detained him without lawful authority until March 2012 when they issued a third detention order under the PSA. The J&K High Court quashed this order as well. He was released on 30 June 2012 only to be detained again under a fourth PSA detention order dated 23 July 2012. At the time of finalising this report, he was being held in Udhampur jail in Jammu.

Similarly, Mehraj-ud-din Kalwal, an activist of the Syed Ali Shah Geelani faction of the Hurriyat, has been detained eight times since 1990. Most recently, an order of detention under PSA was passed on 9 January 2012 for his "highly objectionable" role in the Amaranth land row agitation, which took place four years earlier, in June 2008. He was accused of "instigating the general public to resort to violent protests which resulted in large scale loss of human life and property".[58] Mehraj-ud-din Kalwal has cases registered against him under the Unlawful Activities Prevention Act, the Ranbir Penal Code, and the Prevention of Damage to Public Property Act, 1984. He is accused of rioting armed with deadly weapons, criminal conspiracy to commit an offence punishable with death or imprisonment for life, promoting enmity between classes and promoting enmity between classes in places of worship, attempt to murder, doing acts which endangers human life or personal safety of others, and causing mischief and thereby causing damage to property valued at Rs.50 or upwards. Formal investigations have not begun in any of these cases. The J&K High Court ordered his release on bail in these cases on 12 June 2012, but the authorities did not release him, and he remained in detention under his PSA detention order, which was still valid. On 15 July 2012 he was taken into CIK custody after being discharged from the Bone and Joint Hospital, in Srinagar where he was expected to undergo surgery for a persistent back problem. His brother, Shabir Kalwal, told Amnesty International that he was illegally detained for about a week and then released on 22 July 2012.

5.5 DETENTIONS OF ALLEGED MEMBERS AND SUPPORTERS OF SEPARATIST GROUPS

Amnesty International's 2011 report noted that the J&K authorities used the PSA to detain individuals alleged of being members or supporters of separatist groups. During 2011-2012, Amnesty International found continuing evidence of this practice.

Ameer Hamza Shah, a Hurriyat activist, has been detained at least three times.[59] The most recent PSA detention order against him was passed in 2009. He has been accused of a variety of offences, including provoking people to come out on streets to riot and commit "illegal acts", "fomenting trouble" by inciting a mob to disrupt public order, and "leading a "violent procession". On 2 June 2012, the authorities took him into CIK custody and filed an FIR against him. When a court granted him bail on 2 July 2012, the authorities failed to release him. They transferred him to the Bandipora jail, where he was unlawfully detained. His wife informed Amnesty International on 9 June 2012 that the police had told him that he had "90 per cent chances of being released and 10 per cent chances of being further detained under PSA". He was released on 23 July 2012.

Hafizullah Mir, a member of the Geelani faction of the Hurriyat, has been detained under the PSA a total of six times between 1995 and 2011. Most recently, authorities detained him under the PSA on 18 February 2012. His wife told Amnesty International that he continued to be detained even after the J&K High Court quashed all the detention orders against him and other courts granted his release on bail in the cases registered against him. This bail was granted in the context of charges registered against him under the Unlawful Activities Prevention Act, Representation of People's Act, and the Ranbir Penal Code (for instigating the general public to destroy property). According to Hafizullah Mir's family, the authorities finally released him on 27 September 2012.

Amnesty International emphasises that administrative detentions cannot be a substitute for the ordinary criminal justice system. Individuals must be charged with recognizable criminal offences. Where individuals are charged with such offences, including offences involving the use of violence, they must be promptly tried by a court that meets international fair trial standards instead of being detained without trial for long periods of time. As noted before, not prosecuting persons suspected of committing offences also violates the rights of the victims of these offences.

5.6 NON-APPLICATION OF MIND BY THE DETAINING AUTHORITY

Under section 8 of the PSA, the detaining authority must be satisfied that it is necessary to detain an individual before passing an order of detention. In an interview with Amnesty International, S.M. Sahai, Inspector General of Police in J&K stated that the detaining authority under the PSA did not act at the behest of the police; the police merely supplied it with the necessary material on the basis of which the detaining authority came to an independent decision on the need to detain a person.[60] However, in the period from 2010 to 2012, Amnesty International found cases in which courts had quashed PSA detention orders for "non-application of mind", that is, the failure to exercise due diligence by the detaining authority.[61] This raises concerns about how independent detaining authorities are of the police when they make decisions to detain persons under the PSA.

In the case of Junaid Ahmad Parray,[62] for example, the authorities issued an order to detain him but failed to execute it. While quashing the order, the J&K High Court observed: "The very fact that the respondents have not executed the detention order for [the] last … two years, [which is the] maximum period for which [a] detention order can remain in force, indicates that the detention order has been passed in a mechanical manner".[63] Similarly, in the case of Abdul Hayee Malik,[64] the J&K High Court quashed a PSA detention order because Abdul Hayee Malik was already in judicial custody, and facing trial for certain offences. The Court observed that "[t]he detenue has to remain in custody in connection with such cases unless he is admitted bail, therefore, there was no requirement of passing the order of detention ... Passing of the order of detention under such circumstances shows clearly non application of mind on the part of the detaining authority".[65]

5.7 TORTURE AND OTHER ILL-TREATMENT, CONDITIONS OF DETENTION AND LACK OF MEDICAL TREATMENT

Amnesty International had noted in its 2011 report that persons in detention in prisons in J&K were subject to torture and other ill-treatment. During its visits to J&K in 2012, the organization continued to receive reports of denial of adequate medical care and other ill-treatment.

Recently, the death of a PSA detainee appears to have been caused by a failure to provide adequate medical care. Sajad Ahmad Dar, aged 22, died on 22 March 2012, in the Sher-I-Kashmir Institute of Medical Sciences, Srinagar, after being held in the Kupwara jail for two months without adequate medical treatment. On 24 March 2012, the Kupwara additional district magistrate commenced an inquiry into the circumstances of the death and submitted his report on 2 April 2012. The authorities did not immediately furnish a copy of this report to Sajad Ahmad Dar's family. His family had to resort to an application under the Right to Information Act, 2005 to obtain a copy. The report concluded that the medical staff and the jail authorities were negligent in providing prompt medical care, which led to Sajad Ahmad Dar's death. The report also noted that the jail inmates "in absence of regular doctor and trained paramedical Staff are not being provided proper medical treatment or check-up whenever required." It concluded, "the deceased was physically unfit having some acute problems and needed special treatment, [and] was not provided sufficient treatment which led to his death".[66] At the time when Sajad Ahmad Dar's family informed Amnesty International of these details, the authorities had not registered an FIR against those officers held responsible for the negligence, which led to his death. Sajad Ahmad Dar's family has filed a petition in the J&K High Court with a view to monitor the action being taken on the findings of the inquiry.

In another case, authorities detained Syed Muneer Bukhari, a 22-year old resident of Sopore under the PSA for the first time in 2006. The grounds of detention accused him of being "an important member" of the Lakshar-e-Taiba (considered a 'terrorist group' by the Indian government), and said that he had conspired to "carry out some subversive activities in Srinagar".[67] While he was in detention, Syed Muneer Bukhari developed several medical problems. He was sent to CMC Hospital, Jammu on 14 July 2006 and the report showed that he was suffering from "myotonic dystrophy, possibly myesthenia gravis and permanent ptosis in both the eyes".[68] These disorders require constant medical attention. He was detained for 24 months, and simultaneously, a case under the Arms Act was registered against him. Syed Muneer Bukhari was released in 2008. On 6 July 2012, authorities detained Syed Muneer Bukhari for a second time under a fresh PSA detention order, which stated that he had "played a significant role in creating an atmosphere of fear and terror and

contributed largely to subvert peaceful situation".[69] Subsequent medical reports rule out myasthenia gravis, however, Amnesty International is concerned that Syed Muneer Bukhari may not be receiving the attention he needs for his other medical disorders.

There have also been continued reports of torture and other ill-treatment in detention. On 1 January 2011, the authorities detained 22-year-old Mudassir Bashir Shah of Sopore for the first time. He was kept at the Special Operations Group camp for 14 days where his family claimed the police beat him. The authorities later transferred him to the Sopore police station where he was detained without legal authority for around six months, and then released. On 5 January 2012, the authorities issued a PSA detention order against him. For the next three days, he was held at the SOG camp during the day and sent home for the night. Mudassir Bashir Shah told his family that the authorities beat him at the camp, and that he was forced to write "an apology" for the 2010 protests involving several incidents of pelting stones at the security forces and asked to work as a police informer. On 9 January 2012, the authorities detained him under the PSA. The J&K High Court quashed the detention order on 16 May 2012. The authorities kept him in unlawful detention for another week, and he was released on 22 May 2012.

5.8 RIGHT TO REPARATION

"As the Respondent had miserably failed to justify the detention of the detenue and he has been deprived of his liberty for over two years without any legal justification, the court is of the opinion that it would be just and proper to award some compensation to him at least for his wrongful confinement…The detenue in the present case appears to have been deprived of a fundamental right of his liberty for over two years without following the procedure as established by law … [he has] every right to get damages from the respondents, at whose behest he has suffered the wrongful confinement".

The J&K High Court in *Farhat Ahmad Kanjwal v State*[70]

Indian law recognizes the right to compensation for wrongful arrest and detention.[71] Amnesty International's 2011 report documents how the courts, despite having quashed detention orders, were reluctant to award compensation to the detained persons. Even now, while suits for quashing detention orders routinely seek compensation, Amnesty International has not come across compensation awards in any of the cases it accessed.

However, in a rare recent case, the J&K High Court both quashed the order of detention and kept the issue of compensation alive. On 8 May 2012, the J&K High Court, while quashing the detention of Mubarak Ahmad Wani of Bangidar, held that "this, however, does not end the controversy in the present case as the detenue, apart from seeking quashment of detention order, has asked for compensation on account of what petitioner calls his illegal detention. Let the Respondents file their response as regards claimed liability to pay compensation within two weeks".[72] The state government had not filed its reply on 31 July 2012 when the matter was taken up for hearing. It has been given a last opportunity to file its reply and the matter has been listed for hearing.

6. CONCLUSIONS AND RECOMMENDATIONS

In 2011, Amnesty International termed the PSA a 'lawless law'. In 2012, this assessment continues to hold true. Despite seemingly positive political and legal developments in recent months, the PSA and its implementation in J&K continue to violate India's obligations under international human rights law. Several provisions in the PSA facilitate arbitrary detention, in violation of India's obligations under the ICCPR. Amnesty International's subsequent research in 2012 has also found that the manner in which authorities use the PSA in J&K results in further human rights violations. These include unlawful deprivations of liberty through the practice of 'revolving door detentions', detentions of children, torture and other ill treatment, the denial of medical care while in detention, and a limited realization of the right to reparations. Furthermore, instead of charging and trying persons suspected of committing offences in a fair trial in a court of law, the J&K authorities continue to circumvent the rule of law and the criminal justice system by resorting to detentions under the PSA.

RECOMMENDATIONS

Amnesty International, therefore, reiterates its call on the Government of Jammu and Kashmir to:

Repeal the PSA and any other legislation facilitating the use of administrative detentions;

Abolish the system of administrative detentions in J&K and either release or charge persons accused of committing criminal acts with recognizably criminal offences and try them in a regular court with all safeguards provided;

Implement court rulings ordering release of detainees without delay;

Immediately and unconditionally release all detainees deprived of liberty solely for the peaceful exercise of their rights of freedom of thought, conscience, religion, opinion or expression;

In the period before repealing the PSA, strengthen protection during detention by:

- Ending immediately the use of incommunicado detention;
- Ending detention in unofficial places of detention;

- Ensuring officers carrying out the initial arrest inform the families of the place where the detainee will be held;

- End the practice of repeatedly detaining persons under multiple detention orders on similar grounds;

- Ensuring all detainees are brought before a judicial magistrate within 24 hours of arrest;

- Ensuring that detainees have access to their families, legal counsel and independent medical professionals without delay and regularly thereafter, and monitor the quality of medical reporting;

- Ensuring that the families of those detained are informed of subsequent transfers to other places of detention, without delay;

- Maintaining a centralized register of all detainees available for public access, detailing the date of order or arrest and detention, authority issuing such orders and all transfer, release and revocation orders;

Take all necessary measures to improve prison conditions, including by: (1) ending overcrowding and providing adequate food and medical care, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and (2) adopting a mechanism that provides for the mandatory independent, unrestricted and unannounced monitoring of all places of detention (including confidential interviews with any detainees of the visiting body's choice).

The Governments of India and Jammu & Kashmir must further:

Carry out an independent, impartial and comprehensive investigation into all allegations of abuses against detainees and their families, including of torture and other ill-treatment, denial of visits and adequate medical care, make its findings public and hold those responsible to account;

Take all appropriate criminal or administrative measures against officials who fail to comply with safeguards against human rights abuses;

Ensure all victims of human rights violations have access to effective reparations.

Amnesty International urges the Government of India to:

Facilitate visits of the UN special procedures, in particular those requested by the UN Special Rapporteur on Torture and other cruel inhuman and degrading treatment or punishment, and the UN Working Group on Arbitrary Detention;

Ratify without reservations, and fully implement in practice the UN Convention against Torture and its Optional Protocol;

Withdraw its reservation to Article 9 of ICCPR.

END NOTES

1 PSA Detention Order No. 09/DMP/PSA/2011, dated 10 August 2011.

2 *Javaid Akbar Sheikh v State of J&K*, HCP 298/2011, dated 14 February 2012.

3 PSA Detention Order No. 01/DMP/PSA/2012, dated 4 May 2012.

4 Azad Essa, "Kashmir: Doubts and Disappearances" *Al Jazeera*, 18 April 2011, http://www.aljazeera.com/indepth/features/2011/04/201141811255452148.html, accessed 1 October 2012.

5 Amnesty International, *A 'Lawless Law' – Detentions under the J&K Public Safety Act*, AI Index: ASA/20/001/2011.

6 The term 'lawless law' was used by the Supreme Court of India to describe preventive (i.e. administrative) detention laws in a number of cases including *Jaya Mala v Home Secretary*, AIR 1982 SC 1297; *Ajay Dixit v State of UP*, 1985 SCR (1) 843; *Alijan Mian v District Magistrate*, 1983 SCR (3) 939.

7 The state of J&K is made up of three regions – Jammu Division, Kashmir Division (also known as the Kashmir Valley), and the Ladakh region. The support for self-determination and independence is largely found within the Kashmir Valley.

8 Section 18 of the PSA.

9 Section 13(2) of the PSA.

10 Sections 14, 15, and 16 of the PSA.

11 Shabir Das "Govt to work on Amnesty proposals" *Rising Kashmir*, 23 March 2011, http://www.risingkashmir.in/news/govt-to-work-on-amnesty-proposals-7655.aspx, accessed 8 August 2012.

12 Amnesty International, *Public Statement - An open letter from Amnesty International to Members of the Jammu and Kashmir Legislative Assembly*, AI Index: ASA 20/046/2011. http://www.amnesty.org/en/library/info/ASA20/046/2011/en, accessed 8 October 2012.

13 "India's human rights defenders need better protection, says UN expert" *UN News Center*, 21 January 2011, http://www.un.org/apps/news/story.asp/html/story.asp?NewsID=37339&Cr=human+rights&Cr1=, accessed 7 August 2012.

14 "UN expert calls on India to fight impunity for extrajudicial executions" *UN News Center*, 30 March 2012, http://www.un.org/apps/news/story.asp?NewsID=41676&Cr=india&Cr1=, accessed 8 August 2012.

15 Amnesty International, *India: Urgent need for Government to act as death toll rises in Kashmir*, AI Index: ASA 20/027/2010, 17 September 2010, http://www.amnesty.org/en/library/info/ASA20/027/2010/en, accessed 4 October 2010.

16 Group of Interlocutors for J&K, "A New Compact with the People of Jammu and Kashmir – final Report" at p. 1. May 2012. On file with Amnesty International. The Group of Interlocutors was made

up for three members: Dileep Padgaonkar, senior journalist; M.M. Ansari, Information Commissioner; and Radha Kumar, Trustee of the Delhi Policy Group, a New Delhi-based think tank.

17 *Id,* at page 16.

18 Id, at page 95.

19 *Id*, at page 96.

20 Amnesty International interviews with human rights activists from April 2012 to August 2012.

21 "Govt reacts to Amnesty's allegations, terms amendments a remarkable achievement" *Rising Kashmir*, 4 May 2012, http://www.risingkashmir.in/news/govt-reacts-to-amnestys-allegations-terms-amendments-a-remarkable-achievement-26331.aspx, accessed 8 October 2012.

22 Amnesty International, *Amendments not Enough, Repeal the Jammu and Kashmir Public Safety Act* AI Index: ASA 20/019/2012, http://www.amnesty.org/en/library/info/ASA20/019/2012/en

23 For a detailed discussion on this topic, see Amnesty International, *A 'Lawless Law' – Detentions under the J&K Public Safety Act*, AI Index: ASA/20/001/2011, page 15.

24 Vienna Convention on the Law of Treaties, A/CONF.39/27 (1969), adopted 22 May 1969, entered into force 23 May 1980, para. 19(c). The provisions of this treaty are considered to reflect rules of customary international law applying irrespective of whether or not states have ratified it.

25 Amnesty International, *A 'Lawless Law' – Detentions under the J&K Public Safety Act*, AI Index: ASA/20/001/2011, page 16.

26 Human Rights Committee, General Comment No. 24: 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, UN Doc. CCPR/C/21/Rev.1/Add.6, 4 November 1994, para 8.

27 Opinion no. 45/2008 (India) adopted on 26 November 2008, Opinions adopted by the Working Group on Arbitrary Detention, Human Rights Council Thirteenth Session, 2 March 2010, UN Doc. A/HRC/13/30/Add.1, at www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-30-Add1.pdf (UN WGAD 2010), para 51, accessed 8 October 2012.

28 Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the Commission on Human Rights, UN Doc E/CN.4/2006/98, 28 December 2005, para 46.

29 As per section 8 (3) (b) of the PSA, acting in any manner prejudicial to the maintenance of public order" means (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 its use, or using, or instigating, inciting, or otherwise abetting the use of force where such preparation, using, attempting, instigating, inciting, provoking or abetting, disturbs or is likely to disturb public order; (iii) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of mischief within the meaning of section 425 of the Ranbir Penal Code 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. Amnesty International has argued that this definition is

vague and broad – see Amnesty International, *A 'Lawless Law' – Detentions under the J&K Public Safety Act,* AI Index: ASA/20/001/2011, page 18.

30 Human Rights Committee, General Comment No. 8: Right to liberty and security of persons (Art. 9), 30 June 1982, http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/f4253f9572cd4700c12563ed00483bec?Opendocument, accessed 8 October 2012.

31 Amnesty International, *A 'Lawless Law' – Detentions under the J&K Public Safety Act*, AI Index: ASA/20/001/2011, page 18.

32 See generally, Amnesty International, *A 'Lawless Law' – Detentions under the J&K Public Safety Act* AI Index: ASA/20/001/2011, page 18.

33 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly Resolution 60/147 of 16 December 2005, available at http://www2.ohchr.org/english/law/remedy.htm, accessed 5 October 2012.

34 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, A/HRC/20/14, dated 4 June 2012, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-14_en.pdf, 5 October 2012.

35 Amnesty International, *Public Statement - Amendments not enough - Repeal the Jammu and Kashmir Public Safety Act*, AI Index: ASA 20/019/2012.

36 PSA Detention Order No. DMS/PSA/68/2011 dated 29 March 2012. On file with Amnesty International.

37 The Jammu and Kashmir State Board of School Education, Secondary School Examination Registration slip notes Mohammad Rafiq Sheikh's date of birth as 24 December 1994. On file with Amnesty International.

38 Order of the J&K High Court in *Mohammad Rafiq Sheikh v State*, Cr.M.PNo.24/2012 in HCP No 60/2012 dated 24 May 2012. On file with Amnesty International.

39 Order of the High Court of Jammu and Kashmir in *Murtaza Manzoor Panzoo v State*, HCPNo414/2011 dated 20 March 2012. On file with Amnesty International.

40 FIR No. 06/2012 was filed under Section 294 of the Ranbir Penal Code.

41 According to Umar Farooq Sheikh's Admit Card for Secondary School Examination issued by the Jammu & Kashmir State Board of School Education, Sheikh's date of birth is stated as 05.06.96. On file with Amnesty International.

42 See articles 37 and 40 of the Convention on the Rights of the Child. The UN Committee on the Right of the child has also issued a General Comment titled Children's rights in juvenile justice: General Comment No. 10, CRC/C/GC/10, 25 April 2007.

43 Amnesty International, *A 'Lawless Law' – Detentions under the J&K Public Safety Act*, AI Index: ASA/20/001/2011, pages 23 and 70. For example, the J&K Juvenile Justice Act provides that only boys under the age of 16 are 'juveniles' while the international standard requires all individuals under the age of 18 to be treated as children.

44 *Faizan Ajaz Mir v State of J&K*, HCP No. 411/2011.

45 For example, *Khalid Farhat Shah v State*, HCP No. 348/ 2011; *Faison Aijaz Mir v State of J&K*, HCP No.411/2011; *Sameer Ahmad Wani v State*, LPA No.319/2011 in HCP No. 253/2011.

46 Amnesty International Interview with Main Abdul Qayoom, Senior Advocate, J&K High Court, Srinagar, 14 April 2012; Amnesty International Interview with Mehraj-ud-din Kalwal, Bone and Joint Hospital, Srinagar, 6 July 2012. Interview with Saudagar, Advocate, Anantnag, 10 July 2012.

47 Amnesty International Interview with Mian Abdul Qayoom, Senior Advocate, J&K High Court, Srinagar, 14 April 2012.

48 Amnesty International Interview with Mian Abdul Qayoom, Senior Advocate, J&K High Court, Srinagar, 14 April 2012.

49 Amnesty International, *A 'Lawless Law' – Detentions under the J&K Public Safety Act*, AI Index: ASA/20/001/2011, March 2011, section 6.5

50 PSA Detention Order No.168/DMB/PSA/2010, dated 18 January 2011.

51 Order of the J&K High Court dated 8 June 2011, HCP No. 60/2011. On file with Amnesty International.

52 PSA Detention Order No. 39/DMB/PSA/2011, dated 10 September, 2011 as reported in Order of the High Court of Jammu and Kashmir in HCP No. 348/2011, dated 17 April 2012. On file with Amnesty International.

53 Order of the High Court of Jammu and Kashmir in HCP No. 348/2011, dated 17 April 2012. On file with Amnesty International.

54 PSA Detention Order No. 15/DMS/PSA/2010.

55 PSA Detention OrderNo.39/DMS/PSA/2011

56 Amnesty International, *A 'Lawless Law' – Detentions under the J&K Public Safety Act*, AI Index: ASA/20/001/2011, page 49.

57 See Muzamil Jaleel, "Valley's New Torch Bearers" *The Indian Express*, 31 August 2010, http://www.indianexpress.com/news/valley-s-new-torchbearers/674639/0, accessed 4 October 2012; Muzamil Jaleel, "Allow protests, no one will throw stones: most wanted separatist" *The Indian Express* 29 August 2010, http://www.indianexpress.com/news/allow-protests-no-one-will-throw-stones-most-wanted-separatist/673919/0 , accessed 4 October 2012; Praveen Swami, "Tape exposes Mirwaiz-Geelani tension; Tehreek approached Hizb" *The Hindu*, 5 September 2008, http://www.hindu.com/2008/09/05/stories/2008090556951200.htm, accessed 4 October 2012; Tavleen Singh "A Leader in Kashmir" *The Indian Express* 22 August 2010, http://www.indianexpress.com/news/a-leader-in-kashmir/663449/0, accessed 4 October 2010.

58 PSA Detention Order No. DMS/PSA/57/2011 dated 9 January 2012. On file with Amnesty International

59 The latest detention order was passed on 4 February 2012 (PSA Detention Order No.57/DMS/PSA/2012). Hamza Shah was detained under PSA twice in 2009: under PSA Detention Order No. DMB/PSA/155/2009, dated 6 June 2009 in Central Jail, Kathua, and a second PSA Detention Order No. DMB/PSA/169/2009, dated 27 October 2009 in Central Jail, Kote Bhalwal,

Jammu.

60 Amnesty International Interview with S.M. Sahai, Inspector General (Police), J&K, Srinagar, 18 April 2012.

61 See for example *Mushtaq Ahmad Sheikh v State of J & K*, HCP No.415/2011, dated 1 May 2012; *Mohammad Imran Bhat v Union of India*, HCP No. 44/2012 dated 15 May 2012; *Junaid Ahmad Parray v State of J&K*, HCP No. 440/2010, dated 12 June 2012; *Abdul Hayee Malik v State of J&K*, HCP No. 43/2012.

62 Application CMP No. 177/2010 in HCP No. 440/2010 before the J&K High Court. Order dated 12 June 2012.

63 *Id*. Paragraph 2.

64 J&K High Court, HCP No. 43/2012.

65 A similar order was passed in the case of *Mohammad Imran Bhat v Union of India*, HCP No. 44/2012 dated 15 May 2012.

66 Report by Additional District Magistrate Kupwara, of the magisterial inquiry into the death of Sajad Ahmad Dar Nabi Dar Sangrampora, Sopore District, Baramulla dated 2 April 2012. On file with Amnesty International.

67 PSA Detention Order No.11/DMB/PSA/2012, dated 6 July 2012.

68 Report of the Medical Officer, Central Jail, Kupwara No.SCN/CJJKB/219 to Sr. Superintendent, Central Jail, Kote Bhalwal, Jammu, dated 8 July 2006. On file with Amnesty International. Myasthenia gravis is a neuromuscular disorder that leads to muscle weakness and fatigue. Ptosis causes the eyelids to droop. This restricts vision, and can lead to permanent loss of vision in certain cases. Myotonic dystrophy is a chronic multi-systemic disorder, characterised by wasting of the muscles, cataracts, and cardiac conduction defects.

69 PSA Detention Order No. DMS/PSA/03/2006, dated 8 April 2006.

70 *Farah Ahmad Kanjwal v State*, 1995 Srinagar Law Journal 101 p.103

71 *Rudul Shah v State of Bihar* (1983) 4 SCC 141; *Bhim Singh, MLA v State of Jammu & Kashmir*, (1985) 4 SCC 677.

72 Order dated 8 May 2012 in Mubarak Ahmad Wani v State of J&K, CMP No. 128/2011 in HCP No.364/2011, paragraph 9. On file with Amnesty International.

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