



# General Assembly

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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

### **Written statement\* submitted by International Human Rights Association of American Minorities (IHRAAM), a non-governmental organization on the roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[27 January 2020]

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\* Issued as received, in the language(s) of submission only.

## **Arbitrary Arrests & Detention (Including Children) in Jammu & Kashmir**

### **INTRODUCTION**

As a State party to the International Covenant on Civil and Political Rights (ICCPR), India is obligated to ensure the principles of legality and the right to liberty and security<sup>1</sup>.

The United Nations Human Rights Committee has reminded India that anyone arrested or detained, his continued detention should be determined by an independent and impartial tribunal constituted and operating in accordance with the ICCPR<sup>2</sup>.

The Indian authorities in Indian administrated Jammu & Kashmir (J&K) continue to use various forms of arbitrary detention to target protesters, political dissents and other civil society actors<sup>3</sup>. A number of laws provide the legal basis for arbitrary detention but the one that is used most frequently to stifle political dissent is the Jammu & Kashmir Public Safety Act (PSA). This law does not provide for judicial review of detention and the Indian authorities issue successive detention orders thus defeating the Kashmir High Court orders to release a detainee.

### **The Kashmiri Detainees**

A right to information application found that over 1,000 people were detained under the PSA between 2016 & August 2017<sup>4</sup>.

Human Rights groups have claimed time and again that minors are being arrested under the PSA. In 2014, the Committee on the Rights of the Child called upon India to review its security related laws with a view to prohibiting criminal and administrative proceedings against persons under the age of 18<sup>5</sup>.

In July 2018, the Indian authorities amended section 10 of the PSA, removing the prohibition on detaining permanent residents of J&K outside the state. Consequently, at least 40 Kashmiri pro-freedom leaders, charged under the PSA, were transferred to various prisons outside the J&K in 2018<sup>6</sup>.

Among those transferred to the outside J&K prisons include:

MOHAMMAD YASIN MALIK is chairman of Jammu Kashmir Liberation Front (JKLF) that has now been banned by India. He was arrested and detained initially at Kot Balwall Jail in the Jammu district. Yasin Malik was later shifted to infamous Tihar Jail at New Delhi. It is the Indian National Investigation Agency (NIA) that arrested him for his custodial investigation. The Indian authorities have approached the Kashmir High Court for reopening the decades old cases against Yasin Malik. The Tihar Jail officials grossly mistreat and mostly keep him in solitary confinement. Civil Society

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1 Articles 15 (i) and 9; ICCPR

2 Article 14; ICCPR

3 UN Report, 8 July 2019, Paragraph 84, Page 18

[https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport\\_8July2019.pdf](https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf)

4 Jammu & Kashmir RTI Movement

<https://www.humanrightsinitiative.org/blog/no-rules-sops-for-ordering-preventive-detentions-under-jk-psa>

5 2018 CRC/C/OPAC.CO/I

6 JKCC, "Annual Human Rights Review 2018"; Page 15

groups fear for his extra-judicial or judicial killing bearing in mind that recently the news of his “death” in Tihar Jail was widely reported but later denied by the authorities<sup>7</sup>.

SHABIR AHMAD SHAH is the founder and president of Jammu Kashmir Democratic Freedom Party (JKDFP), a political organisation seeking “right of self-determination” in J&K. He was arrested on 25 July 2017 and currently detained at Tihar jail, New Delhi. Shabir Shah has spent 31 years of his life in jails and recognised as “the Prisoner of Conscience” by the Amnesty International. Shabir Shah’s party workers have always expressed concern on his well-being in the prison which have been denied by the Jail authorities.

FAROOQ AHMAD DAR is the chairman of Jammu Kashmir Liberation Front (R) – (JKLF-R). He was arrested on 25 May 2017 and currently detained at Tihar Jail, New Delhi. Farooq Dar has spent over 19 years in prisons. His party-workers fear about his extra-judicial or judicial killing as some sections of pandit community wish him to be hanged<sup>8</sup>.

ASIYA ANDRABI is the founding leader of Dukhtaran-e-Millat (Daughters of the Kashmir Nation) that has now been banned by India. She has been arrested number of times since 2010. Recently she was arrested on 6 July 2018. Asiya was shifted from Srinagar Jail to Tihar Jail, New Delhi by the NIA. She remains detained there.

NAYEEM AHMAD KHAN is the founder president of Jammu and Kashmir National Front. He is termed as revolutionary in the direction of attaining “Right of Self-Determination” for the people of Jammu and Kashmir. Nayeem Khan was first arrested in 1980 while leading a peaceful protest in Kashmir. He has been booked on numerous occasions under the PSA and detained at various detention centres. Nayeem Khan was arrested by the NIA in 2018 and has since been held at the Tihar Jail, New Delhi.

There are hundreds others who are booked and rebooked and kept in four walls of various prisons across India under the PSA. These include Ms Fahmeeda Sofi, Ms Nahida Nasreen, Altaf Ahmed Shah, Aiyaz Muhammad Akbar, Peer Saifullah, Raja Merajuddin Kalwal, Shahid-ul-Islam, Mohammad Aslam Wani, Zahoor Watali, Syed Shahid Yousaf Shah and Ghulam Muhammad Butt, all of them detained at Tihar jail. Others are held in various jails of J&K and those include – Mian Abdul Qayoom, President, Kashmir Bar Association, Muhammad Ashraf Butt, Secretary General, Kashmir Bar Association, Musarrat Aalam Butt (repeatedly released under the Kashmir High Court orders but re-booked and arrested under the PSA), Showkat Ahmad Bakshi, Noor Mohammad Kalwall and Nazir Ahmad Roonga, Hilal Akbar Lone and Muhammad Ahsan Untoo (advocates and human rights defenders).

## CONCLUSION

IHRAAM informs the OHCHR, President of the UNHRC and UNGA that despite the Kashmir High Court setting aside numerous PSA detention orders, the Indian authorities continue to detain Kashmiris by imposing new PSA orders before they leave prison premises.

The Working Group on Arbitrary Detention observed – “the Government has not refuted the allegation that these persons were detained by security forces under the said Act without serving them with an arrest warrant, which constitute a violation of due process in detention”<sup>9</sup>.

<sup>7</sup> AFP India; 6 August 2019

<sup>8</sup> EurAsian Times – 23 May 2017

<sup>9</sup> A/HRC/13/30/add.1; Paragraph 42

IHRAAM is deeply concerned about Kashmiris right to liberty and security. The right to liberty and security includes the right not to be subjected to arbitrary arrest or detention. OHCHR, the President of UNHRC and UNGA must take serious note of this and call upon India to repeal the PSA to ensure it complies with its international human rights norms and obligations and release all the PSA prisoners.

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