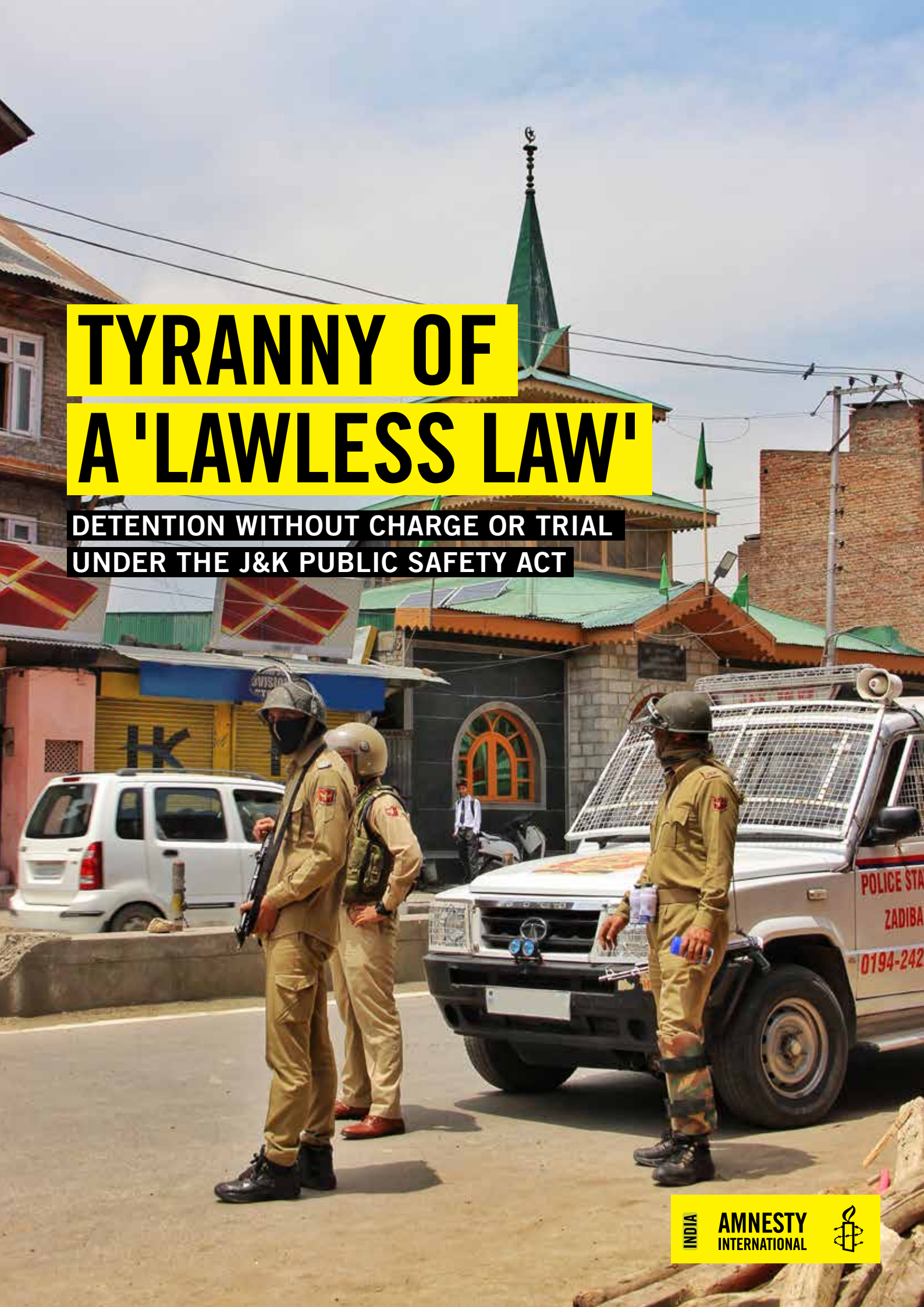


# TYRANNY OF A 'LAWLESS LAW'

DETENTION WITHOUT CHARGE OR TRIAL  
UNDER THE J&K PUBLIC SAFETY ACT



INDIA

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Tanveer Ahmad Dar, a handicapped PSA detainee outside  
his house in Baramulla © Amnesty International India

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# INTRODUCTION

On 14 September 2016, Khurram Parvez, a prominent Kashmiri human rights defender, was set to travel to Geneva to speak at a session of the United Nations Human Rights Council. Khurram had passed through security checks at Delhi's Indira Gandhi International Airport when, he said, "something popped up on the screen of the immigration officer's computer".<sup>1</sup> After 90 minutes, an immigration official told him that he had been instructed by an official from India's Intelligence Bureau to prevent him from travelling to Geneva.

Khurram returned to Srinagar. The very next day, he was arrested and placed in administrative detention under the Jammu & Kashmir Code of Criminal Procedure, for allegedly posing an imminent threat to "breach of peace". He was transferred to a jail in Kupwara, over 100 kilometres from his home in Srinagar. The detention order was based on a police report which claimed that policemen had seen Khurram Parvez on 15 September standing outside a mosque inciting people to shout slogans and march towards a government building.

On 20 September, a court in Srinagar ordered Khurram to be released, after ruling that the executive official who ordered the detention had not followed necessary procedures. But as soon as

Khurram was released the next day, he was detained under the Jammu and Kashmir Public Safety Act, 1978 (PSA) and taken to Kot Balwal jail in Jammu, 300 kilometres from his home.

The PSA detention order stated, among other things, that Khurram had "achieved a prominent position in the separatist camps under a hidden cover of being a human rights activist", had "a long history of affiliation with secessionist organizations" and "has been found resorting to illegal/unlawful activities since long, be it utilizing the youth to resort to violence or gathering so called Human Rights Activists".<sup>2</sup> The activist was accused of encouraging people to throw stones at security force personnel in four incidents; however, none of the First Information Reports filed by the police ever mentioned his name.

The PSA detention order was challenged before the High Court of Jammu & Kashmir. Over two months later, on 25 November, the High Court quashed the detention order, observing that "the detention order of the detenu is not only illegal but the Detaining Authority has abused its powers in ordering his detention."<sup>3</sup> Khurram was released five days later. He told Amnesty International India: "I was detained because the government felt threatened of the work that my organization was carrying out, and wanted to discourage us from engaging with the UN."

Khurram's case is just one of the many thousands in Jammu and Kashmir where individuals have been placed in administrative detention under the PSA without charge or trial,



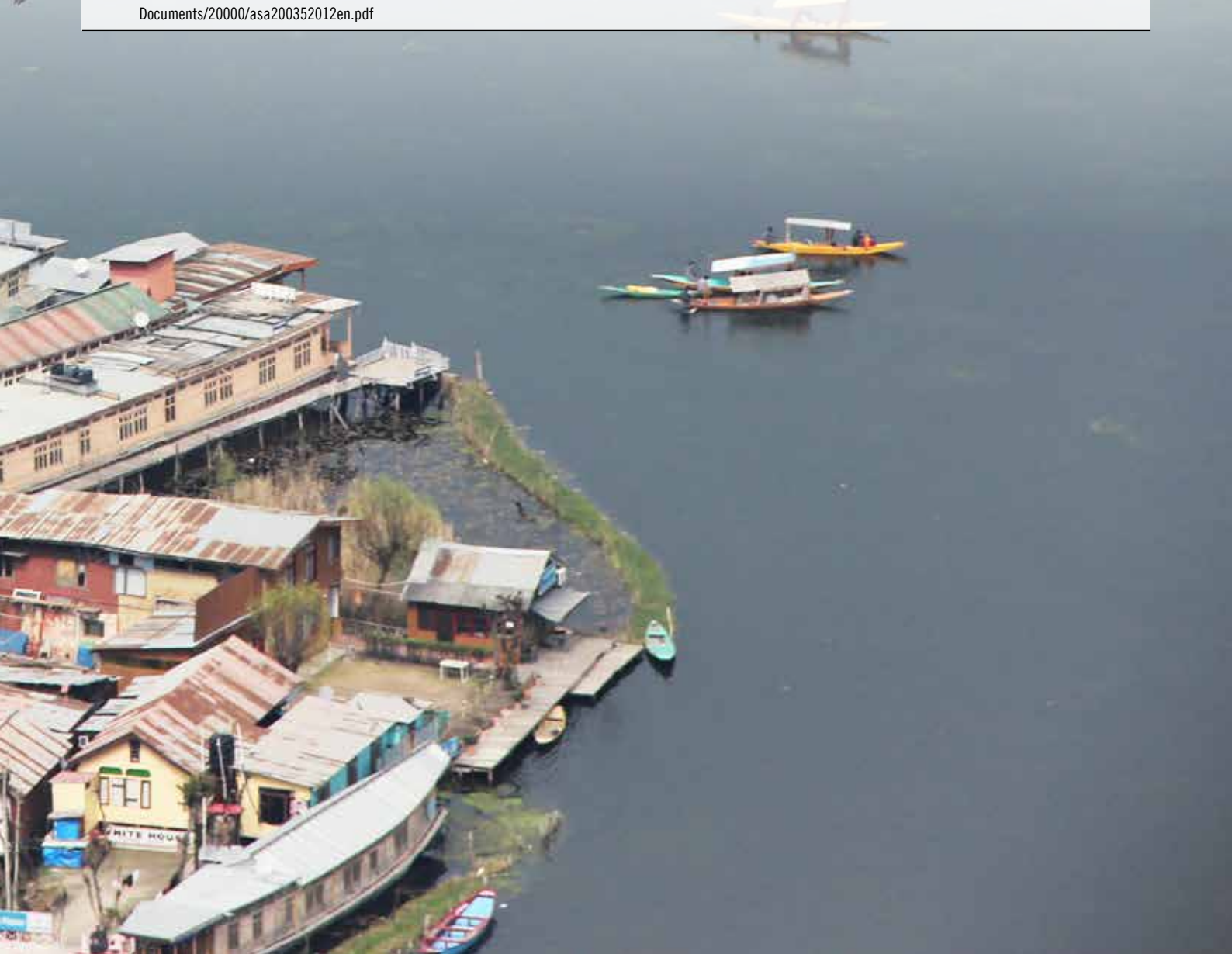
often on vague grounds and without due diligence, in blatant disregard of their fair trial rights.

In a written reply to the Legislative Assembly of Jammu and Kashmir in January 2017, the then-Chief Minister Mehbooba Mufti stated that from 2007 to 2016, over 2400 PSA detention orders were passed, of which about 58% were quashed by courts.<sup>4</sup> The Chief Minister stated in the Assembly in January 2018 that 525 people had been detained under the PSA in 2016, and 201 in 2017.<sup>5</sup> Government statistics are often inconsistent. According to information obtained through Right to Information (RTI) applications, over 1000 people were detained under the PSA between March 2016 and August 2017.<sup>6</sup>

In 2011, Amnesty International had published a report titled 'A Lawless Law' on administrative detention under the PSA, documenting the various ways in which the use of the PSA violated international human rights law.<sup>7</sup> In 2012, Amnesty published another briefing, titled 'Still a Lawless Law', which found that concerns with the PSA and its application remain unchanged.<sup>8</sup>

This new briefing revisits the PSA in its 42<sup>nd</sup> year of existence, to reveal how this 'lawless law' is enabling violations of both Indian and international law in Jammu and Kashmir, thereby contributing to inflaming tensions between residents and state authorities.

1. Suhasini Raj, 'India prevents Kashmiri activist from traveling to UN meeting', The New York Times, 15 September 2016, [www.nytimes.com/2016/09/16/world/asia/india-kashmir-khurram-parvez-jkccs.html](http://www.nytimes.com/2016/09/16/world/asia/india-kashmir-khurram-parvez-jkccs.html)
2. DMB/PSA/46/2016, on file with Amnesty India
3. Khuram Parvez Sheikh v. State & Ors., HCP 297/2016, High Court of Jammu and Kashmir
4. Response to Starred A.Q. No. 123, Jammu and Kashmir Legislative Assembly Budget Session 2017, [www.jklegislativeassembly.nic.in/replies%202017/27th%20of%20Jan%202017/Starred/2017-01-27%20123%20001\\_result.pdf](http://www.jklegislativeassembly.nic.in/replies%202017/27th%20of%20Jan%202017/Starred/2017-01-27%20123%20001_result.pdf)
5. Syed Rizwan Geelani, '726 persons detained under PSA in 2 years, says Govt', Greater Kashmir, 13 January 2018, [www.greaterkashmir.com/news/jammu/726-persons-detained-under-psa-in-2-years-says-govt/272067.html](http://www.greaterkashmir.com/news/jammu/726-persons-detained-under-psa-in-2-years-says-govt/272067.html)
6. Commonwealth Human Rights Initiative (CHRI), 'No Rules, SOPs for ordering preventive detentions under J&K PSA', 2018, [www.humanrightsinitiative.org/blog/no-rules-sops-for-ordering-preventive-detentions-under-jk-psa](http://www.humanrightsinitiative.org/blog/no-rules-sops-for-ordering-preventive-detentions-under-jk-psa) (hereinafter: CHRI, No Rules, SOPs for preventive detentions under J&K PSA)
7. Amnesty International, 'A 'Lawless Law': Detentions under the Jammu and Kashmir Public Safety Act', (Index: ASA 20/001/2011), [www.amnesty.org/download/Documents/28000/asa200012011en.pdf](http://www.amnesty.org/download/Documents/28000/asa200012011en.pdf)
8. Amnesty International, 'Still A 'Lawless Law': Detentions under the Jammu and Kashmir Public Safety Act, 1978', (Index: ASA 20/035/2012), [www.amnesty.org/download/Documents/20000/asa200352012en.pdf](http://www.amnesty.org/download/Documents/20000/asa200352012en.pdf)



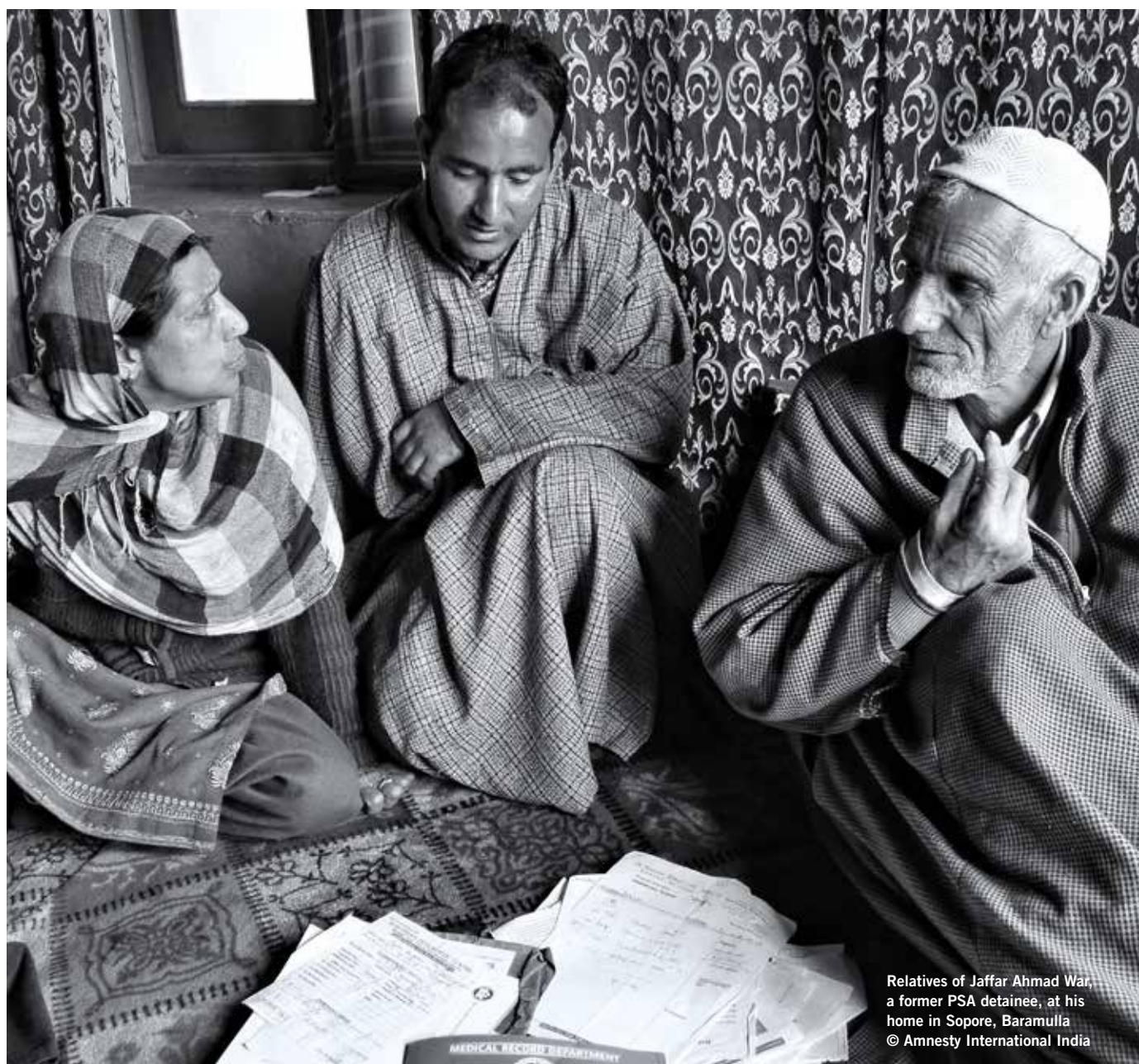
## METHODOLOGY

Amnesty International India analyzed 210 case studies of people who had been detained under the PSA between 2012 and 2018. Each case study included several government and legal documents such as detention orders, police "dossiers" detailing the allegations against the individuals, habeas corpus petitions and High Court orders. In some cases, detainees have been detained multiple times under different detention orders, most of which have been challenged and quashed by courts.

Amnesty International India obtained this information through RTI applications and communications to government departments and lawyers. It gathered information about detainees in 11 districts in J&K: Anantnag, Bandipora, Baramulla, Budgam, Kulgam, Kupwara, Pulwama, Reasi, Shopian, Srinagar and Udhampur. Authorities contacted by Amnesty International India include the J&K Police

Department, J&K Home Department, J&K Prisons Department, District Magistrates/Deputy Commissioners of all 22 districts in the state, the J&K High Court, the J&K State Human Rights Commission and the J&K Ministry of Social Welfare. Information was also obtained from the released detainees and/or their families.

None of the cases studied involved women detainees. This is not atypical, as women by and large are not targets of administrative detention in Jammu and Kashmir. According to statistics compiled by the National Crime Records Bureau, which counts the number of individuals in prison at the end of each year, the highest number of women held in administrative detention in Jammu and Kashmir between 2011 and 2016 was five.<sup>9</sup> However, women in Jammu and Kashmir do continue to face other kinds of human rights violations.



Relatives of Jaffar Ahmad War, a former PSA detainee, at his home in Sopore, Baramulla  
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Amnesty International India is mindful of the sensitive situation in Jammu and Kashmir, owing to the longstanding conflict between security forces and members of armed groups. While the government has a duty to protect its population from violence, it also has an obligation to respect the human rights of all concerned in the course of carrying out its duty.

Amnesty International India takes no position on the guilt or innocence of those alleged to have committed human rights abuses or recognizably criminal offences. However, everyone must be able to enjoy the full range of human rights guaranteed under Indian and international law. By using the PSA to incarcerate suspects without charge or trial, J&K authorities have not only gravely violated their human rights but also failed in their duty to charge and try such individuals and to punish them if found guilty in a fair trial. They have thereby also failed to defend the right to justice of the victims of these crimes. Comments were sought from J&K Police and Prison Department on the findings of the report, but official requests remained unanswered.

Amnesty International India opposes on principle all systems of administrative detention, because they are a way to circumvent fair trial safeguards of criminal proceedings. The procedures, rules of evidence and burden and standard of proof in the criminal justice system minimize the risk of innocent individuals being convicted and punished. It is unacceptable for a government to circumvent these safeguards and detain people whom it does not intend to prosecute. The requirement that the government use the institutions and procedures of ordinary criminal justice, including the presumption of innocence, whenever it seeks to detain a person suspected of criminal conduct, is a fundamental principle of criminal justice and international human rights law.

As a matter of policy, Amnesty International does not take a position for or against self-determination claims in Jammu and Kashmir or any other part of the world. Amnesty does consider that the right to freedom of expression under international human rights law includes the right to peacefully advocate political solutions, as long as it does not involve incitement to discrimination, hostility or violence.

## HOW THE PUBLIC SAFETY ACT WORKS

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”.

Under section 8 of the PSA, a Divisional Commissioner or a District Magistrate - both executive authorities - 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 10 days of detention in a language they understand. However, the authority is not required to disclose any facts “which it considers to be against the public interest to disclose”. The detained person must also be given an opportunity to make a representation against their detention to the government.

All detention orders and representations made by detained persons 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. 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.

The detention of persons below the age of 18 is prohibited under the PSA, following amendments to the Act passed in 2012.

In May 2018, the government of Jammu and Kashmir passed an ordinance (an executive order) which changed the manner in which the members of the Advisory Board were selected.<sup>10</sup> In August 2018, authorities amended the Act to remove a proviso which barred detainees who are permanent residents of Jammu and Kashmir from being lodged in jails outside the state.<sup>11</sup>

Section 23 of the PSA authorizes the government to make rules which lay down procedures to be followed for implementing the Act. However, RTI activists have revealed that the J&K government has not framed any rules or standard operating procedures to be followed by the executive authorities who pass detention orders under the PSA.<sup>12</sup>

9. National Crime Records Bureau, Prison Statistics of India, 2011-2016, Table 3.3 and 3.4, p 37-38, [www.ncrb.gov.in](http://www.ncrb.gov.in). These are the last six years for which the data is available.
10. The Jammu and Kashmir (Preventive Detention Laws) Ordinance, 2018, 22 May 2018, <http://jklaw.nic.in/pdf/preanative%20decaction%20.pdf>
11. The Jammu and Kashmir Public Safety (Amendment) Act, 2018, [jklaw.nic.in/pdf/Public%20Saftey.pdf](http://jklaw.nic.in/pdf/Public%20Saftey.pdf)
12. CHRI, No Rules, SOPs for preventive detentions under J&K PSA

## HOW THE PSA VIOLATES INTERNATIONAL HUMAN RIGHTS LAW

Firstly, under international human rights law, restrictions on liberty must obey the principle of legality: they must be adequately accessible, so that people know how the laws limit their conduct, and they must be precise, so that people can regulate their conduct accordingly.<sup>13</sup> However, the PSA does not define “security of the state”, and provides a vague and over-broad understanding of “public order”.

Secondly, anyone arrested has a right to be immediately informed about the reasons for the arrest.<sup>14</sup> The UN Human Rights Committee has stated that this must also apply to preventive and administrative detentions.<sup>15</sup> However, 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”.

Any arrested person also has a right to judicial review of her detention.<sup>16</sup> However, the PSA makes no such provision for ordinary judicial review. Instead, an Advisory Board which lacks independence from the government reviews all orders. The Board provides for no opportunity to appeal, there is a bar on legal representation for the detained person, and the Board’s report is confidential.

Detained persons also have the right to communicate with and be represented by a counsel of their choice.<sup>17</sup> 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 international human rights law and standards.<sup>18</sup> However, 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 in situations where PSA is abused, this section enables impunity. The Armed Forces (Special Powers) Act, 1989, which is in force in Jammu and Kashmir, contains a similar provision which has often been used to block accountability.<sup>19</sup>

When acceding to the ICCPR in 10 April 1979, India made a reservation to Article 9, 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.” (Article 22 (3) weakens the protections for arrested persons that are present in Article 22(1) and 22(2) for persons subjected to administrative (or “preventive”) detention.) The right to be produced before a magistrate within 24 hours of arrest, and to consult and be represented by a lawyer of choice, which is otherwise available to persons arrested in India, is unavailable to persons placed in administrative detention.

International human rights standards also provide that detained persons should be ordinarily kept in prisons close to their homes.<sup>20</sup> While the PSA earlier specifically stated that detainees who are permanent residents of J&K should not be lodged in jails outside the state, this provision was removed in July 2018 by an amendment to the Act.<sup>21</sup>

Finally, 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.”<sup>22</sup> India’s reservation to Article 9 of the ICCPR - since it denies core Article 9 protections to persons in administrative detention - is therefore incompatible with the object and purpose of the ICCPR. 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.<sup>23</sup> 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 9 and 14 of the ICCPR.<sup>24</sup>

In 2012, the UN Special Rapporteur on the situation of human rights defenders, after a fact-finding mission to India, called for the repeal of the PSA.<sup>25</sup>

13. 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.”
14. 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.”
15. Human Rights Committee, General Comment No. 8: Right to liberty and security of persons (Art. 9), 30 June 1982, <http://www.unhcr.org/refworld/docid/4538840110.html>
16. According to Article 9(4) of the ICCPR, all persons deprived of their liberty, whether arrested or detained must also 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.”
17. Articles 14(3)(b) and (d) of the International Covenant on Civil and Political Rights
18. Article 2(3) of the International Covenant on Civil and Political Rights
19. Amnesty International, Denied: Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir (Index: ASA 20/1874/2015), [www.amnesty.org/download/Documents/ASA2018742015ENGLISH.PDF](http://www.amnesty.org/download/Documents/ASA2018742015ENGLISH.PDF)
20. Principle 20 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: “If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.” Rule 59 of the UN Standard Minimum Rules for Treatment of Prisoners (the Mandela Rules) states: “Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation”.
21. The Jammu and Kashmir Public Safety (Amendment) Act, 2018, 13 July 2018, <http://jklaw.nic.in/pdf/Public%20Safety.pdf>; See also, Ishfaq Naseem, ‘NN Vohra amends Public Safety Act in Jammu and Kashmir: Observers decry ‘dictatorial’ and ‘draconian’’, Firstpost, 1 August 2018, <https://www.firstpost.com/india/nn-vohra-amends-public-safety-act-in-jammu-and-kashmir-observers-decry-dictatorial-and-draconian-move-4863751.html>
22. Human Rights Committee, General Comment 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, 1994, 4 November 1994, <https://www.equalrightstrust.org/sites/default/files/ertdocs//general%20comment%2024.pdf>.
23. Human Rights Committee, General Comment 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, 1994, 4 November 1994
24. 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 <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-30-Add1.pdf> (UN WGAD 2010)
25. Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Mission to India (10–21 January 2011), <https://www.ohchr.org/Documents/Issues/Defenders/A-HRC-19-55-Add1.pdf>



# VIOLATIONS IN THE PSA DETENTION REGIME: FAILURES OF DETAINING AUTHORITIES

The text of the PSA itself violates international human rights law and standards, but even the limited safeguards provided within the law are routinely ignored, and the law misused, by executive detaining authorities and the J&K police.

The PSA authorizes district magistrates and divisional commissioners - both executive positions - to pass orders of detention on the basis of information provided by the police. An order of administrative detention under the PSA is a purely executive exercise of power, and falls outside the ordinary criminal justice process. The J&K government has not framed any rules or standard operating procedures to be followed by these executive authorities,<sup>26</sup> who as a result have wide discretion in determining whether detention is warranted.

The judiciary has attempted to circumscribe the powers of detaining authorities. In 2010, the J&K High Court stated: "The duty is cast on the Detaining Authority both to issue preventive orders and also to safeguard the human rights. The

authority has to balance the two. The authority has to shun the path of casualness and arbitrariness."<sup>27</sup>

India's Supreme Court has stated: "Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law... Preventive detention is often described as a "jurisdiction of suspicion". The detaining authority passes the order of detention on subjective satisfaction... To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however technical, is, in our opinion, mandatory and vital."<sup>28</sup>

However, in reality, the role of the detaining authority has been little more than a rubber stamp, with officials frequently failing to properly scrutinize and evaluate the information presented to them by the police, and preparing detention orders riddled with errors, vague and general allegations and contradictions.

## ADVISORY BOARDS

The Advisory Board is a non-judicial body set up under Section 14 of the PSA to review detention orders and determine whether there is sufficient cause for detention. It consists of two members and a chairperson, who are appointed by the government. Section 14 was amended in 2012 to limit the tenure of the Chair and the members to three years, extendable to five years. In May 2018, the Government of Jammu and Kashmir passed an ordinance (an executive order) which changed the manner in which the members of the Advisory Board were selected. Prior to the ordinance, the PSA stated that the members of the Board would be appointed by the government in consultation with the Chief Justice of the J&K High Court. The ordinance amended this procedure so that the members – provided they were not sitting judges – would be appointed by the government on the recommendations of a three-person committee comprising senior state bureaucrats. This, in effect enhances the role that the executive plays in appointing the members of the Advisory Board.

The Advisory Board almost always upholds detention orders passed by executive officials. RTI applications filed by two law students at the University of Kashmir revealed that between April 2016 and mid-December 2017, the state government referred 1004 detention orders to the Advisory Board. In a staggering 99% of these cases, the Advisory Board recommended confirmation of the detention order.<sup>29</sup> When these cases are challenged in court, though, they are frequently struck down. Between March 2016 and July 2017, 941 petitions were filed before the J&K High Court seeking quashing of detention orders. The Court quashed 764 detention orders - 81% of all orders – in this time period.<sup>30</sup>

The composition of the Advisory Board is kept secret by authorities. Responses to RTI applications filed by the J&K RTI Movement, an NGO, to the Home Department in December 2017 revealed that two former judges, Abdul Wahid and Kartar Singh, were appointed as members of the Board in May 2015.<sup>31</sup> A news report in 2019 stated that Janak Raj Kotwal, a retired J&K High Court judge, had been appointed Chairman of the Advisory Board.<sup>32</sup> However, the current composition of the Board remains unclear as details of the members, their tenure, and their contact information are not publicly available. The secretary to the Chairperson told Amnesty International India on the telephone that he could not disclose the names of the members and chairperson of the Board as it was an "official and high-sensitive secret".<sup>33</sup>

26. CHRI, No Rules, SOPs for preventive detentions under J&K PSA

27. Ghulam Nabi Samji v. State, MANU/JK/0227/2010, High Court of Jammu and Kashmir

28. Rekha v. State of Tamil Nadu, Criminal Appeal No. 755 of 2011, Supreme Court of India, [www.indiankanoon.org/doc/192877/](http://www.indiankanoon.org/doc/192877/)

29. Commonwealth Human Rights Initiative, 'RTI reveals Advisory Board under J&K Public Safety Act spend 75% of its budget upholding detention orders which J&K High Court quashed later on', available at [www.humanrightsinitiative.org/blog/rti-reveals-advisory-board-under-jk-public-safety-act-spent-75-of-its-budget-upholding-detention-orders-which-jk-high-court-quashed-later-on](http://www.humanrightsinitiative.org/blog/rti-reveals-advisory-board-under-jk-public-safety-act-spent-75-of-its-budget-upholding-detention-orders-which-jk-high-court-quashed-later-on) (hereinafter: CHRI, RTI reveals Advisory Board under J&K Public Safety Act spend 75% of its budget upholding detention orders which J&K High Court quashed later on).

30. Commonwealth Human Rights Initiative (CHRI), 'RTI reveals Advisory Board under J&K Public Safety Act spend 75% of its budget upholding detention orders which J&K High Court quashed later on', 2018, [www.humanrightsinitiative.org/blog/rti-reveals-advisory-board-under-jk-public-safety-act-spent-75-of-its-budget-upholding-detention-orders-which-jk-high-court-quashed-later-on](http://www.humanrightsinitiative.org/blog/rti-reveals-advisory-board-under-jk-public-safety-act-spent-75-of-its-budget-upholding-detention-orders-which-jk-high-court-quashed-later-on)

31. Responses are on file with Amnesty International India.

32. 'SAC Approves Appointment of Janak Raj Kotwal as Chairman, Advisory Board under J&K PSA, 1978', Greater Kashmir, 31 January 2019, <https://www.greaterkashmir.com/news/kashmir/sac-approves-appointment-of-janak-raj-kotwal-as-chairman-advisory-board-under-jk-psa-1978/>

33. Telephone interview on 22 April 2019.

# DETENTION OF MINORS

Under international law, anyone below the age of 18 is a child.<sup>34</sup> The PSA prohibits the detention of children, following an amendment to the Act in 2012. In 2014, the Committee on the Rights of the Child, which monitors the implementation of the Convention on the Rights of the Child (to which India is a state party) urged the government to review security-related laws with a view to prohibit administrative proceedings against persons under the age of 18.<sup>35</sup>

The Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013, also provides for children to be treated according to the juvenile justice laws. Section 4(1) of the Act mandates the constitution of Juvenile Justice Boards (JJBs), which are specialized institutions to adjudicate cases involving children in conflict with the law. However, until August 2018 - when JJBs were set up in all districts in J&K<sup>36</sup> - district magistrates were authorized to perform the functions of these Boards.

Amnesty International India has documented several instances where executive authorities have ordered the detention of minors, even when presented with evidence of their true age. In no case did the authorities appear to try to determine the age of the detainee.

On 16 September 2016, Rayees Ahmad Mir, then 16 years old, was arrested in Baramulla under ordinary criminal procedure for allegedly throwing stones at security forces. Two days later, he was ordered to be detained under the PSA, and transferred to Kot Balwal Jail, where he was held with adult prisoners. The detention order stated that he was 18 years old, and that he was being detained as “there is every likelihood of [Mir] being admitted to bail”.<sup>37</sup>

Rayees Mir’s family challenged the order before the J&K High Court, producing a school certificate to show that he was 16. In October 2016, 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. In December 2016, the High Court quashed the order, stating: “How learned District Magistrate has exercised powers in itself clear (sic) means that he has not perhaps gone through above referred provision otherwise he would not have ordered detention of a minor.”<sup>38</sup>

Mohammad Ibrahim Dar was only 14 when he was detained under the PSA in May 2017. The detaining authority recorded his age as 22.<sup>39</sup> The High Court quashed the order in October 2017, after examining his school certificate.<sup>40</sup>

In other cases too, authorities appear to have not taken minors’ age into account when passing detention orders. Danish Hassan Dar was ordered to be detained in March 2017,<sup>41</sup> and again in April 2017,<sup>42</sup> under the PSA. His birth certificate and school certificates indicate that he was 16 years of age at the time, but the detention orders declared that he was 20 years old.

Amnesty International India was unable to find any procedure laid down for the police or the district magistrates to determine a person’s age before detaining them. A former District Magistrate who served in J&K between 2008 and 2012 said that executive officials depend entirely on the dossiers given to them by the police. On condition of anonymity, he told Amnesty International India: “The District Magistrate relies on the police machinery...Once they are making a recommendation, the District Magistrate will obviously ordinarily go by that, unless somebody has already given an input that the age mentioned in a particular dossier is not correct...A District Magistrate is not equipped, and in fact he is not expected also looking into the questions that are questions for judicial determination.”<sup>43</sup>

34. Article 1 of the Convention on the Rights of the Child

35. Committee on the Rights of the Child, Concluding observations on the third and fourth periodic report of India, CRC/C/IND/CO/3-4, 7 July 2014, [https://www.ecoi.net/en/file/local/1205308/1930\\_1423217888\\_g1407612.pdf](https://www.ecoi.net/en/file/local/1205308/1930_1423217888_g1407612.pdf).

36. Circular No. 91, High Court of Jammu and Kashmir, Office of the Registrar General at Srinagar, 24 August 2018, <http://jkhighcourt.nic.in/doc/upload/orders&cir/circular91.pdf>.

37. 130/DMB/PSA/2016, on file with Amnesty International India.

38. HCP 401/16, High Court of Jammu and Kashmir, on file with Amnesty International India.

39. 38/DMB/PSA/2017, on file with Amnesty International India.

40. HCP 201/17, High Court of Jammu and Kashmir, on file with Amnesty International India.

41. 276/DMB/PSA/2017, on file with Amnesty International India.

42. 5/DMB/PSA/2017, on file with Amnesty International India.

43. Interview on 8 April 2019 in Jammu and Kashmir.

44. 02/DMA/PSA/DET/2017, on file with Amnesty International India.

45. Submission of District Magistrate, Anantnag to High Court of Jammu and Kashmir in HCP 209/2017, on file with Amnesty International India.

46. HCP 186/2017, High Court of Jammu and Kashmir, on file with Amnesty International India.

## CASE STUDY

**RAUF AHMED WAGAY**

When the J&K police arrived at Rauf Ahmed Wagay's home in Kulgam in early May 2017, the 17-year-old was asleep in his room. "I was beaten and taken to the local police station," Wagay said. "When I was being taken away from my home, in the middle of the night, I was emotionally broken. I could see my family helplessly watching and pleading before the police."

Wagay said he spent the night at the police station and was taken the next morning to a police camp where, over five days, he was beaten and given electric shocks. He said he was then shifted to a Joint Interrogation Centre in Anantnag where he was detained for another 15 days.

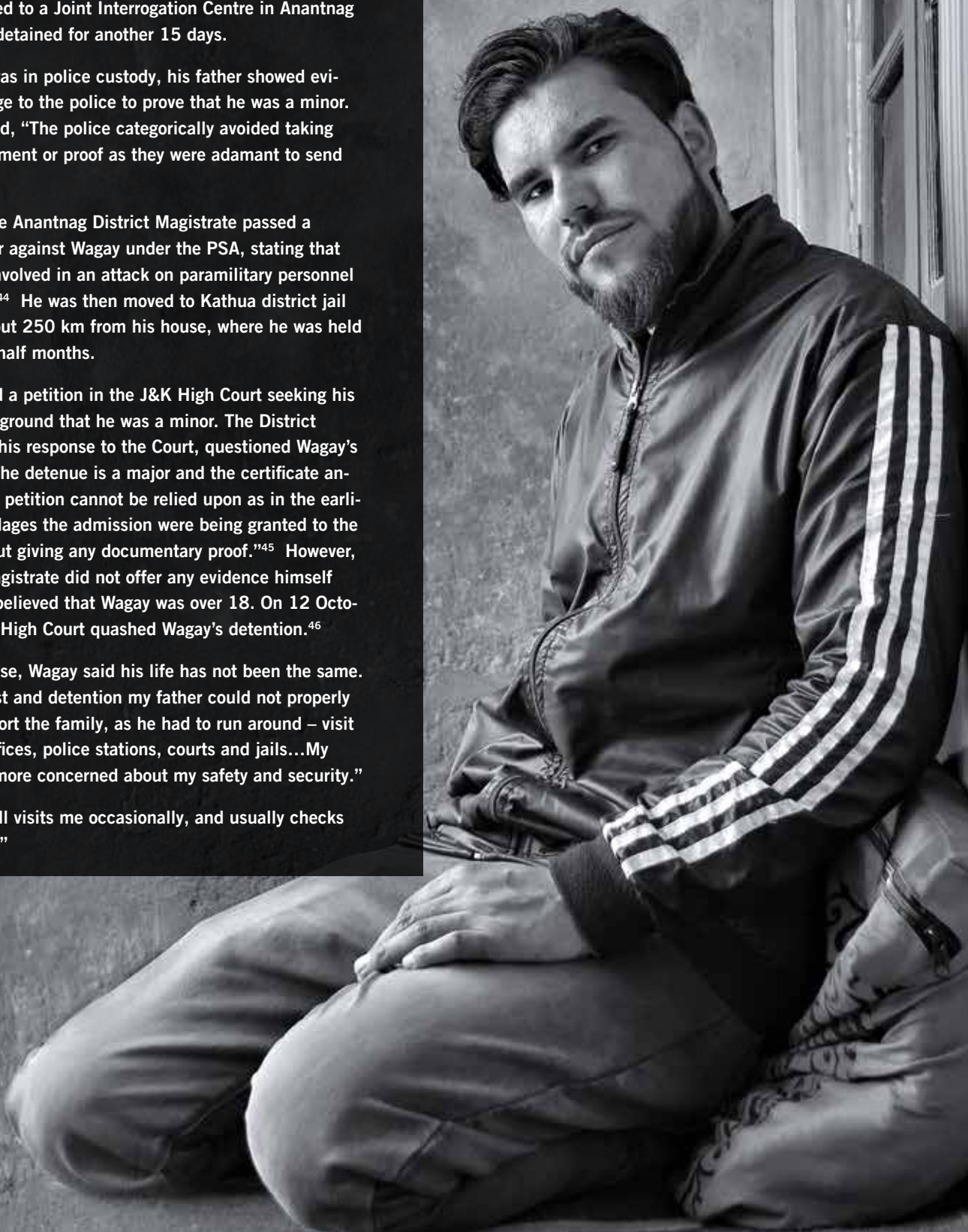
While Wagay was in police custody, his father showed evidence of his age to the police to prove that he was a minor. But, Wagay said, "The police categorically avoided taking any such document or proof as they were adamant to send me to jail."

On 29 May, the Anantnag District Magistrate passed a detention order against Wagay under the PSA, stating that he had been involved in an attack on paramilitary personnel in April 2017.<sup>44</sup> He was then moved to Kathua district jail in Jammu, about 250 km from his house, where he was held for four and a half months.

His family filed a petition in the J&K High Court seeking his release on the ground that he was a minor. The District Magistrate, in his response to the Court, questioned Wagay's age, saying: "The detenu is a major and the certificate annexed with the petition cannot be relied upon as in the earlier times, in villages the admission were being granted to the children without giving any documentary proof."<sup>45</sup> However, the District Magistrate did not offer any evidence himself about why he believed that Wagay was over 18. On 12 October 2017, the High Court quashed Wagay's detention.<sup>46</sup>

Since his release, Wagay said his life has not been the same. "After my arrest and detention my father could not properly work and support the family, as he had to run around – visit government offices, police stations, courts and jails...My family is now more concerned about my safety and security."

"The police still visits me occasionally, and usually checks my cell phone."



## CASE STUDY

**ZUBAIR AHMAD SHAH**

In September 2016, 17-year-old Zubair Ahmad Shah was arrested near his home by the police. "I had left my house to buy vegetables. The policemen caught me and started beating me severely. They caught a few other boys as well. They stripped us and kept us naked...It was embarrassing... They wanted to show what they can do."

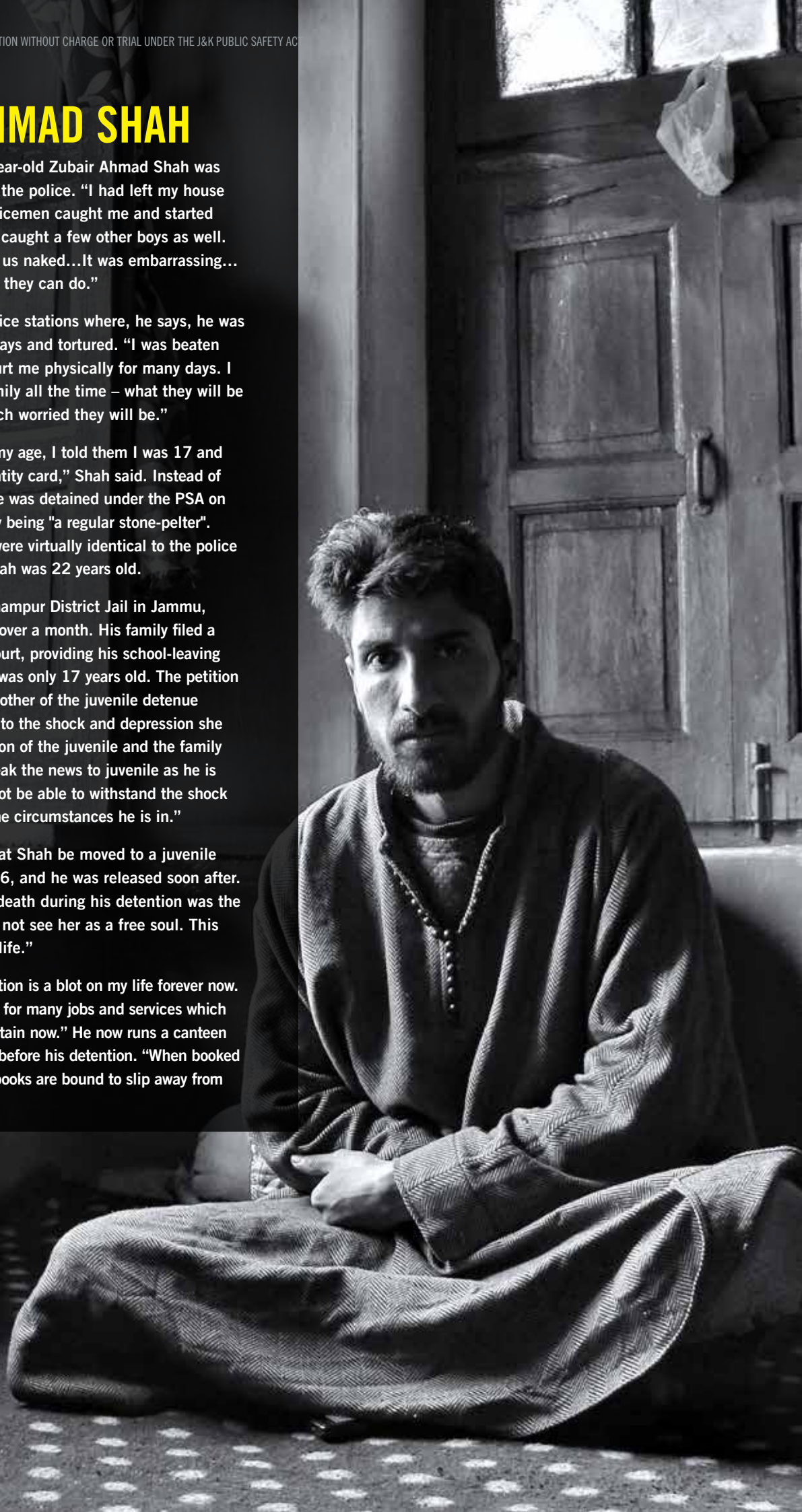
Shah was taken to two police stations where, he says, he was detained for the next 15 days and tortured. "I was beaten in police custody and it hurt me physically for many days. I was thinking about my family all the time – what they will be going through and how much worried they will be."

"When I was asked about my age, I told them I was 17 and even showed them my identity card," Shah said. Instead of being released, however, he was detained under the PSA on 19 September for allegedly being "a regular stone-pelter". The grounds of detention were virtually identical to the police dossier, which said that Shah was 22 years old.

He was then moved to Udhampur District Jail in Jammu, where he was detained for over a month. His family filed a petition before the High Court, providing his school-leaving certificate to show that he was only 17 years old. The petition also added: "Further the mother of the juvenile detainee expired few days back due to the shock and depression she suffered due to the detention of the juvenile and the family was not in a position to break the news to juvenile as he is lodged far away and may not be able to withstand the shock given his tender age and the circumstances he is in."

The High Court ordered that Shah be moved to a juvenile home on 9 November 2016, and he was released soon after. He said that his mother's death during his detention was the "biggest tragedy". "I could not see her as a free soul. This will always hurt me in my life."

Shah said, "The PSA detention is a blot on my life forever now. You need police verification for many jobs and services which is very difficult for me to obtain now." He now runs a canteen in the school he studied at before his detention. "When booked under the PSA," he said, "books are bound to slip away from your hands."



# NON-APPLICATION OF MIND

In several cases analyzed by Amnesty International India, detention orders showed a singular lack of scrutiny by executive authorities. Many of these orders were subsequently quashed by the High Court.

A common flaw observed in the detention orders was they reproduced word-for-word the dossier given to them by the police which contained the allegations against the detainee.

In the case of Showkat Ahmad Dar, who was detained in September 2016,<sup>47</sup> the High Court quashed his detention in March 2017, stating: “A study of the detention order clearly reveals that the detention order is of the Superintendent of Police...there is no independent application of mind on the part of the detaining Authority as the detaining Authority has merely endorsed the grounds of detention placed before him by the Superintendent of Police, Kulgam.”<sup>48</sup>

The High Court quashed Bashir Ahmad Mir’s detention in May 2017, stating among other reasons: “Perusal of grounds of detention would show that it is a verbatim copy of Dossier of Senior Superintendent of Police submitted by him to the Concerned Magistrate.”<sup>49</sup> Similarly, in Bashir Ahmad Wani’s case, the High Court said in November 2016: “The order impugned cannot stand as it is based on the grounds of detention, which is only a verbatim copy of police dossier. In the facts and circumstances, I find non-application of mind on part of detaining authority while passing order impugned.”<sup>50</sup> Mohammed Shabhan, who was detained in March 2017, also had his detention order quashed by the High Court in August 2017 on grounds including the fact that his detention order copied, word-for-word, the police dossier.<sup>51</sup>

Mehraj Ud-Din Mir’s detention under the PSA was quashed in

March 2017 on similar grounds. The High Court said: “The copy of grounds of detention available on the file when compared with the copy of the dossier would suggest that there has been duplication with the interchange of few words here and there.”<sup>52</sup>

In a number of other cases analyzed by Amnesty International India as well, detention orders were found by the High Court to be based purely on the allegations made by the police, with the detaining authority failing to apply their own mind to determine whether people should be detained.<sup>53</sup>

Lawyer Shafkat Nazir told Amnesty International India, “The District Magistrate does not apply his mind to the facts and circumstances of the case. He acts as a rubber stamp of the concerned Senior Superintendent of Police. He believes, as gospel truth, whatever the concerned SSP tells him. And instead of scanning the documents and applying his mind, he puts his seal and signature on the document and gives it the name of grounds of detention. Once you are not applying your mind and you bank on the inputs given by the concerned SSP, the technical aspects in it and the procedural irregularities in it are bound to creep into the cases.”<sup>54</sup>

A former District Magistrate, who served in Kashmir between 2008 and 2012 confirmed that District Magistrates rely heavily on what they are told by the police. The former District Magistrate told Amnesty International India, on condition of anonymity, “The District Magistrate does not have dedicated assistance available in his own office, which could look after such references...Any help that he can derive is from the prosecution wing of the district police. They frame these dossiers, so he has to necessarily rely on the police version only...Many things become a casualty because of the non-availability of time to the district magistrates.”<sup>55</sup>



47. 30/DMK/PSA/2016, on file with Amnesty International India.

48. HCP 561/2016, High Court of Jammu and Kashmir, on file with Amnesty International India.

49. HCP 650/2016, High Court of Jammu and Kashmir, on file with Amnesty International India.

50. HCP 656/2016, High Court of Jammu and Kashmir, on file with Amnesty International India.

51. HCP 114/2017, High Court of Jammu and Kashmir, on file with Amnesty International India.

52. HCP 498/2016, High Court of Jammu and Kashmir, on file with Amnesty International India.

53. Shakoor Ahmad Parray (HCP 69/216); Nazir Ahmad Rather (HCP 399/2016); Sajad Ahmad Mir (HCP 06/2017); Javeed Ahmad Fally (HCP 129/2017); Mohammed Amin Ahangar (HCP 139/2017); Mohammed Hussain Wagay (HCP 296/2017). All orders are on file with Amnesty International India.

54. Interview with Shafkat Nazir on 16 November 2018 at Rajbagh, Srinagar.

55. Interview on 8 April 2019 in Jammu and Kashmir.

**CASE I – BASHARAT AHMAD MIR**DOSSIER

Annexure P6 (20)

NAME : BASHARAT AHMAD MIR @ USTAD UMAR  
 SON OF : LATE ABDUL KHALIQ MIR  
 RESIDENCE : MUNPAPPY  
 DISTRICT : BUDGAM  
 AFFILIATION : LeT TERRORIST OUTFIT  
 AGE : 39 YEARS (Approximately)

1. That the subject is a PAK trained hard core militant and convictionally motivated terrorist affiliated with LeT terrorist outfit which is one of the most dreaded terrorist organization operating in the state of J&K. He has been indulging in secessionist and terrorist activities since long with the object to secede the state of J&K from union of India and to merge it with Pakistan, thus posing a great threat to the maintenance of the security of the state.
2. That the subject is a resident of Munpappy, Budgam and is of the age of 39 years. The subject after passing his 11<sup>th</sup> class came in contact with an HM Militant namely Gul Danda R/O Yarikha who persuaded the subject to join Militancy. The subject crossed over to POK for obtaining training in the use/handling of Arms & Ammunition. After spending three and a half months the subject returned back to the valley. However, the subject was arrested and in view of his anti-national activities, he was detained under PSA and lodged at Kuthua Jail. After his release, the subject didn't shun the path of violence and worked as an OGW for LeT outfit.
3. That the subject remained in touch with some LeT militants like Manzoor Ahmad Najar, Latief Ahmad Rather etc. The subject and the said militants alongwith some others hatched a conspiracy to kill Shri. Shabir Ahmad, the then SHO P/S Chadoora and in pursuance to the said conspiracy on 12.12.2013 the Militants with their illegally acquired weapons fired upon the said Shabir Ahmad who attained

GROUND OF DETENTION

Annexure P5 (17)

NAME : BASHARAT AHMAD MIR, USTAD UMAR  
 SON OF : LATE ABDUL KHALIQ MIR  
 RESIDENCE : MUNPAPPY  
 DISTRICT : BUDGAM  
 AFFILIATION : LeT TERRORIST OUTFIT  
 AGE : 39 YEARS (Approximately)

From the perusal of the material put forth by Sr. Superintendent of Police, District Budgam, it emerges :-

That you are a PAK trained hard core militant and convictionally motivated terrorist affiliated with Lashker-e-Toiba terrorist outfit which is one of the most dreaded terrorist organization operating in the state of J&K. You have been indulging in secessionist and terrorist activities since long with the object to secede the state of J&K from union of India and to merge it with Pakistan, thus posing a great threat to the maintenance of the security of the state.

That you crossed over to Pakistan Occupied Kashmir for obtaining training in the use/handling of Arms & Ammunition. After spending three and a half months you returned back to the valley. However, you were arrested and in view of your anti-national activities, you were detained under Public Safety Act and lodged at Kuthua Jail. That after your release, you didn't shun the path of violence and worked as an Over Ground Worker for Lashker-e-Toiba outfit. That you remained in touch with some Lashker-e-Toiba militants like Manzoor Ahmad Najar, Latief Ahmad Rather etc. You and the said militants alongwith some others hatched a conspiracy to kill Shri. Shabir Ahmad, the then SHO P/S Chadoora and in pursuance to the said conspiracy and it was on 12.12.2013 the Militants with their illegally acquired weapons fired upon the said Shabir Ahmad who attained martyrdom and some other Police personnel were injured. For the said incident a case FIR No. 216/2013 U/S 302,307,120-B RPC was registered in P/S Chadoora. During the course of investigation it came to surface that you alongwith your fellow terrorists was involved in the



District Magistrate  
Budgam

## CASE II – ZUBAIR AHMAD SHAH

1

ANNEXURE P4  
(14)

DOSSIER

Name : Zubair Ahmad Shah  
S/O : Mohammad Ramzan Shah  
Age : 22 years approx.  
R/O : Pethpora Kralgund  
Tehsil : Kralgund  
District : Kupwara

The subject namely Zubair Ahmad Shah S/o Mohammad Ramzan Shah R/o Pethpora Kralgund is 8<sup>th</sup> Class drop out from Govt. Middle School Kralgund and is currently engaged with farming. The subject is 22 years old approximately.

The subject is a staunch supporter of secessionist ideology propagated by the Hurriyat leaders, seeking cessation of state of J&K from the Union of India. The subject in order to propagate the secessionist ideology always indulges in anti national activities and motivates other youth of the area to join in stone pelting. The subject aims at disrupting the public peace and tranquillity by creating mayhem and chaos among the general public. The subject harbours a provocative attitude and often leads processions, instigates people to raise slogans against the union of India and State of J&K. The subject often conducts himself at the behest of All party Hurriyat conference leaders whose sole object is to disrupt the peace process in the state of J&K and to destabilize/subvert the Government established under law.

The subject is a regular stone peltor and mobilizes youth to engage security forces in stone pelting. The activities of the subject not only create a serious law and order problem but also expose the public life and property to great risk and danger. The subject often harasses the public who do not fall in the line of Hartal usually announced by separatists. The subject often by his unlawful acts disturbs the public order by disrupting the normal activities of the life. The subject always put his all round efforts to breach the public peace and tranquillity. The subject is frequently instigating the people against the security forces and police. He needs to be curtailed immediately to restore the present prevailing fragile public peace and order.

Grounds of detention mentioned in the Police Dossier.



Grounds of DetentionANNEKURE P3  
(11)

Name : Zubair Ahmad Shah  
 S/o : Mohamamd Ramzan Shah  
 Age: 22 years approx.  
 R/o : Pethpora Kralgund  
 Tehsil: Kralgund  
 District: Kupwara

Whereas, as per dossier received from Superintendent of Police Handwara vide his No. Pross/Dossier/2016/2163-66 dt.17-09-2016, the subject namely Zubair Ahmad Shah S/o Mohammad Ramzan Shah R/o Pethpora Kralgund is 8<sup>th</sup> Class drop out from Govt. Middle School Kralgund and is currently engaged with farming. The subject is 22 years old approximately.

The subject is a staunch supporter of secessionist ideology propagated by the Hurriyat leaders, seeking cessation of state of J&K from the Union of India. The subject in order to propagate the secessionist ideology always indulges in anti national activities and motivates other youth of the area to join in stone pelting. The subject aims at disrupting the public peace and tranquility by creating mayhem and chaos among the general public. The subject harbours a provocative attitude and often leads processions, instigates people to raise slogans against the union of India and State of J&K. The subject often conducts himself at the behest of All party Hurriyat conference leaders whose sole object is to disrupt the peace process in the state of J&K and to destabilize/subvert the Government established under law.

The subject is a regular stone pelter and mobilizes youth to engage security forces in stone pelting. The activities of the subject not only create a serious law and order problem but also expose the public life and property to great risk and danger. The subject often harasses the public who do not fall in the line of Hartal usually announced by separatists. The subject often by his unlawful acts disturbs the public order by disrupting the normal activities of the life. The subject always put his all round efforts to breach the public peace and tranquility. The subject is frequently instigating the people against the security forces and police. He needs to be curtailed immediately to restore the present prevailing fragile public peace and order.

On 05.08.2016, at 1430 hrs, the subject led a mob spread over hundreds of people, which came out from Supernaghama and its adjacent areas assembled at Supernaghama market. The mob turned unruly and started anti India and pro-freedom slogans resorted to stone pelting over the police

# DETENTION ON VAGUE AND GENERAL GROUNDS

Amnesty International India found cases of PSA detentions that were ordered on the basis of vague and generic allegations, which prevent detainees from effectively challenging them.

The detention order passed against Nissar Ahmad Najar in February 2017 states in one passage: "You are a skilled motivator and resorts (sic) to rabble rousing at the slightest opportunity in order to convince the impressionable youth to adopt to violent agitation. You have been found to be always in search of teenagers in order to have their minds poisoned with the venom against the public order."<sup>56</sup>

The High Court quashed the detention order in May 2017, stating: "In the grounds of detention, particulars of the youth, have not been mentioned, who are alleged to have been instigated/provoked by the detainee or that (sic) all the persons who were alleged to have made him to remain in contact with his associates...grounds of detention that constitute basis for detention order in question are ambiguous, vague, uncertain and hazy."<sup>57</sup>

Ghulam Mohammed Tantray was detained in September 2016 on the basis of an order which stated, among other things: "You are a hardcore activist of Hurriyat (G) group, involved in motivating

and instigating the youth of the Rafiabad area for creating law and order problems, thereby disturbing peace and tranquility of the area/State."<sup>58</sup> The order then went on to list four instances where Tantray allegedly led mobs to throw stones at security forces and vandalized property, without naming anybody else.

This order was also quashed by the High Court, which stated: "The detainee was not provided the particulars of youth who are alleged to have been instigated/provoked by detainee. The detainee, in the absence of such details, could not be expected to be in a position to give his side of story and persuade detaining authority and other respondents that the allegations against him were bereft of any basis."<sup>59</sup>

Often, detaining authorities repeatedly use terms such as "chronic stone pelter",<sup>60</sup> "incorrigible anti-social element",<sup>61</sup> and "stigma for peace loving people"<sup>62</sup> to justify detention. In 2017, the Supreme Court observed that using such accusatory terms would not itself be sufficient reason to justify administrative detention. The Court said: "The rhetorical incantation of the words "goonda" or "prejudicial to maintenance of public order" cannot be sufficient justification to invoke the draconian powers of preventive detention."<sup>63</sup>



56. 88/DMS/PSA/2016, on file with Amnesty International India.

57. HCP 55/2017, High Court of Jammu and Kashmir, on file with Amnesty International India.

58. 143/DMB/PSA/2016, on file with Amnesty International India.

59. HCP 484/2016, High Court of Jammu and Kashmir, on file with Amnesty International India.

60. Detention orders of Ghulam Nabi Gojri (160/DMB/PSA/2016), Dilwara Ahmad Bhat (131/DMB/PSA/2016) and Umar Hajam (19/DMB/PSA/2017), on file with Amnesty International India.

61. Detention orders of Mohammad Ashraf Wani(52/DMB/PSA/2017), Abdul Salam Mir(02/DMB/PSA/2017), Ali Mohammad Dar (62/DMB/PSA/2016) and Rayees Ahmad Mir(130/DMB/PSA/2016), on file with Amnesty International India.

62. Detention orders of Ali Mohammad Dar(62/DMB/PSA/2016), Ghulam Ahmad Parray(53/DMB/PSA/2016), Salman Yousuf Sofi(41/DMB/PSA/2016) and Javid Ahmad Khan (08/DMB/PSA/2016), on file with Amnesty International India.

63. V. Shantha v. State of Telangana, AIR 2017 SC 2625, Supreme Court of India.

## AN EPIDEMIC OF 'SUSPICIOUS' LETTER-PADS

In some cases, vague and ambiguous grounds for detention are accompanied by allegations that are surprisingly similar in tone and wording. For example, Amnesty International India came across at least six instances where men from Baramulla district were detained under the PSA, where the only specific immediate allegation was that they were all apprehended at police check-points with letter-pads of armed groups on their person.<sup>64</sup>

In Mohammed Sidiq Lone's case, he was detained on two separate occasions under the PSA for allegedly carrying Jaish-e-

Mohammed letter pads, once in July 2016 and again in October 2017 (at which time, Lone says, he was already in custody).<sup>65</sup>

Even if it is assumed that armed groups publish letter-pads with their names on them, mere possession of a letter-pad does not constitute a criminal offence, let alone amount to evidence of a crime yet to be committed. Moreover, the striking similarity of these allegations and the way they are worded raises concerns that they may have been fabricated.



A J&K Police jeep deployed at a protest site in Srinagar  
© Amnesty International India

64. All the men are also accused of providing "logistic support/transportation" to members of armed groups, but the PSA orders contain no details about the kind of support provided, or when, where or to whom specifically they were provided.

65. 121/DMB/PSA/2017, on file with Amnesty International India.

**Below are extracts from some detention orders:**

**Grounds of Detention**

Name: Sajad Ahmad Chopan  
 S/O: Gh Rasool Chopan  
 R/O: Edipora Bomal  
 District: Baramulla  
 Age: 29 years  
 Edu. Qualification: 9<sup>th</sup>  
 Occupation: Meat seller shop at Bomal chowk  
 Languages Known: Urdu/Kashmiri  
 Religion: Muslim  
 Affiliation: OGW HM outfit  
 Marital Status: Unmarried

(2) Annexure 'E'

You were reportedly born in a middle class family in your native village of Edipora Bomal Sopore. Your age is about 29 year, have passed 9th class examination in Govt. High School Bomal and discontinued further studies due to some domestic problems, are running meat shop at Bomal Chowk. In the year 2013, you got contact with a local Militant namely Adil Ahmad Mir S/O Mohd Sultan Mir R/O Brahn Kalan Sopore of HM outfit who motivated you to work as OGW and accordingly you started working as OGW for HM Outfit and started providing logistic and other support, particularly transportation of the local Militants from one area to another area.

On 30.06.2016, you along other associates (OGWs) namely Ikhlas Ahmad Sheikh S/O Gh Hassan Sheikh R/O Edipora Bomal, Shauket Ahmad Lone S/O Abul Jabbar Lone R/O Edipora Bomal and Mohd Syed Malik S/O Mohd Asyraf Malik R/O Darpora Bomal, boarding in a Alto Car bearing Registration No. JK050/4827 from Bomal to Sopore near Dangeipora crossing were apprehended by Police Sopore during Naka checking and following illegal Arms/ammunition were recovered from the possession of apprehendees:-

Police Uniform-03 Nos. Poach-01 No. RDX-1/2 Kg. Pressure Mine -10 Nos., AK Buff Damaged-02 Nos, IED Circuit -02 Nos, UBGU-01 No, Shoes- 04 pairs, Ammunition -09 No Wireless Antenna -09 Nos, Banner -01 No, Wireless Set- 01 No G.C Siab-01 No, RPG Rocket-04 Nos.

To this effect, Case FIR NO 186/2016 U/S 171 RPC, 3/4 Exp Sub Act, 161-A IWT Act stands registered in Police station Sopore which is under investigation. You were detained under PSA vide District Magistrate Baramulla's Order No.38/DMB /PSA 2016 dated 19-08-2016 and No. 281/ DMB/PSA /2017 dated 21-03-2017. You were released from PSA Detention on 07-08-2017. After your release, you did not mend up your way and started again indulging in militancy related activities. You remained in touch with the anti national elements (Militants) and were working as OGW with HM outfit. You were apprehended by police on 24-08-2017 at Wadoora Foyeen and two pages of letter pad of HM outfit were recovered from your possession. To this effect case, FIR No. 69/2017 U/s 13 ULA Act stands registered in Police Station Bomal which is under investigation. Brief facts of the instant Case are detailed as under:-

On 24/08/2017, police component Sopore establish a Naka at Sopore Kupwara Road near Wadoora Foyeen. During Naka Checking the Naka Party noticed your suspicious movement, coming from Bomal towards Wadoora Foyeen. On seeing the Naka Party, you tried to escape from the spot but the Naka party chased and apprehended you forcefully. During your search, two pages of letter pad belonging to HM outfit were recovered from your possession. In this regard, case FIR No. 69/2017 U/s 13 ULA Act stands registered in Police Station Bomal which is under investigation.

**Case 1 (30 June 2016):**  
 Sajad Ahmad Chopan is arrested near Sopore at a police checkpoint. "During your search, two pages of letter pad belonging to HM outfit were recovered from your possession."<sup>66</sup>

**Case 2 (16 December 2016):**  
 Farooq Ahmed Najar and Sheikh Imran are arrested near Sopore at a police checkpoint. "...both the OGW'S were apprehended and one letter pad of LET outfit [Lashkar-e-Taiba] from each were recovered from their possession".<sup>67</sup>

**Grounds of Detention**

Name: Farooq Ahmad Najar  
 S/O: Late Khazir Mohd Najar  
 R/O: Harwan Bunpora  
 Tehsil: Sopore  
 District: Baramulla  
 Age: 37 years  
 Occupation: Carpenter  
 Language known: Urdu/Kashmiri  
 Religion: Muslim  
 Affiliation: OGW Let outfit  
 Marital Status: Married

(10)  
ANNEXURE - C

You were reportedly born in a middle class family in your native village at Bonapora Harwan Bomal Sopore. You got early education from Govt. Middle School Bomal upto 8<sup>th</sup> class. You are aged about 37 years. You are a Carpenter by profession and working as OGW with LeT outfit. You helped and provided logistic support/transportation to the local/ foreign militants of LET outfit from one place to another and became strong worker of the said outfit. On 16-12-2016, you while on way to Sopore near by pass Kupwara crossing, were apprehended by police Sopore along with letter pads of the LET outfit. To this effect, case FIR No. 496/2016 U/S 10-13 ULA Act stands registered in police station Sopore. The brief fact of the Case is as under.

On 16-12-2016, police component Sopore received an information that two upper ground workers namely Farooq Ahmad Najar S/o Khazir Mohd R/O Harwan Sopore and Sheikh Imran S/O Sheikh Anayatullah R/O Peer Mohalla Zalooru Sopore are approaching towards Sopore area for executing subversive activities. On this information police component Sopore along with 22RR, 179 Bn CRPF E -Coy establish Naka at Bye pass Kupwara crossing and both the OGW'S were apprehended and one letter pad of LET outfit from each were recovered from their possession. To this effect, case FIR No.496/2016 U/S 10-13 ULA Act stands registered in P/S Sopore which is under investigation. You were formally arrested in the instant case and bailed out by the orders of CJM Court Sopore.

Keeping in view the above mentioned facts, it is clear that you are a strong OGW of banned Let outfit and are providing every possible support to the terrorists for doing subversive /criminal activities. Your activities have all along been threat to the security of state, especially Range Baramulla, particularly Sopore area.

In view of the above, you are hereby detained under the Public Safety Act, 1978. You have a right of making representation to the Govt. in the Home Department against your detention, if you so choose.

District Magistrate,  
Baramulla

66. 92/DMB/PSA/2017, on file with Amnesty International India.  
 67. 285/DMB/ARA/PSA, on file with Amnesty International India.

**Grounds of Detention**

Name: Mudasir Ahmad Ganie  
 S/O: Ghulam Din  
 U/O: Ladoora Rafiabad  
 Tehsil: Sopore  
 District: Baramulla  
 Age: 24/25 years  
 Edu. Qualification: 11<sup>th</sup> pass  
 Occupation: Private Business  
 Language known: Urdu/Kashmiri.  
 Religion: Muslim  
 Affiliation: OGW HM outfit  
 Marital Status: unmarried

Amrune  
B  
12

You were reportedly born in a middle class family in village Ladoora Rafiabad. You got early education from Govt. High school Doubagah up to 10<sup>th</sup> class. After passing 10<sup>th</sup> class examination from the said institution, you got admission in Govt High school Hadipora up to 11<sup>th</sup> class. After passing 11<sup>th</sup> class examination, you gave up education due to some domestic problem. You are aged about 24/25 years. You are doing private business. In the year 2016, you made contacts with the local/ foreign militants of M outfit and started working as OGW for the said militant outfit. You helped and provided logistic support/transportation to the local militants of HM outfit from one place to another. On 18-02-2017, while on way to Sopore you were apprehended by police Sopore near fruit Mandi crossing Sopore along with illegal letter pads of HM outfit. To this effect, case FIR No. 38/2017 u/s 10,13 ULA Act stands registered in police Station Sopore. The brief facts of the case is as under:-

On 18.02.2017, police component Sopore along with 22RR,179 Bn E coy establish naka at Frut Mandi Crossing Sopore. During naka checking the naka party apprehended 03 suspicious persons. During their search 07 leaves of letter pads belonging to HM outfit were recovered from them who were identified as Mudasir Ahmad Ganie S/O Ghulam Dim R/O Ladoora, Abdu Majeed Dar S/O Munawer Dar R/O Ladoora, Gh. Gh. Mustafa lone S/O Mohd Ashraf lone R/O Thugund Sopore. On this case FIR No. 38/2017 U/S 10-13 ULA Act stands registered in police station Sopore which is under investigation.

You are a hardcore OGW of HM outfit and your activities are threat for the security of the state, if you will be allowed to move freely, it will become fatal for the security agencies.

In view of the above, you are hereby detained under the Provisions of Public Safety Act, 1978. You have a right of making representation to the Govt. in the Home Department against your detention, if you so choose.

District Magistrate,  
Baramulla

**Case 3 (18 February 2017):**  
 Mudasir Ahmad Ganie and two others are arrested in Sopore at a police checkpoint because they were "suspicious". "...7 leaves of letter pads belonging to HM outfit were recovered from them".<sup>68</sup>

**Case 4 (9 March 2017):**  
 Mohammed Ibrahim Lone is arrested near Sopore after alleged "suspicious movement" near a police checkpoint. "...2 leaves of letter pads belong to HM outfit [Hizbul Mujahideen] were recovered from you".<sup>69</sup>

**Grounds of Detention**

Name: Mohammad Ibrahim Lone  
 S/O: Ghulam Mohammad Lone  
 U/O: Wadoora Payeen Sopore  
 Tehsil: Sopore  
 District: Baramulla  
 Age: 25/26 years  
 Edu. Qualification: M-Com  
 Occupation: Private Job  
 Language known: Urdu/Kashmiri/English.  
 Religion: Muslim  
 Affiliation: OGW HM outfit  
 Marital Status: unmarried

10  
Amrune  
D

You were reportedly born in a middle class family in your native village Wadoora Payeen in the year 1991. You got early education from Agra Public School Wadoora upto 3<sup>rd</sup> primary, then joined Sir Mohd Iqbal School Talbal Srinagar and passed 10<sup>th</sup> class from the said school. After passing the 10<sup>th</sup> class examination, you got admission in Govt. Boys Higher Secondary Talbal Srinagar. After passing 12<sup>th</sup> class examination from the said institution, you joined Govt. Degree College Sopore for further studies and completed Bachelors Degree from the said college in the year 2011. You completed Masters Degree in Commerce through IGNO. Thereafter, you joined Private job in a Mobile company OSR (oppo sales representative). In the year 2016, you made contacts with the local militant of HM outfit namely Irshad Ahmad R/O Selo, who motivated you to work for the said militant outfit as OGW. You voluntarily joined and started working as OGW for the said militant outfit. You helped and provided logistic support/transportation to the local militants of HM outfit from one place to another.

On 09-03-2017, police component Sopore along with 52RR established naka checking at Bypass Seer Crossing Sopore. During naka checking the naka party noticed your suspicious movement while you were coming from Amargarth Sopore towards Seer. You tried to escape from the spot after seeing the naka party. The naka party, after chased you apprehended you and during search, 02 leaves of letter pads belonging to HM outfit were recovered from you. On this case FIR No. 22/2017 U/S 10-11 ULA Act stands registered in police station Tarso which is under investigation.

You are a hardcore OGW of HM outfit and your activities are threat to the security of the state. If you will be allowed to move freely, it will become fatal for the security agencies deployed for maintenance of law & order.

In view of the above, you are hereby detained under the provisions of Public Safety Act, 1978. You have a right of making representation before the Govt. in the Home Department against your detention order, if you so choose.

District Magistrate,  
Baramulla

68. 270/DMB/PSA/2017, on file with Amnesty International India.  
 69. 15/DMB/PSA/2017, on file with Amnesty International India.

Below are extracts from some detention orders:

**Grounds of Detention**

Name: Shabir Ahmad Mir @ Shabir Mohi  
 S/O: Mohammad Sultan Mir  
 R/O: Brath Kalan Sopore  
 Tehsil: Sopore  
 District: Baramulla  
 Age: 28 years  
 Edu. Qualification: 5<sup>th</sup> pass  
 Occupation: Business [Shopkeeper]  
 Language known: Urdu/Kashmiri  
 Religion: Muslim  
 Affiliation: OGW Let/HM outfit  
 Marital Status: unmarried

You were reportedly born of your native village Brath Kalan Sopore in a middle class family. You are aged about 28 years, have passed 5<sup>th</sup> class examination in Govt. primary school in your native village. You did not continue education due to some domestic reasons. You were working in a private shop in the year 2010. In the year 2011, you joined the Hizbul Mujahideen (HM) outfit in the village of the name Dera Sopore. You were recruited as a militant. You were involved in the work of Holy Quran, etc. You left the shop after a few days. You were involved in making contacts with local militant Mohd Saif and other militant. You were also started working as OGW with HM. You were also associate of the foreign militants in the year 2016. You made contacts with a LET Commander namely Saifullah leader of Pakistan and started working with him. You provided all logistic support/transportation to the militants of said outfit and also motivated the youths of the village near to join militancy. On 14.05.2017, you were apprehended by the police station Sopore and some pages of letter pads of LET outfit were recovered from your possession. To this effect, case FIR No 130/2017 U/S 10-19 ULA(P) Act stands registered against you in P/S Sopore. You were arrested / detained under Public Safety Act on a number of times. The details of PSA warrants executed against you are as under:-

01-26/DMB/PSA/2014 Dated 31-03-2014  
 02-235/DMB/PSA/2017 Dated 18-01-2017

Despite being given many chances you did not mend your way and remained continuously involved in militancy related activities. After your release, you remained connected with the anti national elements (Militants) and were working for militants and found again involved in militancy related case FIR no. 77/2017 U/S 13 ULA Act of police station Baramulla. Brief facts of the instant case is as under:-

On 25-09-2017, police component Sopore established naka at Zini Mode Sopore Kupwara Road and during the said naka checking, while coming from Sopore to Selloo in suspicious condition you tried to escape from the spot but naka party tactfully apprehended you and during your search, 02 leaves of letter pad belonging to HM outfit were recovered from your possession. To this effect, case FIR No 77/2017 U/S 13 ULA Act stands registered in Police Station Baramulla which is under investigation.

Keeping in view the above mentioned facts, it is clear that you are having a criminal mind and are not ready to mend your way. You have been arrested in case FIR No 77/2017 of PS Baramulla and are presently on remand. There is every possibility that you

**Case 5 (10 October 2017):**  
 Shabir Ahmad Mir is arrested near Sopore after being seen “in suspicious condition” near a police checkpoint. “...2 leaves of letter pad belonging to HM outfit were recovered from your possession”.<sup>70</sup>

**Case 6 (5 January 2018):**  
 Mohammed Shafi Mir and another are arrested near Sopore after alleged “suspicious movement”. “...2 pages of letter pads each belonging to HM outfit were recovered from their possession”.<sup>71</sup>

**Grounds of Detention**

Name: Mohd Shafi Mir  
 S/O: Ghulam Qadir Mir  
 R/O: Brath Kalan Sopore  
 District: Baramulla  
 Age: 24 years  
 Edu. Qualification: 10<sup>th</sup>  
 Occupation: Fruit Business  
 Languages Known: Kashmiri/ Urdu  
 Religion: Muglim  
 Affiliation: OGW HM Outfit  
 Marital Status: Married

You were reportedly born in a middle class family in your native village of Brath Kalan Sopore. You are aged about 24 years old and have studied up to 10<sup>th</sup> class. You could not continue further studies due to some domestic reasons. You are dealing with fruit business. In the year 2016, you developed contacts with the militants of HM outfit, who motivated you to work with HM Outfit as OGW. On the motivation of militants, you started working as OGW with HM outfit. You provided every possible support to the local/ foreign militants of HM outfit particularly transportation of local / foreign militants from area to area and provided them shelter. Your brother, namely Sajad Ahmad Mir had joined militancy in the year 2016 and is presently an active militant. You are hardcore OGW of HM Outfit in the area of Brath Kalan Sopore and are involved in motivating the youths of area Sopore to join militancy. You have a tendency to motivate the gullible youth of your area for joining militancy. You provided every sort of support to the militants of HM outfit due to which security of the area got affected. You were apprehended by police component Sopore / 22 RR on 05-01-2018, along with your other associates of Dangerpora/Sopore Crossing during naka checking and 02 pages of letter pads were recovered from your possession and 02 pages of letter pads were recovered from the possession of your associate belonging to HM outfit, for which case FIR No. 06/2018 U/S 13 ULA Act stands registered in police Station Sopore. The brief facts of the case is as under:-

On 05-01-2018, police Component Sopore along with 22 RR established naka at Dangerpora Sopore Crossing, during checking the naka party noticed the suspicious movement of two persons who were coming from Dangerpora towards Sopore. On seeing the naka party, the suspicious persons tried to escape from the spot but the naka party, chased and apprehended them tactfully during their personal search. 02 pages of letter pads each belonging to HM outfit were recovered from their possession who have been identified as Mohd Shafi Mir S/O Gh Qadir Mir R/O Brath Kalan Sopore and Ausadatik Rasool Lone S/O Gh Rasool Lone R/O Edpore Baramulla. In

ANNEXURE B  
 9

SHAFI MIR  
 NAZIR  
 05 JAN 2018  
 P.S. SOPORE

70. 119/DMB/PSA/2017, on file with Amnesty International India.  
 71. 180/DMB/PSA/2018, on file with Amnesty International India.



A policeman taking a video of the protesters during a protest march at Down Town, Srinagar © Amnesty International India

# FAILURE TO FOLLOW PROCEDURE UNDER THE PSA





The PSA requires detaining authorities to provide detainees copies of the documents they have relied on to pass the detention order, in a language the detainee understands, to provide a vestige of fairness to the proceedings under the Act. However, this requirement was violated in a significant number of cases analyzed by Amnesty International India, and constitutes the most common reason for quashing of detention orders by the High Court.

In Abdul Rashid Bhat's case, for instance, the High Court quashed his detention order, stating: "In the order of detention itself it is mentioned that the Superintendent of Police, Sopore, has produced the material record, such as dossier and other connected documents based on which order of detention becomes imperative. The dossier in fact is in the form of a report, which has not been furnished to the detenu. Neither the copies of FIR, seizure memos which perhaps would form part of the dossier, have been furnished to the detenu...Non supply thereof disabled the petitioner from effectively representing before the authorities concerned against the order of detention."<sup>72</sup>

Another frequently recurring infirmity is that the detainee is not informed that they have a right to make a representation before the detaining authority. In about 80% of the cases where the High

Court has quashed a detention order, one of the grounds has been that the detainee was not informed of their rights.

In Irshad Ahmad Shah's case, the High Court noted that Shah had not been informed that he had a right to make a representation before the detaining authority. It reiterated a Supreme Court ruling, stating: "...non-communication of the fact to the detenu that he has a right to make a representation to the Detaining Authority, would constitute an infraction of the valuable Constitutional right guaranteed to the detenu under Article 22(5) of the Constitution and such failure would make the order of detention invalid."<sup>73</sup>

Even detainees' families are often not provided with copies of relevant documents. In many cases analyzed by Amnesty International India, families said they had "informally" obtained the relevant documents, which went on to form the basis of their habeas corpus petitions to the High Court.

## DETENTION IN PRISONS FAR FROM HOMES

In August 2018, after the elected state government of J&K was suspended following the collapse of the ruling coalition of political parties, a council headed by the centrally-appointed Governor amended the Act to remove a proviso which barred detainees who are permanent residents of Jammu and Kashmir from being lodged in jails outside the state.<sup>74</sup>

This amendment violates international human rights standards which provide that detained persons should be ordinarily kept in prisons close to their homes. Principle 20 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: "If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence." Rule 59 of the UN Standard Minimum Rules for Treatment of Prisoners (the Mandela Rules) states: "Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation."

Local lawyers told Amnesty International India that the amendment significantly disrupts detainees' access to families and lawyers. Mir Shafkat Hussain, a lawyer, said: "If a person is lodged in a jail outside J&K, the government of that particular state becomes a party in the case. Notices related to lodgements and release orders, after quashment orders from the court, need to be served to the authorities in that state...For a lawyer, access to his client is a big issue."<sup>75</sup> Shafkat Nazir, another lawyer, said: "When a detainee is sent to a jail outside Kashmir, you are not able to bring the detainee to the court where the trial is on, and so the case suffers...The police cite law and order as the reason for their inability to bring the detenu to court, but it is actually just a way of dodging the law and making the detainee suffer."<sup>76</sup> Parvez Imroz asked: "How can a lawyer travel for hundreds of kilometers to visit a detainee when he is fighting the case for free?"<sup>77</sup>

72. HCP 188/2017, High Court of Jammu and Kashmir, on file with Amnesty International India.

73. HCP 141/2017, High Court of Jammu and Kashmir, on file with Amnesty International India.

74. The Jammu and Kashmir Public Safety (Amendment) Act, 2018, [jklaw.nic.in/pdf/Public%20Saftey.pdf](http://jklaw.nic.in/pdf/Public%20Saftey.pdf)

75. Interview with Mir Shafkat Hussain on 11 April 2019 at Dalgate, Srinagar.

76. Interview with Shafkat Nazir on 16 November 2018 at Rajbagh, Srinagar.

77. Interview with Parvez Imroz on 3 April 2019 at Amira Kadal, Srinagar.

# UNDERMINING THE CRIMINAL JUSTICE SYSTEM

As noted in Amnesty's previous reports, authorities in J&K have used the PSA to devise a parallel or "informal" system to circumvent the regular criminal justice system in place and detain individuals for long periods of time, depriving them of their fair trial rights.

In over 90% of the cases analyzed, detainees faced both PSA detentions and criminal proceedings in parallel, on the basis of the same or similar allegations. Most detainees, before being detained under the PSA, have criminal cases registered against them for various alleged offences. Once the detainee is taken into formal custody, the offences under the First Information Report are cited as grounds to warrant detention under the PSA. The detaining authority, often with little to no scrutiny (as outlined in the sections above), passes the detention order.

The detainee, in addition to defending themselves in trial, then needs to also challenge the detention order if they are to be released. The police appear to use the PSA as a safety net, using it to secure the detention of suspects who are released, or likely to be released, on bail. If the PSA order is quashed, the person can be detained on a criminal charge until another PSA order is issued.

Lawyers in Kashmir told Amnesty International India that the state police do not favour criminal proceedings, as they involve a higher standard of proof and a presumption of innocence. With the PSA, on the other hand, vaguely prepared grounds are often enough for detaining authorities to be "subjectively satisfied" that a detention order is warranted.



## HABEAS CORPUS PETITIONS

Habeas corpus petitions are the chief avenue of redress for families of PSA detainees. These petitions are almost always filed before the J&K High Court. While they can also be filed before the Supreme Court, only a few petitions have been filed in this manner.

Even the availability of redress before the High Court depends largely on the financial and other resources of the detainee and their families. Writ petitions can be filed only before the High Court benches situated at Jammu and Srinagar, making it a difficult, costly and inconvenient process for families who live outside those two cities.

The J&K High Court Case Flow Management Rules state that “a writ of habeas corpus shall invariably be disposed of within a period of fifteen days”.<sup>78</sup> However, this rule is virtually never followed. Local lawyers say that a habeas corpus petition usually takes an average of six months to be decided. Advocate Parvez Imroz, a senior lawyer and activist, told Amnesty that authorities use this delay to harass people. “If a person is detained for six months or three months, the case outlives the detention period and the petition becomes infructuous,” said Imroz.<sup>79</sup>

Lawyers also say that state authorities often use obstructive tactics to prolong hearings and detention periods, by not appearing for hearings, or not filing counter-affidavits or relevant documents. Mir Shafkat Hussain, a lawyer who has represented thousands of PSA detainees, says, “The state deliberately does not file responses to the petitions. They want to prolong the detention of the people, knowing that the orders passed for the detentions are bad orders and will be quashed by the court. Just to detain a person for a longer time and to punish him, they delay their responses.”<sup>80</sup>



Two J&K policemen atop their vehicle at a protest site at Alangari Bazar, Srinagar  
© Amnesty International India

78. The Rules are available at [jkhighcourt.nic.in/cir\\_old/hc-mg-rules.pdf](http://jkhighcourt.nic.in/cir_old/hc-mg-rules.pdf)

79. Interview with Parvez Imroz on 3 April 2019 at Amira Kadal, Srinagar.

80. Interview with Mir Shafkat Hussain on 11 April 2019 at Dalgate, Srinagar.

## CASE STUDY

**JAFFAR AHMAD WAR**

In August 2017, Mohammad Sabir War received a phone call summoning him to a police station in Sopore. The caller said that his son, 22-year old Jaffar Ahmad War, was in custody. At the police station, War found Jaffar lying on the floor, having suffered a seizure.

"The police officers told me to take Jaffar home, on the condition that I bring my other son to the police station and have him stay in custody until Jaffar comes back," said War. "I refused."

Jaffar Ahmad War has schizophrenia and suffers from regular seizures. A few days after the incident, he was detained again, this time under the PSA, for allegedly being "a hard core stone pelter", referring to an FIR that had been registered against him. His father said, "We used to bring medicines for him. He is completely dependent on his medicines and has to take them without fail twice every day. If he doesn't, he gets seizures."

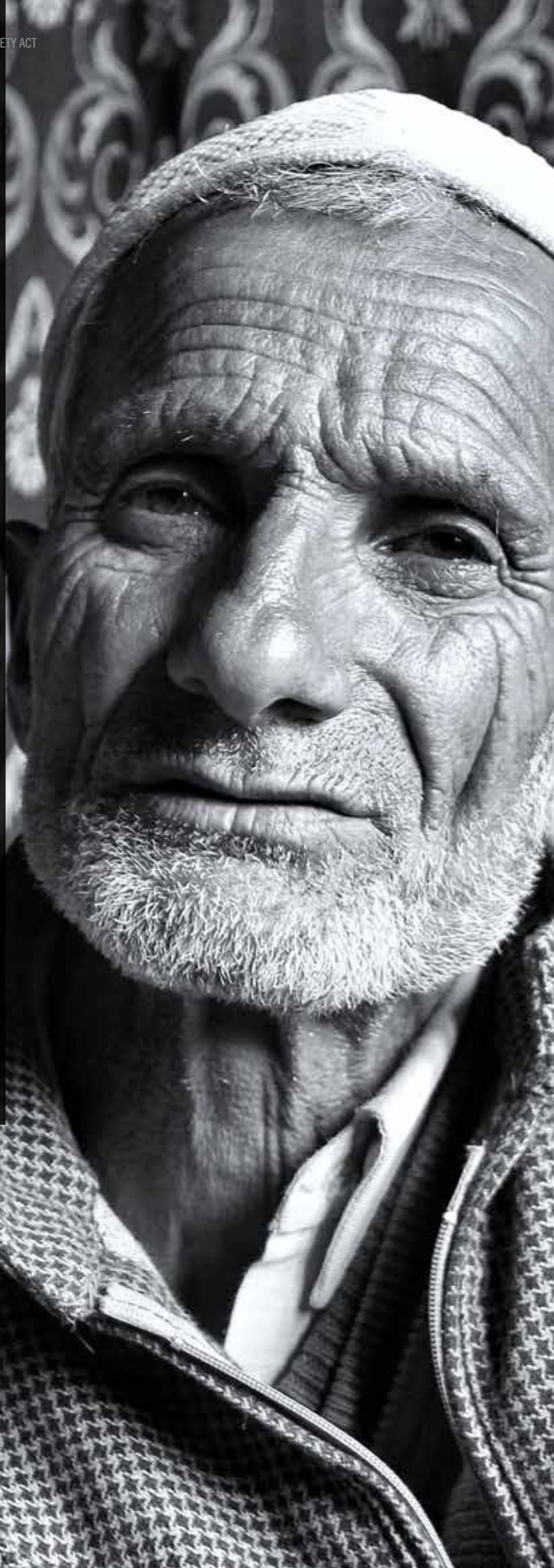
Jaffar was shifted between different police stations and jails on several occasions, and his detention took a toll on his family's finances. "Due to his health condition, we would visit him every 15 to 20 days," said his father. "We had to borrow money from our friends, neighbours, and relatives. Visiting him in Jammu ate up all our savings."

Jaffar's detention was quashed by the High Court in December 2017. The Court stated: "To classify the detenu as a "hardcore stone pelter" cannot be sufficient to invoke the statutory powers of preventive detention...[S]uch detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes which the detenu may have committed. After all, preventive detention cannot be used as an instrument to keep a person in perpetual custody without trial."<sup>81</sup>

Jaffar's father says that his son is now "a changed man". "He is fed up with the continuous harassment from the police and has turned religious. I fear that he will get radicalized," he said. At the time of writing, Jaffar had been placed in administrative detention in March, 2019 again under the J&K Code of Criminal Procedure.

Mohammad Sabir War, father of Jaffar Ahmad War who was found lying on the floor of a police station, having suffered a seizure  
© Amnesty International India

81. HCP No. 229/2017, High Court of Jammu and Kashmir, on file with Amnesty International India.



# CONTINUED PSA DETENTION DESPITE BAIL OR ACQUITTAL

The PSA's parallel system does not just co-exist with the criminal justice system, but is also used to actively infringe detainees' fair trial rights by keeping them in detention even after courts have ordered their release on bail. Instead of appealing against the rulings granting release on bail, authorities merely use the charges against the suspect as grounds to detain them under the PSA, in effect overturning the principle of presumption of innocence.

In as many as 69 cases analyzed by Amnesty International India, the detaining authority passed a detention order explicitly because the suspect had been ordered to be released on bail in the criminal proceedings against him. Detainees also say in their writ petitions that the PSA orders often refer to activities allegedly carried out after their release on bail, even when the detainees have remained in custody.

Detaining authorities even repeatedly use the phrase "normal law has not been sufficient to stop you" or similar phrases in their PSA orders, indicating that the intent of the PSA detention is to circumvent the rulings of the judiciary, and in effect deliberately undermine the rule of law. In one case, a detention order said, "the regular law of the land has clearly failed in confining you for long enough".<sup>82</sup>

The J&K High Court has criticized this measure occasionally. In one case, it stated: "The State could have exercised its right to knock at the doors of a higher forum and seek the reversal of the order(s) of bail so granted to the detainee by the Court. This single infraction knocks the bottom out of the contention raised by the State that the detainee can be detained preventatively, when he was already admitted to bail. It cuts at the very root of the State action. The State ought to have taken recourse to the ordinary law of the land."<sup>83</sup> However, authorities continue to maintain that release on bail is a valid ground for PSA detention. In doing so, in effect, they disregard the judiciary's assessment of whether a detainee is likely to commit a crime, and replace it with their own assessment. They often rely on regressive Supreme Court rulings, which allow for administrative detention to prevent release on bail, to bolster their case.<sup>84</sup>

In many other cases, the detaining authority has issued a detention order even before the detainee has received bail, because of the likelihood that he may receive bail in the case against him. Hilal Ahmed Bhat, for instance, was arrested and detained on 1 March 2017 in Pulwama for allegedly illegally possessing arms and ammunition. On 3 April 2017, the District

Magistrate of Pulwama passed a detention order against him under the PSA, stating that he had gone missing in January 2017 and joined the Hizbul Mujahideen, and carried out "subversive activities in the area". The order justified his detention by saying: "You are presently in police custody and under ordinary laws there is likelihood of you getting bailed out and your remaining at large will pose threat to the security of the State."<sup>85</sup>

India's Supreme Court has ruled that authorities should not place someone in administrative detention simply because there is a likelihood that they may be released on bail. In the 2017 case of *Sama Aruna v. State of Telangana*, the Court stated: "... it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detainee was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case the bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an undertrial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed."<sup>86</sup> The National Security Act, like the PSA, is an administrative detention law.

The J&K High Court has relied on this and similar decisions to quash several PSA detention orders. However, authorities continue to use the PSA in many cases to keep people in detention, instead of contesting bail orders. In one case, the detention order even cites "inadequacy of statutory provisions" to justify detention under the PSA.<sup>87</sup>

In some cases, detainees who were acquitted in criminal cases against them were kept in detention after being implicated in new cases. Basharat Ahmad Mir, Ashiq Hussain Bhat and Manzoor Ahmad Najar were first arrested in December 2013 and accused of shooting at police personnel, and killing one policeman, earlier that month. A trial court acquitted the three men in April 2017. However, they were not released, and were instead implicated in another FIR filed in 2013, in which they were accused of firing at security forces in December 2013. All three were detained under the PSA in May 2017 on the basis of the same allegations.<sup>88</sup> The detention orders were quashed on various grounds in December 2017 and January 2018, but the three men were immediately detained again under fresh PSA orders in February 2018.<sup>89</sup>

82. Tasweef Ahmad Mir, 106/DMS/PSA/2017, on file with Amnesty International India

83. *Tasweef Ahmad Mir v. State of J&K & Anr.* (HCP 13/2018), High Court of Jammu and Kashmir, 2018, <https://indiankanoon.org/doc/165028465/>.

84. For example, the Supreme Court in *Ibrahim Nazeer v. State of Tamil Nadu* (Criminal Appeal No. 732 of 2006), allowed for detention orders to be passed to prevent release on bail. In *Rekha v. State of Tamil Nadu* (2011), it also seemed to allow for detention orders to be passed where a person's co-accused have been released on bail. Consequently, many applications to the High Court seeking quashing of detention orders claim that the orders are unjustified because detainees have not yet applied for bail.

85. 1/DMP/PSA/2017, on file with Amnesty International India.

86. *Sama Aruna v. State of Telangana*, Supreme Court of India, [www.sci.gov.in/jonew/judis/44898.pdf](http://www.sci.gov.in/jonew/judis/44898.pdf).

87. Rouf Ahmad Wagay, 02/DMB/PSA/DET/2016, on file with Amnesty International India.

88. 13/DMB/PSA/2017; 11/DMB/PSA/2017; 12/DMB/PSA/2017, on file with Amnesty International India.

89. 04/DMB/PSA/2018, 05/DMB/PSA/2018 AND 06/DMB/PSA/2018, on file with Amnesty International India.

# REPEAT ORDERS AND REVOLVING-DOOR DETENTION

Authorities frequently misuse Section 19 of the PSA to issue repeat detention orders to keep people in detention for prolonged periods. Section 19 states that “there shall be no bar to making of a fresh order of detention against a person on the same facts as an earlier order of detention” where the earlier order of detention “is not legal on account of any technical defect” or where the order “has been revoked by reason of any apprehension, of for avoiding any challenge that such order or its continuance is not legal on account of any technical defect.”

However, authorities frequently issue repeat detention orders on the same grounds as earlier orders, arguing that the earlier orders



An abandoned camp of security forces at Kangan, Ganderbal  
© Amnesty International India

had been quashed on "technical grounds" even when they were quashed on substantive grounds. This then contributes to creating a "revolving-door detention" system, where detainees whose PSA orders are quashed are immediately detained again under fresh orders on identical or similar grounds.

Abdul Rashid Rather was arrested in November 2016 for allegedly organizing violent protests and throwing stones at security forces, and was detained under the PSA a few days later.<sup>90</sup> In September 2017, the J&K High Court quashed the order, stating that Rather had not been informed that he had a right to make a representation to the detaining authority.<sup>91</sup> However, Rather was not released, and was instead implicated in another criminal case. In October 2017, he was detained again under a new PSA order, which stated that the earlier one had been quashed on "technical grounds".<sup>92</sup>

In Bashir Ahmad Wani's case, the first detention order – passed in November 2016 – was quashed by the High Court in May 2017 on several grounds, including the fact that the grounds of detention in the PSA order were a verbatim copy of the police dossier.<sup>93</sup> Yet a second PSA order passed in July 2017 reiterated the same grounds, stating that the earlier order had been quashed on technical grounds.<sup>94</sup>

The High Court quashed Mohammed Rajab Bhat's detention under the PSA in January 2018, stating among other grounds the fact that he had been detained to prevent his release on bail, which he had already secured.<sup>95</sup> However, the very next month, a detention order was passed on the same facts since, it claimed, the earlier order had been quashed on "technical grounds".<sup>96</sup>

The High Court has contributed to the problem by passing rulings containing contradictory readings of what constitute "technical grounds" for quashing.

In Bashir Ahmad Sheikh's case, a detention order passed in August 2016 was quashed in November because Sheikh had not been given the material which formed the basis of his detention.<sup>97</sup> A second PSA order passed in December on the same grounds was quashed in May 2017. This time, the Court said: "It is trite that when an order of detention is quashed, the material which formed base for quashed order of detention can't form base for ordering new detention, unless, of course, some material is collected by the investigating agency which would warrant preventive custody".<sup>98</sup> The ruling appears to suggest that not giving a detainee the materials which form the basis of his detention is therefore not a technical but a substantive ground for quashing a detention order, and any new PSA order must be based on new facts.

However, in Tanveer Ahmad War's case, the Court ruled differently. War was arrested in October 2016 on suspicion of leading and participating in several incidents of stone-throwing against security forces. War uses a motorized tricycle, as his left leg is amputated. He secured bail in the cases against him, but was immediately detained under the PSA in December 2016 before he could be released.<sup>99</sup> The J&K High Court quashed the detention order

in April 2017 on the grounds that War had not been given all relevant documents related to his detention. However, the Court also states towards the end of its ruling: “As this detention order has been quashed on the technical ground of not supplying the entire materials relied upon by the detaining authority to the detainee along with its translated copies, it shall be open for the detaining authority to pass fresh order on the same grounds as permissible under law.”<sup>100</sup>

As expected, a new detention order was passed the very next month on essentially the same grounds, stating that the previous order had been quashed on technical grounds.<sup>101</sup>

Amnesty International India found 71 cases of revolving-door detentions, where authorities had either issued a new detention order, or implicated a detainee in a new FIR, to ensure that they remain in detention.

Cases abound of detainees being subjected to prolonged revolving-door detention. Mohammad Subhan Wani was detained under four different detention orders between August 2016 and January 2018.<sup>102</sup> Ghulam Nabi Gojri was detained under five different orders of detention continuously without being released, according to a writ petition before the High Court.<sup>103</sup>

Perhaps the most glaring example of this practice is the case of Masarat Alam Bhat. A separatist leader, Bhat has been held in PSA detention dozens of times since 1990. Despite being named in several FIRs, he has not yet been convicted in any case, and authorities have passed successive detention orders to keep him locked up. He has been detained under 37 different detention orders since 1990; cumulatively, he has been held in detention under the PSA for over 20 years.

In 2015, the J&K High Court, while quashing one of his detention orders, stated: “We have to realize that by prolonging detention beyond permissible limits, we are literally sentencing detainee, who incidentally is accused in pending criminal cases, without trial...[D]etenuue has suffered detention for most of last 25 years with brief intervals. Such recourse is repugnant to spirit

and mandate of Articles 21 and 22 of the Constitution. The Act has been operated against detainee in an unfair, unjust and unreasonable manner, not in tune with fundamental right to life and personal liberty...Repeated detention orders – one after another, in effect perpetuating preventive detention (in present case for two and a half decades except brief intervals), therefore would offend spirit of Article 21 of the Constitution, even if preventive detention law does not expressly forbid such a course.”<sup>104</sup> Yet even after this ruling, several detention orders were passed against Bhat, who is still in detention.

Amnesty takes no position on whether Masarat Alam Bhat is guilty or innocent of the crimes he is accused of committing. However, holding him and others in administrative detention for years violates not just their rights, but also the rights of the victims of these crimes, who do not get to see the perpetrators brought to justice.



90. 184/DMB/PSA/2016, on file with Amnesty International India.

91. HCP 671/2016, High Court of Jammu and Kashmir, on file with Amnesty International India.

92. 132/DMB/PSA/2017, High Court of Jammu and Kashmir, on file with Amnesty International India.

93. HCP 656/2016, High Court of Jammu and Kashmir, on file with Amnesty International India.

94. 72/DMB/PSA/2017, High Court of Jammu and Kashmir, on file with Amnesty International India.

95. HCP 319/2017, High Court of Jammu and Kashmir, on file with Amnesty International India.

96. 189/DMB/PSA/2018, High Court of Jammu and Kashmir, on file with Amnesty International India.

97. 69/DMB/PSA/2016, on file with Amnesty International India.

98. HCP 05/2017, High Court of Jammu and Kashmir, on file with Amnesty International India.

99. 197/DMB/PSA/2016, on file with Amnesty International India.

100. HCP 684/2016, High Court of Jammu and Kashmir, on file with Amnesty International India.

101. 35/DMB/PSA/2017, on file with Amnesty International India.

102. 78/DMB/PSA/2016, dated 19 August 2016; 196/DMB/PSA/2016, dated 14 December 2016; 59/DMB/PSA/2017, dated 4 July 2017; 169/DMB/PSA/2018, dated 27 January 2018.

103. 160/DMB/PSA/2016, dated 1 Nov 2016; 280/DMB/PSA/2017, dated 17 March 2017; 06/DMB/PSA/2017, dated 10 April 2017; 117/DMB/PSA/2017, dated 10 Oct 2017; 139/DMB/PSA/2017, dated 8 November 2017.

104. HCP 32/2015, High Court of Jammu and Kashmir, on file with Amnesty International India.

## CASE STUDY

# MOHAMMED SUBHAN WANI

75-year-old Mohammad Subhan Wani was detained on four successive occasions under the PSA between August 2016 and October 2018. Each time, the PSA order was quashed by the J&K High Court. Wani says that he was never released from prison when a PSA order was quashed, but was instead illegally detained - sometimes for over a month - until a fresh order was issued.<sup>105</sup>

Of his detention in 2016, Wani said, "I was kept in a 6x6 feet cell with four other prisoners. I protested and was shifted to another cell. Other prisoners were not that lucky. They told me that they were kept naked. We were kept in jails far away from home, which made it difficult for us to meet our families and lawyers."

Wani said that his detention also affected his family. "One of my sons was framed and detained for 29 days. Another son was detained for 27 days. Sometimes they would come to my home and if I wasn't there, they would arrest my children and detain them."

105. PSA order no. 78/DMB/PSA/2016 was passed on 19 August 2016 and quashed by the High Court on 25 November 2016 on the ground that the reasons for the detention had not been communicated to Wani. Order no. 196/DMB/PSA/2016 was passed on 14 December 2016 and quashed on 25 May 2017 on the same ground as earlier, and also because the detention order was not based on any new allegations. A new PSA order no. 59/DMB/PSA/2017 was passed on 4 July 2017, and quashed on 13 December 2017 on the same grounds. Order no. 169/DMB/PSA/2018 was then passed on 27 January 2018 and quashed by the High Court on 3 August 2018, on the ground that the detention order had relied on grounds used to pass previous detention orders.





## CASE STUDY

## TANVEER AHMAD WAR

In October 2016, security force personnel arrested 39 year-old Tanveer Ahmad War from his home in Baramulla. War has polio and uses crutches to walk. He told Amnesty International India that he was illegally detained in a station for 14 days until an FIR was registered against him, and tortured.

"I was beaten and my legs were burnt with cigarettes. They forced me to name boys in my locality who participate in protests."

War was subsequently detained under the PSA. When the J&K High Court quashed the detention order, the Baramulla District Magistrate passed a fresh order. He was only released from custody after the second order was quashed as well. War said that his health has worsened since his detention.

"I fell in the bathroom at the Baramulla police station and hurt my leg. Although I was provided medical care, the police officials asked my wife to pay for it. She did. The prison conditions are not friendly for people like me. Moving from one jail to another was traumatising because I could not move much and was mostly bedridden."

War said the detention has affected his family financially as well. "The detention crushed our dreams. I had taken a loan to start a business before I was arrested in 2016. Since I was in jail, I could not repay it. My wife had to sell her gold ornaments to repay the loan. I feel sorry for her because she had to suffer so much."



## ILLEGAL DETENTION AND ILL-TREATMENT

The "informal justice system" that is the PSA also facilitates a range of other human rights violations, including arbitrary detention of detainees in police stations before detention orders are issued.

Amnesty International's previous reports, and research for this report, reveal a pattern of arbitrary detention which is commonly used in PSA cases to ensure that detainees are not released even when detention orders are quashed. Many cases begin with the person being taken "unofficially" for investigation to a local police station and kept in custody, without any legal basis, before they are arrested under an FIR or a PSA detention order. None of the official records reflect the period of interrogation.

In the analyzed cases, the duration of unlawful detention, which often entail spates of "interrogations", ranged from two days to a month. In the case of Javid Ahmad Khan, his writ petition states that he was unlawfully detained for 33 days before being shifted to the District Jail, Udhampur where he was formally detained under the PSA.<sup>106</sup> Such unlawful detention violates detainees' rights under the Constitution of India to be produced before a magistrate within twenty-four hours. It also amounts to arbitrary detention as defined by the UN Working Group on Arbitrary Detention (UNWGAD), a human rights body which investigates cases of arbitrary deprivation of liberty.<sup>107</sup>

PSA detainees may be subjected to periods of illegal detention as a result of the way in which the authorities combine the PSA and the ordinary criminal law to prevent their release (see preceding chapter). Periods of illegal detention can follow individuals' release on bail or the quashing of a PSA detention order, and always precede a further PSA detention order or formal arrest on a criminal charge. Subsequent PSA orders sometimes even allege that the individual committed criminal acts outside prison, during the period when he was in custody. Allegations of such illegal and unlawful detention feature in a number of habeas corpus petitions filed on behalf of PSA detainees before the High Court, indicating a pattern of abuse. Unfortunately, the High Court appears to never question this kind of detention.

Some of the PSA detainees whose cases were analyzed also spoke of facing or witnessing torture or other ill-treatment, including beating, stripping and electric shocks. Khurram Parvez, the human rights defender who was detained under the PSA, told Amnesty International India about his detention: "The prison conditions were harsh and the inmates were subjected to humiliation by stripping them naked. The quality of food was substandard. The political prisoners booked under PSA were kept in solitary confinement regardless of their age and health status. Some of the political prisoners were kept in the same barracks as regular prisoners.

The health facilities available in the jail were not as per the needs of the inmates. The jail was not disabled-friendly. All the political prisoners were sent to jails hundreds of kilometres away from their homes in a deliberate attempt to punish and persecute these people."<sup>108</sup>

106. 08/DMB/PSA/2016, on file with Amnesty International India.

107. Category I of the five categories defined by the UNWGAD relates to deprivation of liberty "when it is clearly impossible to invoke any legal basis justifying" it, [www.ohchr.org/Documents/Issues/Detention/FactSheet26.pdf](http://www.ohchr.org/Documents/Issues/Detention/FactSheet26.pdf)

108. Interview with Khurram Parvez on 6 April 2019 at Amira Kadal, Srinagar



## CASE STUDY

**BASHIR AHMAD SHEIKH**

“The policemen climbed over our compound walls and came into the house. They started smashing everything. They broke down doors and windows. They destroyed the utensils in our kitchen. Books were thrown out into the corridor. Then they started beating me with the butts of their guns. They finally took me to the police station at Tangmarg.”

Bashir Ahmad Sheikh, 38, was booked under the PSA in August 2016 for allegedly “organizing and leading unlawful demonstrations and pelting stones upon police/security forces.” What followed was a punishing series of revolving-door detentions which are typical of the ordeal faced by many PSA detainees.

“The day I was arrested, I was shifted to the Joint Interrogation Centre, Baramulla where I was lodged for four days. From there I was taken to Kot Balwal Jail in Jammu, where I was detained for three months and nine days. It was not a good experience at all. I was asked to take off all my clothes and was kept nude for some time. It was quite humiliating for me. Then I was taken to JIC in RS Pura in Jammu. After detaining me there for three days, the police brought me back to the police station in Tangmarg. Despite the J&K High Court quashing my detention order in November 2016, I was not released and was kept in custody for 27 days.

I was then shifted back to JIC Baramulla, where I was kept for a night and then sent back to Central Jail, Jammu. I was lodged there for six months under a second PSA detention order passed in December 2016. The court quashed this PSA order as well in May 2017. But the police didn't release me again. I was again taken to JIC, RS Pura, Jammu where I was detained for five days. Then I was sent to JIC Baramulla.

While I was in detention, the police registered another FIR against me. I was also again booked under a third PSA order in June 2017, and then shifted to District Jail in Kathua. I was lodged there for two months and 21 days, when the PSA order was quashed once again. This time again, I was taken to JIC RS Pura and detained there for 13 days. Then I was detained for 45 days in the sub-jail in Baramulla. From there I was taken to JIC, Humhama Srinagar, where I was kept for a night, then to the police station in Humahama, Srinagar, and then to the police station in Baramulla. The next day I was taken to the police station in Tangmarg, when I was finally released.”



## FAILURES OF THE JUDICIARY

The only feasible legal avenue open to families of PSA detainees is to file a habeas corpus petition before the J&K High Court.<sup>109</sup> India's higher judiciary is meant to act as a custodian of the Constitution of India and the rights it guarantees.

The High Court has played a key role in curbing misuse of the PSA, as is evident from the cases mentioned earlier. Between March 2016 and July 2017, the Court quashed over 80% of all detention orders on various grounds.<sup>110</sup>

However, the High Court has also failed to adequately defend human rights principles enshrined in the Constitution of India and international human rights law and standards. The Court has been remiss in some specific ways:

- Ignoring illegal detention: In many of the cases analyzed for this report, detainees complained of being held in illegal detention without any basis, often prior to having a PSA detention order issued against them. In some cases, minors have been illegally detained. Despite having these allegations brought to its notice, the High Court has not ordered investigations into a single instance of alleged illegal detention. In many cases, people have been detained illegally after their detention orders have been quashed by the High Court, or they have been ordered to be released on bail. Such detention amounts to open defiance of court orders. Yet the High Court has not intervened to secure the liberty of detainees.
- Not holding detaining authorities accountable: The High Court has quashed many cases of PSA detention when executive authorities have failed to show due diligence in issuing detention orders. In several cases, it has quashed successive detention orders issued against the same individual. Yet the Court has rarely held police officials or executive detaining authorities accountable for their failures, even when it has pointed them out. Officials already protected from prosecution under immunity provisions in the PSA are further emboldened by such reluctance from the High Court. The higher judiciary in India has vast constitutional powers and courts are often known to enforce their decisions through fines, strictures and other penalties. Yet the J&K High Court has appeared hesitant to take such measures.
- Not awarding compensation: The Supreme Court of India has awarded compensation in the past in cases of human rights violations, including illegal detentions.<sup>111</sup> Most writ petitions filed in cases of PSA detention before the High Court raise the issue of compensation, and the Court sometimes mentions these requests, yet never acts on them.



A course book lying on the floor of a school, after it was burnt down in Baramulla © Amnesty International India

As advocate Parvez Imroz says, “Why is the police so insensitive to the judiciary’s orders? The reason is that the courts have failed to assert themselves. I do not have a single case in my knowledge where the detaining authorities have been questioned for passing the illegal orders, for example passing the detention orders against the minors or invalid persons. Or people who are remotely connected with the violence or with any political activity. Not a single case is there where the courts have ordered compensation to be paid to the detainees, though we have lot of cases in the Supreme Court.”

“The procedural safeguards are being violated by the detaining authorities because there is no accountability...It is not only about the impunity of the armed forces here, which is much talked about. There is also impunity of the bureaucracy...

The courts have completely caved in. Judicial impunity has emboldened the executive to pass the orders repeatedly.”<sup>112</sup>

The apparent reluctance of the High Court to go beyond examining procedural issues, and deal with substantive protection of the rights of PSA detainees, has created an odd equilibrium in Jammu and Kashmir, where authorities flout the limited safeguards of the PSA with impunity, the Court quashes their orders, and authorities then issue new orders, for the cycle to start again. Authorities do not face any penalties for their actions, and the Court’s quashing of orders ensures that a façade of the rule of law is maintained.

The costs of this equilibrium are borne, then, by PSA detainees, whose rights continue to be routinely violated.

109. Article 32 of the Constitution of India provides for writ petitions to be filed before the Supreme Court of India. Article 226 of the Indian Constitution and Section 103 of the Constitution of J&K provide a similar right to remedy at the High Court.

110. CHRI, RTI reveals Advisory Board under J&K Public Safety Act spend 75% of its budget upholding detention orders which J&K High Court quashed later on

111. Courts have ordered compensation despite India’s reservation to Article 9(5) of the ICCPR, which states that “[a]nyone who has been a victim of unlawful arrests or detention shall have an enforceable right to compensation”. In the case of *DK Basu v. State of West Bengal* in 1996, the Supreme Court said that the reservation to ICCPR “has now lost its relevance in view of law laid down by this Court in a number of Cases awarding compensation for the infringement of the fundamental right to life of a citizen”. Available at [www.indiankanoon.org/doc/501198/](http://www.indiankanoon.org/doc/501198/)

112. Interview with Parvez Imroz on 3 April 2019 at Amira Kadal, Srinagar.



## CONCLUSION

In 2011, Amnesty International described the PSA as a 'lawless law', which had in effect supplanted the criminal justice system in Jammu and Kashmir. Eight years later, this description holds just as true. This briefing indicates a pattern of abuse by J&K authorities, who have continued to use the PSA in a manner that furthers human rights violations, including by detaining children, passing PSA orders without due diligence and on vague and general grounds, ignoring the limited safeguards under the Act, subjecting individuals to "revolving-door detentions", and using the PSA to prevent release on bail and undermine the criminal justice system.

The text of the PSA continues to violate several of India's obligations under international human rights law, including respecting detainees' fair trial rights to be promptly informed of the reasons for their arrest, to judicial review of the detention, to be represented by counsel of their choice, and to remedy for abuses.

Further, regressive amendments to the Act in 2018 have also led to detainees being held in prisons far from their homes, in violation of international human rights standards. Detainees are often not provided all relevant materials regarding their detention, and a shroud of secrecy surrounds the functioning of the Advisory Board. Unlawful detention and torture and other ill-treatment also continue to be enabled by the PSA.

The PSA, which was ostensibly introduced as an exceptional measure to detain people who pose an extreme and imminent danger to security, continues to be used as an alternative to the criminal justice system. Authorities use the PSA to detain people suspected of criminal offences against whom they do not have sufficient admissible evidence, or to detain people who should not have been arrested at all. In doing so, they violate not just the right of detainees to a fair trial, but also the right of victims of crimes to justice.

While the J&K High Court routinely quashes detention orders which fail to comply with procedural safeguards, it does little to tackle the impunity enjoyed by executive authorities. This system has contributed to the already widespread fear and alienation felt by people living in the Kashmir Valley.

Accountability, transparency and respect for human rights are required to rebuild trust.

Jammu and Kashmir will elect a new government in 2019. This government will have a chance to break with the past and show the people of Jammu and Kashmir that their rights matter. It must not waste this opportunity.





Mother of Waheed Ahmed Gojree,  
who was detained under PSA when he was  
a minor © Amnesty International India

# RECOMMENDATIONS

## **Amnesty International India calls upon the Government of Jammu and Kashmir to:**

- Repeal the J&K Public Safety Act and any other legislation facilitating the use of administrative detentions;
- Release all detainees held in administrative detention under the PSA, or charge them with criminal offences and try them promptly and fairly in a regular court;
- Provide full reparation to all detainees held in unlawful detention under the PSA;
- Launch prompt, independent and impartial investigations into all allegations of unlawful detention and torture or other ill-treatment in custody, and bring to justice those responsible.

## **Pending the repeal of the PSA, strengthen protection during detention by:**

- Ending immediately the use of unlawful detention without basis;
- Ending detention in unofficial places of detention;
- Ensuring that the police carrying out the initial arrest inform the families of the place where the detainee is held;
- Ensuring all detainees are brought before a judicial magistrate within 24 hours of arrest;
- Ensuring that children in conflict with the law are brought before a Juvenile Justice Board and treated in line with the J&K Juvenile Justice Act;
- Ensuring that detainees have access to their families and legal counsel and all detainees are able to exercise their right to be examined by an independent doctor as soon as they are arrested and after each period of questioning; 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;
- Revoking the immunity offered to government officials under the PSA;
- Ordering all district magistrates to ensure that they verify that any individual arrested is over 18 before ordering detention under the PSA;
- Ensuring that detainees are lodged in jails close to their homes;
- Taking all necessary measures to improve prison conditions, including by adopting a mechanism that provides for the mandatory independent, unrestricted and unannounced monitoring of all places of detention (which include confidential interviews with any detainees of the visiting body's choice).











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