

Art by Malik Sajad

DETENTIONS IN JAMMU & KASHMIR

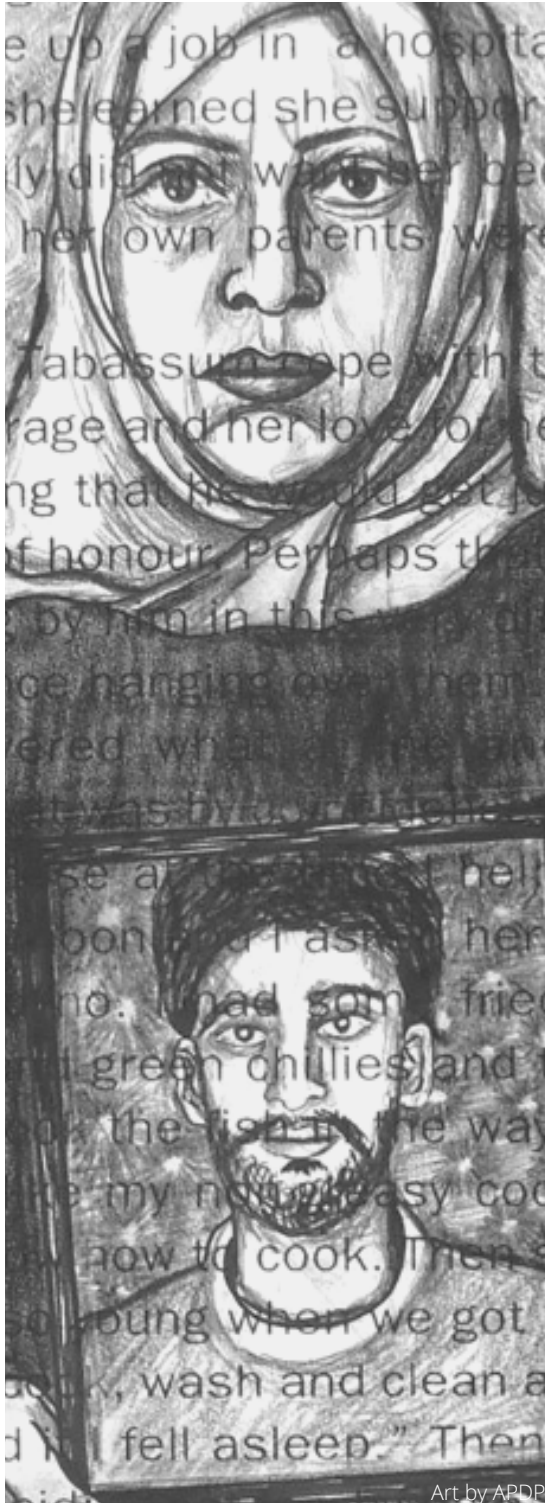
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Photo by @journobubakar

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DETENTIONS IN JAMMU & KASHMIR



Art by APDP

BACKGROUND

Since 1947, India's occupation of Jammu and Kashmir has systematically used arbitrary and preventive detentions to politically repress the people of the region and commit collective punishment on the population, in complete disregard for the norms of international law. These measures are taken out against a population that has been demanding its right to self-determination since 1947, mandated by a number of UN Security Council resolutions.¹

On August 5 2019², India de-operationalized the "special status" of Jammu and Kashmir that was enshrined in Article 370 of the Indian constitution, bifurcating the region into two Union Territories that would be governed directly by the Indian government in New Delhi. Kashmiris have termed this 'unilateral action' as an attempt by the Hindu-nationalist government of PM Narendra Modi to change the legal status of a territory that remains disputed in the international arena and to bring about demographic changes in the region along the lines of Israeli settlements in Occupied Palestine . This demographic change would involve making the Muslim-majority region into a Hindu-majority, to render any possible solution of the dispute obsolete. This decision of the Indian government violates various regional and international treaties and constitutional agreements.

In preparation for this step, India left no stone unturned to silence local dissent against the change by stationing additional troops in what is already the world's most militarized zone, restricting people's right to move and assemble, and placing an unprecedented communications blackout in the region by shutting down all internet, mobile, and landline services. The throttling of Internet speeds continues to this day.



In addition, India intensified its existing practice of preventive and arbitrary detention. Credible media reports as well as human rights organizations such as Amnesty International⁴, Jammu and Kashmir Coalition of Civil Society (JKCCS)⁵, and People's Unions for Civil Liberties have between 5,000 to 13,000 cases⁶. The detainees include politicians, activists, students, business leaders, lawyers, human rights defenders, teachers, and children.

PREVENTIVE AND ARBITRARY DETENTIONS

India acknowledged that 5,161 persons were detained in Jammu & Kashmir since August 4, 2019. According to Amnesty International, the number of people held in administrative detention in Jammu & Kashmir increased to 7,357. At least **34 of them were minors**.⁷



Photo by @journobubakar

The abductions and incommunicado detentions taking place in the context of a complete communications and mobility shutdown created an atmosphere of panic and terror, as families couldn't locate their loved ones who had been detained for weeks. Incommunicado detention most commonly takes place immediately after the Indian forces first apprehend a suspect. No formal arrest or detention proceedings are conducted and no information is provided to the family at this stage. At times, incommunicado detention takes place in secret facilities, usually in camps of the Special Operation Group of local police and military forces.

Mass arrests and detentions are carried out under a wide variety of vague and overly-broad security laws and powers. These include the **Public Safety Act** (PSA) 1978⁹, the **Unlawful Activities Prevention Act** (UAPA) 1967¹⁰, and ordinary criminal law, amongst others.

Other than these legally sanctioned forms of detention, long-standing practices of unlawful and undocumented "holding" of detainees in police stations, military establishments, and interrogation centers have been widespread along with house arrests, particularly of prominent political activists and leaders.

A majority of those imprisoned are male and especially from the youth. However, those held in prisons include women who have been active in the movement for

self-determination. A number of them are also psychologically and physically harassed during their detentions.

Detentions are a form of collective punishment. They affect not only the detainee but the entire family and community. Young men and adolescents go on the run “underground”, unable to return home for weeks fearing the detentions and torture that will result. During mass arrest sprees, communities and entire villages are summoned to the police station and made to stand as “guarantors” on community bonds by police.¹¹

JAMMU AND KASHMIR PUBLIC SAFETY ACT (PSA)¹²

The PSA is a preventive detention law whereby a person can be detained on mere suspicion or without evidence. It circumvents the **ordinary judiciary trial**. It provides for detention of three months extendable to one year in the case of persons “acting in any manner prejudicial to the maintenance of public order”, and detention of six months extendable to two years in the case of persons “acting any manner prejudicial to the security of the state.” The PSA has been systematically used by India to punitively detain people in the interests of maintaining public order, “national sovereignty”, and “national security” based on police inputs in secretive dossiers which are rarely disclosed to detainees and subject to minimum judicial review.

The PSA has been used to detain

individuals who express their political dissent by participating in peaceful demonstrations, as well as street protestors who pelt stones at armed forces, and even political activists, lawyers, journalists, and ordinary civilians and children.

The only remedy is to approach the J&K High Court in a Habeas Corpus Petition for the quashing of the illegal detention order, which routinely takes up to a year due to delays. In a recent report by a fact-finding team, out of the 450 Habeas Corpus petitions filed after August 5, more than 400 remain pending.

The PSA has created a routinized system of “**Revolving door detention**”, the common practice of passing a new order after the expiry of an existing detention order, which is done immediately without release, to keep the individual in continuous detention. As a result, it keeps political opponents “out of circulation” as in the case of Shabir Ahmad Shah and Masrat Alam Bhat who have been detained under their 35th and 37th PSA respectively¹³

After August 5, data obtained by JKCCS and Association for Parents of Disappeared Persons (APDP), show that as many as **662 fresh PSA detentions were registered in 2019 out of whom the majority (412) were registered post-August 5, 2019**. The detainees included Mian Abdul Qayoom (President of the High Court Bar Association) and Abdus Salam Rather (President of the Baramulla Bar Association),





Mian Abdul Qayoom - President of the Kashmir Bar Association

amongst others. In July 2018, the PSA was amended to allow authorities to lodge people in jails outside of J&K. Amnesty International has stated that **at least 251 detainees were shifted out of Kashmir**. This violates Article 47 of the Geneva Convention, which explicitly states that “protected persons accused of offenses shall be detained in the occupied country¹⁴.”

The J&K High Court has refused to revoke the PSA detention of a number of cases. In one high profile case, the judge argued that “the detention of the person is not to punish him for what he has done but to intercept and prevent him from doing it under a subjective standard....subjective satisfaction of the detaining authority to detain a person or not isn’t open to objective assessment by a court. A court is not a proper forum to scrutinize the merits of administrative decision to detain a person¹⁵.”

The PSA is used to detain

individuals through a system of “Open FIR (First Information Report) cases,”¹⁶ where police stations issue FIRs regarding crowd actions and cite “unknown persons” as accused, enabling them to arrest targeted individuals later. This is a form of mass criminalization and profiling, particularly of youth.

Amnesty International has described the PSA as a “Lawless law”¹⁷ that has **enabled arbitrary detentions in Kashmir for decades**.

UNLAWFUL ACTIVITIES PREVENTION AMENDMENT ACT 2019 (UAPA)¹⁸

The UAPA gives powers to the Indian government to designate an individual as a “terrorist.” The main objective of UAPA is to make powers available for dealing with activities directed against the “integrity” and “sovereignty” of India.. Vague and unsubstantiated charges of terrorism or terror funding are made. Any individual can be categorized as a “terrorist” and have their property seized. They are subject to a travel ban and face a pre-trial detention of 180 days before any charges are filed. They can be held without any reasons being disclosed and are not provided bail.

The Indian government has banned two organizations—the Jamaat-I-Islami and the Jammu Kashmir Liberation Front—and designated them as “unlawful organizations.” As a result, mass arrests of people have occurred based on actual or presumed past/present affiliation with these groups.



The Director-General of the National Investigation Agency (NIA) which oversees UAPA cases has the power to “attach properties” acquired from the proceeds of terrorism. Since January 2020, the government has been using the UAPA to threaten and detain individuals found to be using virtual private networks (VPNs) to access social media.

Many Kashmiris have served time in Indian prisons for years on “terror” charges before being acquitted for lack of evidence. They are subject to discrimination, torture, and inhuman treatment in Indian jails.¹⁹

ILLEGAL DETENTIONS

The practice of illegal detentions is carried out by summoning individuals to police stations or by detaining individuals during night raids carried out at their homes. What follows is a classic exercise of illegality in the name of maintaining law and order as individuals, including minors, are kept at police stations for days without charges or formal orders.

Youth who are profiled as “street protestors” (locally called stone pelters) are particularly vulnerable to mass incarceration and illegal detentions. They are required to present themselves at police stations, particularly during high-security days and in neighborhoods and localities which are perceived to be volatile. Hundreds of youth are abducted without any legal basis in this way and lodged

in police stations all over J&K. If they are not subsequently charged under criminal offenses or PSA, they are let off only if family along with local elders sign a community bond with an assurance of no future protest or dissent by the detained individual.²⁰

In some cases, a common practice has emerged where individuals are only released after paying a ransom²¹. The practice of ransom is carried out informally without the nomenclature of practices of law and justice. These illegal practices of detention create fear of arbitrary and undocumented detentions and cast a chilling effect on the population.

DETAINEES SENTENCED TO LIFE IMPRISONMENT

There are around **29 Kashmiri men who have been languishing in prison for more than 10 years**. Five of these prisoners have completed more than 20 years of imprisonment. India has made use of laws such as the Prevention of Terrorism Act and Terrorist and Disruptive Activities Act against numerous political dissidents. These two Acts (POTA and TADA), allowed the authorities to treat confessions made to the police admissible in evidence. Consequently, many reports surfaced of the law being grossly abused. Kashmiris, who were booked under these acts, were subjected to third-degree (torture). Under duress, many of these detainees were pressurized to confess to committing a crime they



were not involved in. They were forced to sign a blank paper, which was later turned into a confessional statement and produced in the court as evidence. Though the aforementioned Acts have been abolished due to their widespread misuse, the unlawful detention of Kashmiris has continued. In July 2019, four Kashmiri men, Mohammad Ali Bhat, Lateef Ahmad Waza, Mirza Nissar Hussain, and Abdul Gani Goni, were acquitted of all charges and **released after 23 years of wrongful imprisonment** without bail or parole.

In the case of Dr. Qasim Faktoo, who has been behind bars for 28 years, the court sentenced him to life imprisonment, i.e 14 years, based on the confessional statement extracted out of him using force. On completion of his jail term, the State authorities bent their own dictum and declared that "life imprisonment means imprisonment till death". Since 1947, every lifer convict in India was released by the Government once the Review Board recommended his/her release. In Dr. Faktoo's case, the same procedure was followed. His case was forwarded to the Review Board as soon as he completed 14 years, and the board after reviewing his case recommended his release to the Government. The government, however, rejected the recommendations. The case of Dr. Qasim has served as a precedent for the Indian government and has allowed it to follow a similar coercive pattern in

various other cases of Kashmiri lifers.

TREATMENT OF DETAINEES

The treatment of Kashmiris in prisons in Kashmir and across India barely meets any standard practices. Most of them are subject to **torture**, both physical and psychological, and **inhumane treatment**. They are held in overcrowded spaces, lacking ventilation, oftentimes amid criminals. They are not provided with adequate food, clean clothes, or cleaning supplies. Those who suffer from chronic illnesses are not provided with necessary medical attention. Many of them also suffer from additional injuries and illnesses, usually inflicted on them during their detention. Because Kashmiri prisoners represent the state's most hated "other" they are subject to cruel and harsh treatment from prison officials.



Phot by Atul Loke

Nazir Ahmad Sheikh, 61, a farmer who was featured in the report on torture, said soldiers accused him of being a militant and detained him in 1994. He said they crushed his legs with a heavy roller and then poured scalding hot water on them.



- Severe beating, punching, and kicking of detainees
- Handcuffing detainees for long periods in contorted positions
- Exposure to loud music and screaming sounds
- Sleep deprivation
- Denial of food, water, and use of toilet
- Threats of or actual acts of sexual abuse
- Solitary confinement
- Psychological threats and pressure to collaborate or confess to committing a crime that the detainee is not involved in
- Denial of medical treatment
- Electrocution
- Roller punishment (a heavy wooden log or an iron rod is rolled over the legs of the detainee, extra weight is exerted by army personnel who sit on the opposite sides of this rod/log)
- Cutting off chunks of flesh from detainee's body
- Water-boarding
- Dunking the head of detainees in water (which is sometimes mixed with chilli powder)
- Burning of the body with iron rods, heaters, or cigarette butts
- Stripping the detainees naked
- Forcing the detainees (including teenagers) to urinate on electric heaters
- Rubbing salt and spices over the wounds of the detainee
- Mental breakdown (e.g. after incessant torture, detainees are told that a family member has come to visit them, the hopeful detainee is then taken into a room where no family member awaits them but are met with another round of torture)
- Rats are slipped inside the trousers of the detainee
- Forced to drink urine or water from unsanitary gutters

IMPACT ON FAMILIES

Families have to bear with the separation of their loved ones and oftentimes feel helpless given the lack of legal remedies. Many of them are not able to get in touch with their family members. The imprisonment of a husband, son, or brother can also result in immense economic hardships. Their children are forced to drop out of school and begin to start earning for their families. Imprisoned children have their education disrupted and suffer immense **psychological distress**.

Family members often have no idea where their children are held. For those detainees that are sent outside of Kashmir, their families struggle to find the financial means to visit them. Families are forced to remain silent about the violations of the rights of the detained individuals due to the threat of reprisals, which includes further arrest, harassment, torture, or even death at the hands of police forces. There is little communication between the family members of the detainee and the detainee. Phone calls are rarely allowed only in some cases. At times the authorities withhold the letters of family members and do not pass them on to the detainee. This only exacerbates the problems for the families. For some families, when they pursue the release of their prisoners in Kashmir, they are often threatened with the shifting of the prisoner to some distant jail. In some cases, the authorities actually do it.

COMMUNITY BONDS

Community bonds are another exercise of illegality as they make the entire community responsible for the future actions of the individual, with a direct and immediately threatening effect. After August 5, 2019, scores of individuals in Kashmir were released only after the larger community — which includes the detained individual's family, relatives, neighbors, and others— would sign an official bond of good behavior guaranteeing in writing that the arrestee would not engage in any anti-state activity in future (dissent) and the whole community would be made responsible for such actions. This serves the twin purpose of criminalizing dissent, or any peaceful ways of registering protest and creating fissures within a community.²²



Phot by Kamran Yousuf

80-year-old Zaina showing a picture of her son (Lateef Ahmad Dar) who was picked up by the Indian forces on August 1st. She has not seen her son in the past six months after he was picked up from his home in Southern Kashmir's Bello village.

MINORS

The Juvenile Justice Committee (JJC) of the J&K High Court submitted before the Supreme Court of India that '144 boys, **including a 9-year-old kid**, were arrested by state forces' after August 5. However, this number seems an under-estimation of the actual figure of minors kept under detention, including illegal detention.²³

JKCCS and APDP²⁴, through field visits to several districts of the Valley, found that scores of minors have been arrested illegally and without any charges. While the JJC report maintains that all minors were detained for not more than a single day, media reports and independent research suggests that there were many detentions of minors who were kept in illegal custody at police stations for weeks altogether. Amnesty International has found that at least **34 minors were booked under the PSA**.²⁵



Photo courtesy of TRTWorld

Children in the Kashmir conflict are the subject of a new report released by the Jammu and Kashmir Coalition of Civil Society under the title "Terrorised: Impact of Violence on the Children of Jammu and Kashmir".

THE LACK OF ACCESS TO JUSTICE

Government actors systematically fail to investigate claims, refuse to participate in investigations and prosecutions, ignore the contempt orders of courts attempting to force their participation in proceedings concerning human rights claims, and **operate with complete impunity**. Judges routinely fail to question the government's authority to detain. The Kashmiri court system is riddled with delays and backlogs that deny victims effective remedies.²⁶

LACK OF DUE PROCESS:

- There are hundreds of habeas corpus petitions before the J&K High Court challenging the PSA detention orders and the court has failed to provide any remedy.
- The J&K High court is failing to check the indiscriminate use of administrative detention.

JUDICIAL DELAYS:

- The detentions are quashed after months, resulting in massive delays and infringement of rights of the individuals detained.

JUDICIAL IMPUNITY:

- The J&K High Court and the Supreme Court of India are enabling an atmosphere of impunity and lack of accountability for widespread human rights violations in Kashmir.

INTERNATIONAL LAW²⁷

The nature of detentions in Jammu and Kashmir is such that it violates both the national laws of India as well as international human rights law. India violates its treaty obligations and basic principles of human rights law by detaining people for lengthy periods, without allowing them to effectively challenge their detention in court. In addition, since detentions take place in the context of an occupation and an ongoing armed conflict, **India is in violation of its obligations under the Geneva Convention**, particularly with respect to:

- Arbitrary detentions which are mostly without charge or trials, disallowing the possibility of judicial review and other safeguards recognized by international human rights law. These safeguards include the right to justice, right to truth, and the right to seek remedy, which includes and is closely related to the right to judicial review of the detention, and the right to communicate with and be represented by a counsel. As a result, arbitrary detentions also violate the principle of legality under international law.
- Provisions of international legal instruments guaranteeing protection which constitute primary obligations of States, such as the Universal Declaration of

Human Rights (UDHR), International Covenant On Civil and Political Rights (ICCPR), United Nations Convention against Torture (UNCAT), Convention on the Rights of Child, etc.

- Soft law instruments and norms outlined in General Comments of the UN Human Rights Council, Reports of Special Rapporteur, and various other UN Bodies.
- Therefore, these detentions violate India's international legal obligations, customary international law, and jus cogens norms.





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