

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) No. 1166 OF 2019

In the matter of :

ENAKSHI GANGULY & ANR

...PETITIONER

VERSUS

UNION OF INDIA & ORS

...RESPONDENTS

Petitioners' Affidavit in Response to the Report of the Jammu and Kashmir Juvenile Justice Committee pursuant to the direction, dated 20.09.2019 passed by the Hon'ble Supreme Court.

The Petitioners above-named

Most Respectfully submit as under:

1. That this Hon'ble Court had directed the Juvenile Justice Committee (JJ Committee) of the High Court of Jammu and Kashmir, vide Order dated 20th September 2019, to 'undertake an exercise with regard to the facts stated in the writ petition and revert to us within a week from today'.
2. That the Writ Petition (Civil) no. 1166/2019 has been filed by two well-respected child rights experts, who sought to draw the attention of this Hon'ble Court towards reports specific to children in Jammu and Kashmir after August 5th 2019. The widespread reports in both print and digital media, and in international and mainstream national press, describe violations of rights of at least three different kinds: illegal (if temporary) detentions (and in some

cases) beatings by security forces, maiming and injuries, and deaths. The Writ Petition prayed that the reports were both frequent enough and serious enough to merit a 'judicial review' of the situation with respect to children.

3. That the Writ Petition had prayed that the situation be reviewed by the Juvenile Justice Committee of the High Court of Jammu and Kashmir.
4. That the 'Report on the exercise undertaken by the Jammu and Kashmir Juvenile Justice Committee' dated 26.09.2019 does not indicate any 'judicial review' or indeed any application of mind or independent examination/ verification of the allegations and averments in the Writ Petition. The JJ Committee's Report merely *forwards* the contents and conclusions of the Report submitted to it by the Director General of Police, without recording any findings of its own: *"In its aforesaid report, the Director General of Police has categorically refuted the assertions and allegations made in the media reports, and, consequently in the Writ Petition."* [Page 3 of the Report]. It is respectfully submitted that on close reading it would appear that the Report of the Director General of Police does not 'categorically' refute the averments so much as it 'rhetorically' denies them, i.e. denies them repeatedly, with many a flourish, but with little substance. This is the reason that the matter would benefit immensely from independent application of mind.

5. That this Hon'ble Court had directed the Juvenile Justice Committee to 'undertake an exercise' in context of the averments and prayers in the Writ Petition. The Writ Petition, in turn, had expressed concerns over possible instances of illegal detention of children by security forces. In the event, the Report of the Juvenile Justice Committee that relies only on the response of the selfsame party (without having heard any other stakeholder), and without having applied its mind to it does not serve the purpose of the exercise.

6. That the Report of the JJ Committee annexes the Minutes of its first meeting held in order to plan the process of compliance with the directions of the Supreme Court to 'undertake an exercise' towards verification of the averments in the Writ Petition. The Minutes record that *"there are numerous assertions made in the petition, based on media reports – print and electronic – alleging arrests, detention, beating and maiming of juveniles etc. in the valley of Kashmir ever since 05.08.2019."* [Page 13 @14]

7. That further, the Minutes state that *"this Committee wishes to bring it on record that it or any of its Members individually has not received any complaint or representation or anything like that from any individual, lawyer, human rights' activist, group of persons, organization, civil society member or any other person complaining about the arrest of any Juvenile, though regular Habeas Corpus Petitions challenging arrests and detentions have continuously been*

filed before the High Court by advocates, and reportedly, bail applications for release of persons arrested by police involved in different offences have also been presented before and dealt with by the Courts subordinate to the High Court in the valley.” [Page 13 @ 14 -15]

8. That it is most respectfully submitted that the aforesaid exhaustive record of all possible stakeholders in the matter is especially relevant, since none was called upon to give their account before the JJ Committee. In contrast, the Committee ‘resolved to ascertain facts from the concerned state agencies as to the assertions and allegations made, in the Writ Petition in question, based on media reports’. [Page 1-2].
9. That it may arguably be said that no other stakeholder stepped forward to state a case before the JJ Committee. It is very humbly submitted that the Petitioners in the present Writ Petition had intended to do just that by reposing their trust in the JJ Committee of the High Court, as the body, which might independently verify the allegations with respect to excesses against children. They believe that the situation merits judicial intervention and supervision.
10. That equally important, there are numerous unconnected and independent reports from fact-finding teams of concerned citizens and activists, mainstream newspaper, both domestic and

international, video reports etc. which strongly allege instances of excesses against children. They have been coming out consistently and are available in the public domain. It is submitted that their summary dismissal as 'false', 'motivated lies' would be to our own detriment and to the detriment of our Constitutional morality. Diverse reports from across various media are annexed herein. These also include videos and Pictures and are marked as Annexure-P/1 Colly. (26-41)

11. That two excellent sources of independent verification are also identified in the aforesaid Minutes: Habeas Corpus Petitions filed on behalf of minors and bail applications on behalf of minors filed before the subordinate Courts. However, it may be noted that since the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013 (the Act) offers a separate mechanism for trial of children in conflict with law, it is the Juvenile Justice Board, under S. 13 that would grant or reject a minor's bail application. Thus, the Juvenile Justice Board may certainly be directed to furnish copies of bail applications, as also of the FIRs produced before them.

12. That Section 14 of the Act also directs that at the point of arrest, the special juvenile police unit must immediately inform the parents/guardian of the factum of the minor's arrest and also give notice to them to be present before the Board, before which the child would appear. Thus the Juvenile police unit must have records

of all such notices issued to Parents and corresponding appearances and Orders of the Board. The Committee may direct those to be placed on record.

13. That the same Section also contemplates the appointment of a probation officer for the arrested child, whose task is to prepare a background file on the child in order to assist the Board in its inquiry. These files must be placed on record before the Committee to show the sanctity of the proceedings and also so that the child has an opportunity to participate in the case against him.

14. That there are several other stakeholders in the JJ system: the Child Welfare Committee, the Juvenile Justice Board, the Childline and the Integrated Child Protection Officer. Each of them could have been called upon to provide a written report and supporting documents in order to have a more diverse perspective.

15. That the Committee had directed the Registrar to provide a list of Habeas Corpus Petitions, if any, moved by or on behalf of juveniles and alleging wrongful detention. The Committee's Report itself annexes an Order in one such petition, directing enquiry into the age of the detainee, who is allegedly 14 years of age. A corresponding news report details the case and alleges that the 14 year old was beaten in custody and has now been moved to a jail in Varanasi. There are also other examples available on the website of the High Court of Jammu and Kashmir or through news reports. In

one Habeas Corpus petition, which was earlier listed as W.P (Crl) No. 262/2019 and now listed as W.P (Crl) No. 306/2019, vide order dated 24.09.2019, the Court had directed the District Magistrate to look into the detenu's school card, which showed him to be a minor. On 1.10.2019, the Court's order records that the government revoked its Order of detention on 20.09.2019 and brought the minor back by road from Bareilly Jail, where he had been lodged. He was handed back to his family on the night of 29.09.2019. This is an express case of a child who had been illegally detained. However, it does not feature in the list of children detained among the DGP'S list of 144 children, although he was definitely in detention until 29.09.2019. The DGP'S Report was prepared on 25.09.2019. A copy of the Orders dated 24.09.2019 and 01.10.2019 are annexed herewith. Also the report from Scroll is annexed herewith.

Annexure-P/2 Colly (42-54)

16. That certainly there are other minors, illegally detained, like in the aforementioned case who may have fallen through the cracks and do not feature in the DGP's 144. The Indian Express reported on 01.10.2019 that family members of two other minors have approached the J&K High Court through a writ of Habeas Corpus and challenging their detention under the Public Safety Act. A copy of the news report from Indian Express is annexed herewith.

Annexure-P/3 (55)

17. That the Habeas Corpus Judgments with respect to children themselves show that there have been illegal detentions of children, and that in some cases children have even been moved out to jails outside the state. A news report from the Times of India is annexed herewith. Annexure-P/4 (56)

18. That the Report of the JJ Committee outlines the procedure followed in 'undertaking the exercise'. In its preparatory meeting of 23.09.2019, it *'resolved to ascertain facts from the concerned state agencies as to the assertions and allegations made, in the Writ Petition in question, based on media reports. Thus the Director General of Police, J& K and the Divisional Commissioners of Jammu, Kashmir and Ladakh, were directed to **obtain separately** reports/information on each and every assertion/allegation made in the petition **and the media reports** from their field agencies and to submit the same to the Committee through the Registrar General'*.
[Emphasis Supplied; Page 1-2]

19. That curiously, the Divisional Commissioner (and that too only of Srinagar) did not submit any separate report, but merely submitted a letter dated 25.09.2019 stating *"I, the undersigned hereby endorse the report submitted by ADGP, Coordination Police Head Quarter, J&K."* [Page 40]

20. That no other security agency was either directed to submit a report, nor did they do so of their own volition as parties implicated.

21. That further, the Committee also directed that information be collected from *"all the Courts of the State subordinate to the High Court as well as from the Registry of this Court as to whether there has been any bail applications or Habeas Corpus Petition, as the case may be, filed on behalf of a juvenile or where it is claimed or complained that the arrested person or detainee was or is a juvenile. [...] Furthermore, the Registrar General shall ask all the Principal District and Sessions Judges of the State to obtain information from the Juvenile Justice Boards within their jurisdiction as to whether any Juvenile in conflict with law has been produced before or dealt with by them with effect from 05.08.2019 till date."* [Page 15-16]

22. That there is a letter dated 24.09.2019 annexed to the Report that states that reports have been received from Principal District and Sessions Judges of various Districts. However, their contents are neither mentioned nor discussed at any point. It would have been pertinent to record whether any Habeas Corpus Petitions involving children were pending before the High Court. From listed Orders on the High Court website and from news reports we find that at least five to six petitions involving children were heard by the High Court, and at least three minors have now been released as a result. These detentions were not reflected in the DGP'S 144.

23. That it would have been equally crucial to learn about the number of FIRs registered and produced before the JJ Board under S. 13 of the Act, of notices issued to parents and case files prepared by Probation officers on children who had been arrested as mandated under Section 14 of the Act. As per the Report of the DGP, on which the Committee has relied, there must be at least 135 FIRs/ complaints before the Board, also 135 notices of arrest sent to parents/guardians for appearance before the Board. There must be 142 orders of bail granted by the Board/ officer in charge and two orders of remand by the Board. Additionally there must be 144 case files prepared by Probation officers for each child arrested.

24. That the Committee had directed that a report be obtained from the *'Mission Director (Integrated Child Protection Services), J&K, Srinagar Social Welfare Department in his capacity as being the implementing agency of integrated child development protection scheme whether any juvenile, within his knowledge, has been arrested, detained, beaten or maimed by the police or security forces with effect from 05.08.2019 till date or any such instance or juvenile in conflict with law has been brought to his notice?'* [Page 16]

25. That it is submitted that the JJ Committee under the aegis of the High Court is possibly best equipped to make an independent verification of the injuries and deaths from the hospitals and

morgues. In any case, the one page response of the Mission Director (JKICPS) does not address the primary question put to him: *whether any juvenile, within his knowledge, has been arrested, detained, beaten or maimed by the police or security forces with effect from 05.08.2019 till date.* The response merely states that 36 children were lodged in the juvenile observation home at Srinagar on various charges, out of which 21 have been bailed out.

The letter does not include copies of FIRs, bail or remand orders, or indeed any report under S.14. Also, curiously remand under Section 107 Cr.P.C has been allowed although explicitly barred under S. 18 of the ACT. Furthermore, it is not clear how the executive magistrate gave orders of remand with respect to juveniles, otherwise governed by the Act.

In most cases the FIRs seem to be old and unconnected to extraordinary circumstances in Kashmir. They pertain to unrelated offences under POCSO and even to cruelty to wife by relative of the husband.

26. That thus the only primary document that the JJ Committee's Report relies on is the Report of ADGP, on behalf of the DGP dated 25.09.2019. There are six preliminary points of a general nature about the DGP's Report:

1. There is no firm denial of the averments. The Report states that *"the instances as quoted and claimed by the Petitioners regarding arrest/detaining of children in different areas of Kashmir Zone cannot be **independently verified or confirmed** given the consideration of the facts reflected in the Petition"* [Emphasis supplied], yet the Report presumes to summarily dismiss the averments.
2. It may be noted that the DGP (as other senior officers) have given statements to the press acknowledging that they are practicing a 'revolving-door' policy whereby security forces detain some boys from a neighbourhood for a few days and then let them go, purportedly with a view both to counsel them against violent protest and also to make it known that the law enforcement agencies have access to every subject. News Reports carrying the interview are annexed herewith. Annexure-P/5 Colly (57-61)
3. Conceptually, the DGP's Report conflates the 'child in need of care and protection' (CCP) with the 'child in conflict with law' (CCL). In terms of the Juvenile Justice Act the two categories are entirely separate and have different mechanisms for intervention and support. The Child in need of care and protection (CCP) is a child made vulnerable because of her immediate social, political or family situation. Such children may have become vulnerable due to their familial situations: broken families, poverty, homelessness, etc. or because of broader contexts of being in

situations of conflict. If the child is susceptible to display of violence, *even then* the Juvenile Justice Act envisages interventions through social and psychological counseling, via trained personnel and not through preventive detentions. In fact, preventive detention of the kind made under S. 107 Cr.P.C (1989 Samvat) is specifically *barred* in Section 18 of the Act [Section 22 of the Central Act]. Also, the 2012 amendment to the Public Safety Act explicitly bars the application of the PSA to children.

A child in need of care and protection must be produced before a child welfare committee, for being placed in 'safe custody' as per Section 31 of the Act. Such safe custody does not contemplate a police official/ or being lodged in police precincts even temporarily.

A bald assertion has been made in the DGP's Report at Page 25 to the effect that ' Child welfare committees' are effectively working. In fact, a good barometer of their effective working would be reduced encounter of security personnel with children in need of care and protection, for it should ideally be the task of CWCs and Childlines to help and counsel children. It would be important to know how the Childlines established in Srinagar, Budgam and Anantnag are being run. How many calls have they received/ responded to after 5th August 2019?

On the other hand, a child who has already committed an offence (either by already disturbing the peace, or having caused some public nuisance) is a child in conflict with law. There is a very definite mechanism in the Juvenile Justice Act with respect to children who find themselves in conflict with law. They are not to be made part of the adult criminal justice system, but are to be taken through the Juvenile Justice Board. Thus, there production before the Board, the order of remand, or grant of bail and all further proceedings are to happen through the Juvenile Justice Board.

Certain relevant Sections of the Act are reproduced for easy reference:

'Section 11. *Apprehension of juvenile in conflict with law*—(1)

As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer, who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the Board:

Provided that in no case, a juvenile in conflict with law shall be placed in a police lock-up or lodged in a jail.'

Section 13. Bail of juvenile.—(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

Section 14. *Information to parent, guardian or probation officer.*— Where a juvenile is arrested, the officer incharge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform—

- (a) the parent or guardian of the juvenile, if he can be found, of such arrest and direct him to be present at the Board before which the juvenile will appear ; and
- (b) the probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry.

Section 24. *Punishment for cruelty to juvenile or child.* — Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to one year, or fine, or with both.

It is not immediately clear from looking at the report that the procedure prescribed with respect to children in conflict with law and those in need of care and protection has not been mixed up.

4. There are some general principles enshrined in Section 3 of the Central Juvenile Justice Act. Amongst them the Principle of 'Presumption of Innocence': Any child shall be presumed to be innocent of any *mala fide or criminal intent* up to the age of eighteen years and also 'Principle of non-stigmatizing semantics': Adversarial or accusatory words are not to be used in the processes pertaining to a child. It is important to be conscious of the general principles. In its general tone and tenor and in the statements made to the press, the state shows a certain lack of familiarity with the Juvenile Justice Act itself.
5. The DGP's Report suggests that the situation in Kashmir is volatile in terms of instant and spontaneous protests and therefore certain liberties with right to liberty and expression have to be taken, if even to keep the children from greater harm. It may well be an administrative principle, but wholly untenable constitutionally. Executive pragmatism would still have to be constitutionally tested on a case-to-case basis and cannot be allowed to become a policy, if even in the cause of national security. The fundamental rights have not been suspended and accrue to each naughty child in Kashmir: they cannot be

overlooked on executive whim. It is an established principle of law that Fundamental rights cannot be infringed in the absence of statutory law and through executive action alone. Kharak Singh v. State of UP 1964 SCR (1) 332 held thus: "Before entering on the details of these regulations it is necessary to point out that the defence of the State in support of their validity is two-fold: (1) that the impugned regulations do not constitute an infringement of any of the freedoms guaranteed by Part III of the Constitution which are invoked by the petitioner, and (2) that even if they were, they have been framed **"in the interests of the general public and public order"** and to enable the police to discharge its duties in a more efficient manner and were therefore "reasonable restrictions" on that freedom. **Pausing** here it is necessary to point out that the second point urged is without any legal basis for if the petitioner were able to establish that the impugned regulations constitute an infringement of any of the freedoms guaranteed to him by the Constitution then the only manner in which this violation of the fundamental right could be defended would be by justifying the impugned action by reference to a valid law, i. e., be it a statute, **a statutory rule or a statutory regulation.**" [Emphasis Supplied]

Chandrachud, J. writing on behalf of four justices in K.S. Puttuswamy v. Union of India (2017) 10 SCC 1 underlined that in case of infringement of fundamental rights, it was appropriate to

not cede ground to executive supremacy but rather to practice judicial review of such executive action.

6. It is surprising and unfortunate that the DGP's report should presume to comment on the motives of the Petitioners. The unsubstantiated comments are defamatory, but more critically they seem to dismiss the culture of judicial review of executive action, and of upholding constitutional rights.

27. That with Respect to Paragraph 2, the report states that the story regarding an 11-year-old boy from Pampore having been detained is factually incorrect and also adds *'that the authenticity of the reportage is quite doubtful. It seems that this report has been generated with the intention to malign the police.'* The story as reported in the mainstream papers including Business Insider and Telegraph actually did not mention the 'police'; it only suggested that the boy was detained by 'security forces'. The authenticity could more thoroughly be checked by calling upon the reporters, rather than unilaterally dismissing it.

28. Paragraph 3 states that *"Washington Post does not indicate the source which has quoted this incident so as to **check the veracity of this information**"* [Emphasis supplied], thus indicating that the police has not been able to check veracity. Yet, it dismisses the allegation as false.

29.Paragraph 4 is a report from the Quint, which is being denied as uncorroborated. The news-report states that names are being changed to protect the victims. Thus, it may have been difficult for the authorities to corroborate without help from the reporter. Curiously, no further information was asked for and yet the report was unilaterally dismissed. The reporter continues to stand by the story.

30.Paragraph 5 states that two minors from Mahjoor Nagar were booked under FIR 80/2019 on 22.08.2019, although their own allegation (as reported) is that they were initially picked up in the intervening night of 19th-20th August. There is actually no contradiction between the two versions: it is quite possible that the FIRs were registered on the third day. It is exactly for this reason that the boys should be produced before the JJ Committee for an independent verification of facts.

31.Paragraph 7 which relates to the detention of two boys Farhan and Junaid both makes the claim that *'the report does not provide the specifics of the alleged incident'* and *'states that it is difficult, almost impossible, to enquire and seek report in an alleged incident like this'* and yet it dismisses it as false. Thus the statements are mutually contradictory. Unfortunately, the Report is replete with such.

32.Paragraph 8, which dismisses an incident of a boy on his way to hospital having been detained, does so only on the basis of moral

outrage, but no verified facts. The Report says *'not even a wee bit of credibility is inspired by it. The report suggests as if police is a predator on a prowl because it defies common sense that if a boy is on his way to hospital with tea and food carried by him, that he would be arrested and put behind bars. This is nothing but an attempt to demoralize the police.'*

33.Paragraph 10 again states that the police are *'handicapped in responding to it in an effective manner. Since, essential facts have not been given for the police to respond to it, hence it cannot be responded effectively'*. The incident is not denied.

34. Paragraph 11. also speculates about the implausibility of a CRPF Jawan having hit the girl with a catapult, while another was talking to her uncle. *'The more probable explanation for the injury is that the girl was hit by a stone thrown by some stone pelter, if at all such injury had occurred'*. In this particular paragraph, the field reports fall to the level of counter-allegations and counter-speculations. Once again this incident, very widely reported was easily and independently verifiable by the JJ Committee. Enclosed herewith is a picture of the injured child. Annexure-P/6 (62)

35. Paragraph 12 denies that injuries were caused to Asif Muhammad by pellet guns, since *'no such report had surfaced'*. Washington Post provides the date and name of the hospital where he was admitted. The matter is easily verifiable. It is submitted that the JJ Committee

has the resources to have an independent verification done of these cases involving injuries and deaths.

36. Paragraph 13 denies the death of Osaib Altaf, even in the face of video recordings of his funeral. Videos and photographs carried by The Wire are attached herewith. Annexure-P/7 Colly (63-67)

37. Paragraph 14 states that *'the provision of Section 11 of JJ ACT has been complied with in letter and spirit. The juvenile was apprehended in his own interest as it was apprehended that the said juvenile would fall in the company of violent mob and exposing himself to moral, physical and psychological danger'*. It is submitted that Section 11 of the Act applies to children who are in conflict with law and not to children who may fall into bad company and expose themselves to danger. Such children are those who are in need of care and protection and a separate mechanism for intervention exists for them. In any case, whether the child is in danger of falling in with bad company can only be decided by the Child Welfare Committee under Section 31 of the Act and not by the local police.

38. That as per law, at least 79 arrests out of the 144 shown in the DGP'S Report are illegal. Section 18 of the Act reads thus: '18. *Proceedings under Chapter VIII of the Code of Criminal Procedure not competent against juvenile.*—Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, Samvat 1989,

no proceeding shall be instituted and no order shall be passed against the juvenile under Chapter VIII of the said Code."

39. That since Section 107 falls within Chapter VIII of the Code (Samvat 1989), arrests of children under the said section are manifestly illegal. Surprisingly, 70 children are shown arrested –illegally- under Section 107 of the Code and in violation of Section 18 of the Act. It is an even greater tragedy that the youngest illegally detained child was a mere 9 years old. [Page 26 @ 27]

40. That similarly, the 2012 amendment to the Public Safety Act introduced Clause (f) to Sub-section (3) of Section 8, thus explicitly barring the arrest of children under preventive detention. Yet, 9 children are shown as having been 'preventively arrested', which is again an illegality.

41. That on the list, 127 children were arrested and booked under formal FIRs and yet released on the same day. Out of those released, at least 10 were booked for non-bailable offences, yet there are no Bail applications/ orders on record. It is difficult to ascertain why FIRs were lodged against so many children, if as claimed, they had only been temporarily detained to keep them out of trouble, and as the records show they were to be let off on the same day.

42. It is submitted that the DGP's Report as *forwarded* by the JJ Committee shows a lack of understanding of both the substantive ideas and the procedures outlined in the Juvenile Justice Act. Further, the 'DGP'S 144' featuring children as young as 9 and 11, also shows a lack of sensitivity to the spirit of the Juvenile Justice Act, and to Constitutional rights.

It is therefore submitted that the issue requires further investigation by the JJ Committee, with the involvement of all stakeholders. The JJ Committee was tasked with verifying the averments in the Writ Petition. It could not have delegated the whole exercise to the DGP, without giving its own independent findings. Thus the mandate as given by this Hon'ble Court is not met and the JJ Committee has abdicated its jurisdiction.

The JJ Committee has the capability and resources to conduct an independent review by involving the alleged victims in the process and establishing a procedure where they may be heard without fear and in-camera, such that different perspectives are recorded.

Drawn By:

Shahrukh Alam, Advocate

Filed by:

(Ms Sumita Hazarika)

Counsel for the Petitioners

New Delhi

Filed on: 14.10.2019

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CIVIL ORIGINAL JURISDICTION
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In the matter of:

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VERSUS

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...RESPONDENTS

AFFIDAVIT IN SUPPORT OF THE RESPONSE TO THE JJ COMMITTEE REPORT

I, Enakshi Ganguly, daughter of Shri S.P Ganguly, aged about 58 years, resident of 1343, Sector-A, Pocket-B, Vasant Kunj, New Delhi, do hereby solemnly affirm and state as under:

1. That I am one of the Petitioners in the above Petition and as such I am competent to file this affidavit in support of the reply to the JJ Committee report.
2. I have gone through the JJ Committee Report and the reply thereto has been prepared under my instructions and the content of the said reply are based on information known to me and I state that the same are true and correct.
3. The annexures annexed to the reply are true copies of their respective originals.

DEPONENT

VERIFICATION

I, the deponent above named, do hereby verify that the facts stated in the above affidavit are true and correct.

Verified on this 14th day of October 2019 at New Delhi.

DEPONENT

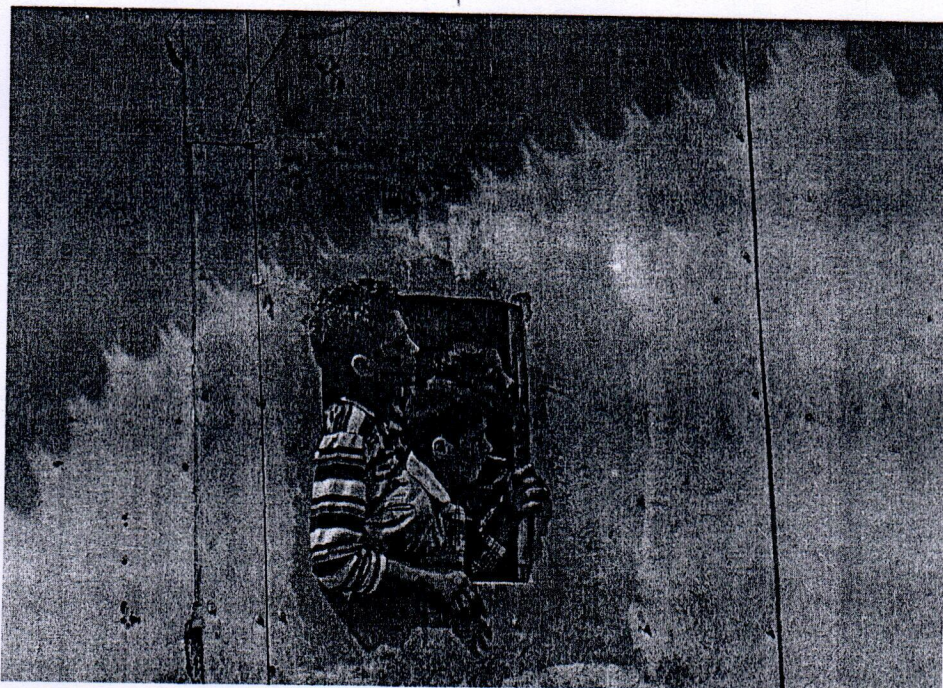
J&K Police Has Been Quietly Arresting Children Without A Paper Trail

Annexure-P/1 (Copy)

26

HuffPost India has been able to identify at least four such cases, including a 15-year-old high school student who was illegally detained for 23 days without charge.

Safwat Zargar



Getty Images via Getty Images

Kashmiri children look towards clashes between protesters and security forces on August 30, 2019. The Jammu and Kashmir Police has been arresting children without paper trails that could hold them accountable.

SRINAGAR, Jammu and Kashmir — For a week, from August 27 to September 3 this year, 17-year-old Waseem Ahmad Thakur left his home each morning for the nearest police station in Soura, where he would sit for 12 hours before he was allowed to return home.

"They asked him to be present at the police station every day from 8 am to 8 pm," Thakur's father, Ghulam Ahmad, told *HuffPost India*. "When my son went to the station on the first day, he said there were 5-10 boys like him who had been told the same thing."

Thakur is one of several Kashmiri children who have been placed in limbo by the state police force, possibly in breach of the law. Some of these children, their parents said, were physically abused by policemen during their illegal detention.

HuffPost India has been able to identify at least four such cases, including a 15-year-old high school student who was illegally detained for 23 days without charge. The child detainees and their family members said more children had been arrested. Family members refused to be photographed, and most spoke off record as they feared police reprisals.

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On August 5, 2019, the Indian government nullified Jammu and Kashmir's

On August 5, 2019, the Indian government humiliated Jammu and Kashmir's constitutionally guaranteed autonomy, flooded the valley with thousands of soldiers, cut off all internet and mobile phone services, effectively suspended all civil rights and liberties, and jailed over 4,000 Kashmiris, including the region's prominent politicians.

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The arrests and the clampdown have prompted a wave of protests, which in turn, have led to more arrests and protests.

Civil rights activists say those detained include children—a claim denied by Indian security forces. On August 14, Kavita Krishnan of the Communist Party of India (Marxist-Leninist) told *HuffPost India* of at least three instances of children, including a boy as young as 11, being detained by Indian security forces.

On September 20, the Supreme Court directed the Juvenile Justice Committee of the Jammu and Kashmir High Court to examine allegations that Kashmiri children have been illegally detained as part of the crackdown in Kashmir.

Thakur's case reveals that the state police have carefully avoided creating any paper trails that could hold them accountable. Rather than formally arrest children — which could prove politically sensitive — the state police has taken to picking up children, detaining them in adult facilities without charging them, and subsequently releasing them without proffering any explanation for their actions.

In cases like Thakur's, children have been forced to present themselves at police stations — for no ostensible reason beyond harassment and humiliation — well after they have been released.

Thakur's father, Ghulam Ahmed, said his son was arrested in the early hours of August 24 in a night raid by a joint team of police and Central Reserve Police Force (CRPF) personnel.

"They came at around 2 am in the night and broke open the door. He was just wearing an inner and a trouser. They just dragged him from his bed and didn't even allow him to wear his chappals," Ghulam Ahmad said.

The police offered no reasons for why he was being picked up, nor why he was released three days later without any charges.

"He's just a child. He has grown a little beard, that's why he looks like a grown-up," Ghulam Ahmed said. "They took him as if he was some big criminal and beat him up with sticks at the time of his arrest."

Jammu and Kashmir police spokesperson Manoj Sheeri declined comment for this story.

"I don't have the mandate to talk to media," Sheeri said, despite his designation as spokesperson. "Please talk to some higher police official. I can't make any comment."

23 days in detention

On August 9, in the neighbourhood of Anchar, a 15-year-old boy was picked up by the police and detained for 23 days at the Safa Kadal police station without providing any official explanation or documentation for his arrest or

subsequent release. *HuffPost India* examined his school documents, which state his date of birth as 25 January 2004.

The boy's parents told *HuffPost India* he was visiting his grandparents when the neighbourhood was caught up in an anti-government protest, and subsequently arrested. Given that all communications links in Kashmir had been snapped, the family had no idea where their child was.

"Since he was at his maternal home, we thought he's there. The people at his maternal home thought that he had gone home in the melee," his mother said. "We had no information about him for three days."

The family finally received word from neighbours whose relatives had also been arrested. "They had seen my son at the police station, and told us he has been detained," the mother said.

The family, who pleaded for anonymity as they feared police reprisals, said the boy was arrested with three other adults. While the three adults were charged, the boy's parents said, the child was not named in any of the cases.

HuffPost India first met the boy's family on August 29. "Police says that they'll let my son go only when the rest of the three get bail from the court," his nervous mother said at the time.

On September 9, his mother confirmed that the boy had been released on September 2.

"I am just thankful he's home," she told *HuffPost India*. "I won't even allow him to move out for a second now."



ASSOCIATED PRESS

A Kashmiri boy walks past an Indian paramilitary soldier in Srinagar on August 7, 2019. Off record, senior police officers explained that a refusal to document those arrested allowed the police to evade responsibility.

No accountability

In an interview with *The Indian Express* on September 9 2019, Kashmir's senior-most police officer, Director General Dilbag Singh, sought to portray the police's disregard of established procedures as a humane act.

"In certain incidents, there is no violence or FIR. There is some venting of

anger, that doesn't come into cognizable offence," Singh said. "Why should I record it and spoil the career of that boy? When they cross a level, there is violence, stone pelting or someone is injured, there is a report."

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In the same interview, Singh claimed that, in such cases, those detained were released the same day.

Off record, senior police officers explained that a refusal to document those arrested allowed the police to evade responsibility.

"In police records, only those arrests are officially counted where there's a proper paperwork," a source in the police said. "The centralized database of figures is based on the feedback of detentions and arrests from police stations across the valley. So, you can say that if a detention is not followed by proper paperwork and charges, it doesn't exist."

Kashmir's draconian anti-terror laws allow the police to detain civilians for upto 6 months at a time without trial, after which the police can simply slap a fresh case on the accused—gaining another 6 months of detention.

This means many parents prefer to negotiate informally with the police, rather than approach the courts for redress.

"If a family tries to approach court, it means the police have to bring formal charges against the detained which means they will have to fight these cases in courts," explained a lawyer working for a rights group. "No family wants that."

"In most cases, families plead with the local Station House Officer of a police station to see release of their kin including minors," the lawyer continued.

"There's no accountability for these illegal detentions."

'What was their break?'

This isn't the first time Indian security forces are arresting children. In 2016, when Kashmir was last riven by fervent anti-India protests, Abdul — a resident of Turkwangam village in Shopian — said his elder son, who was 15 at the time, was picked up by Indian security forces and tortured in custody.

"He was tortured so much that doctors put plaster on both of his arms. They had to put pins in one of his arms to treat him," said Abdul, a daily wage labourer who declined to share his second name. "My wife suffered a shock when our son was picked up by the army. Since then, she never got well.

Eventually, she passed away."

Three years later, Abdul said, security forces have re-arrested his older son, who is now 18, as well as his younger son — who is only 16. On the day of their arrest, on August 22, the Indian army was at Turkwangam to chase down a band of suspected militants.

"What did my sons have to do with militants? What was their crime?" Abdul said. "Like many, they were out on the road at that time [the army arrived]. The army tortured both my sons in front of me before taking them away."

The Indian government has arrested so many civilians since August 5 that Kashmir's prisons have run out of space. As a consequence, many detainees have been sent to prisons across the country, making it almost impossible for their relatives to find them.

their relatives to find them.

"I am a poor man. What will I do if they book him under some case and send him to jail outside the state?" Abdul said. "I will be devastated."

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On a flag and a prayer

The arrests in Kashmir have been so indiscriminate that civilians have been arrested for the pettiest of reasons. On August 14, Pakistan's Independence Day, a Pakistani flag was found hanging from a tree in Kanchan village in central Kashmir's Ganderbal district.

Five days later, when the village erupted in protest against the continued lockdown in Kashmir, the local police and the paramilitary Central Reserve Police Force arrested five people, including a 15-year-old boy, his uncle who is a policeman himself, and the local tailor — who was accused of stitching the Pakistan flag found on the tree.

"When they brought the seized flag before me in the police station, it turned out that it had been hand-sewn, which means anyone could have made it," said Mohammad Shafi, the part-time tailor who was among the detained. "In case it had been machine-sewn, then they would have booked me."

Shafi was in custody for 17 days. The minor boy, who's a class 8 student at a local government school in Ganderbal, was released after a detention period of 13 days. His uncle, a serving police cop, was released after four days.

The boy's relatives told *HuffPost India* that the boy had felt isolated after his detention, and had stopped stepping outdoors.

"We even tried to send to him to his maternal home for few days but he didn't stay there and asked us to bring him home," the relative said: "He feels there's some heaviness in his heart."

'Our routine is to be abused and detained': Kashmiri youth speak of sweeping raids and violence

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Anumeha Yadav

Zuna Begum crouches at the top of a flight of stairs, quietly wiping away her tears. She has just emerged from the first floor, which is under construction, on hearing her grandson Shahnawaz's name. He was detained "over fears of outbreaks of unrest" days after the Indian government abrogated Article 370 of the constitution, removing Kashmir's autonomy. There is no official count, but as many as 13,000 are said to have been detained all over the Valley, with more than 300 arrested.

Zuna is elderly and has kidney failure. A plastic bag filled with urine hangs from her waist. She needs dialysis regularly at a Srinagar hospital, 40 km away from her home in a village in Bandipora, North Kashmir. But her grandson, Mohsin Shahnawaz Ganai, the only one in the family who earned a living as a quarry worker, is no longer at home. Zuna sits in a corner of the staircase, weeping. "I have no one. Shahnawaz used to say, 'Why do you cry? I am your son.' But the soldiers took him."

Shahnawaz was detained on August 15. He was in the bathroom when a police team barged into their home. His sister Shafia, an undergraduate student of sociology in Sumbal, says the police broke their front door and then the bathroom door. "They went inside the bathroom and thrashed my brother. They would not let him get dressed. They dragged him to their vehicle and beat him again."

She points to window panes which she says the policemen smashed. The glass panes of windows in the living room, bathroom and the house's entrance are shattered.

Newslaundry



Zuna Begum wept saying the security forces had detained her grandson. The family said the police would not give them documentation confirming that they had detained Shahnawaz on August 15.

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Shafia says the family has been unable to get a copy of the first information report from the Sumbhal police station that will serve as documentary proof that Shahnawaz is being held by the police. "When I go to the police station, the Station House Officer tells me 'I know your family's condition is not good, that your father and grandmother are not well'. He sends me to the duty officer, who records the daily entries in the station, who informs me that there is no criminal complaint registered about this."

She adds: "But I can see Shahnawaz inside the lock up. He looks traumatised and shaken."

In Dudwan village in North Kashmir's Kupwara, Nazma, 16, has her own memories of trauma from August. A class 11 student, Nazma says on August 9, someone who had thrown stones at an Army vehicle ran past their house, fleeing from the soldiers. Soon, over 20 soldiers entered her house, breaking the glass panes of windows with their guns. "Then they pounced on my older brother, who works as a driver and who was at home that day because of the curfew," she says. "When we went near to stop them from beating him, they caught us and hit us and pushed us to the floor. They hit my mother with fibre sticks on her arm. The end of my older sister's kurta tore as they pushed her to the floor. We were crying, pleading, but they did not listen."



Nazma and her sister Bisma said they were hurt when Army personnel raided their home and detained their brother on August 9.

Nazma's brother was taken to a Rashtriya Rifles camp nearby, she says. Her parents and other brother went to the camp, repeatedly pleading that he be

released. "We were all were very scared. I waited at home," Nazma says. "When the Army released my brother three days later, he was in so much pain. He could not lift his arm, he could not walk."

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Nazma says her family canceled her brother's wedding, scheduled in October, after this incident.

In Pulwama in South Kashmir — where, in February, a suicide bomber rammed into a CRPF convoy, killing at least 40 personnel — residents spoke of a similar pattern of detentions, arrests and violent sweeping raids on their homes.

In Ademohalla, Abdul Ghani, an elderly man who makes rotis in an eatery for a living, says four of his house's window panes were broken by security personnel.

In Arihal, a 24-year-old man who runs a poultry shop says Army and police personnel conducted sweeping raids in Ademohalla, Tilwana and Hergama mohalla in the first week of August. "They broke into my house, climbing over the gate at 1 am, and they held me for two hours. They thrashed me till 3 am and then left me," he says. "In a second raid, the police detained two minors for over three weeks -- Soham Ahmed Raina, a student of class 8, and Aijaz Ahmad Bhat, who is in class 12."

In Lassipora in Pulwama, residents allege that Army personnel take them for forced labour inside their camp. "They catch 10-15 men every day and force them to work, carrying bags of construction material. We cannot refuse. They let us go by evening, but pay nothing," says a 30-year-old man.

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The detained youth at the Shopian police station.

At noon at the police station in Shopian town, police officials deny that any minor is being held there. They claim they have 15-20 youths but in "preventive detention". At 12.30 pm, though, young men and boys, detained in two overcrowded cells, were let out for a few minutes to eat in the centre of the police station. Their families were gathered outside the gates, waiting.

'Preventive detentions are a matter of perception'

In every neighbourhood and village that *Newslandry* visited across four districts in September, residents spoke of violent raids by the police, Army or the paramilitary CRPF. Some said their family members had been detained for 40 days without criminal complaints or paperwork at police stations, making it difficult for them to approach courts protesting against unlawful detention. Family members of the detained pointed to their injuries from the raids, and the doors and windows of their homes lay broken.

Since August 5, several accounts and news reports have emerged of Kashmiri men being tortured in detention. But at the Army's 15 Corps headquarters in Badami Bagh, Srinagar, a military spokesperson denies all allegations.

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"We raided and detained them as a precaution so they do not hurt themselves," says a spokesperson of the lieutenant colonel rank in the Signals regiment. "If I detain you and send you to another agency from here, someone may think it is a violation but someone else may think it is a security concern, this is a matter of perception."

He adds: "Preventive detentions is a lesser evil, and the proof of the pudding is in the relatively few instances of violence since August 5."

Asked about allegations of torture inside military camps, his senior, a spokesperson of the rank of colonel, denies it: "We have been able to confirm that people were tortured in only two cases instances, both from the same village in South Kashmir."

The lieutenant colonel adds: "We are thinking of taking actions such as filing 'counter-FIR' against international media outlets such as the BBC for showing false information."



Roads have been largely deserted since the Indian government removed Jammu and Kashmir's constitutional autonomy in early August.

In an interview last month, Director General of Police Dilbag Singh said the police had detained "about 3,000 persons" as a preventive measure and arrested "a few hundreds", but many had been let off after their families and neighbours signed "community bonds" pledging that the detainees would stay

away from protests.

"We pick them, counsel the boys, and leave them," Singh claimed. "We do not believe in first information reports." The police had not registered offences, he said, out of concern for the boys' careers, which would be marred if they had a criminal record.

Singh denied any violence had occurred during police raids.

A history of arbitrary detentions

Authorities have for years used various forms of arbitrary detention in the Kashmir valley, including under the draconian Jammu and Kashmir Public Safety Act of 1978, which allows the police to detain anyone to prevent them from acting in any manner "prejudicial to the security of the state or the maintenance of public order".

Unlike police custody, a person detained under the PSA need not be produced before a magistrate within 24 hours of being held. The district magistrate has to place the detention order within four weeks before an advisory board. The magistrate issues orders to hold those detained initially for three months, then often extends this detention for three months at a time without producing new evidence — using it to detain people for months and even years. A [July 2019 report](#) by the Office of the United Nations High Commissioner for Human Rights noted that though India's Supreme Court has described the system of administrative detention, including the PSA, as a "lawless law", authorities in Srinagar continued to use it.

Shaikh Ghulam Rasool, chairperson of the J&K Right To Information Movement, says an advisory board designated to review the detention orders within four weeks had approved 998, or 99 per cent, of the 1,004 PSA orders between April 2016 and December 2017.

"But in a RTI query we found that in the same period the Jammu and Kashmir High Court admitted 941 cases quashing PSA detention orders and quashed 765 — or 80 per cent — of the orders that the advisory board had upheld," says Rasool. "The court quashed PSA orders as it found them wrong on grounds such as violation of constitutional provisions, procedural lapses, and lack of fresh facts to justify detention."

Parvez Imroz, a senior human rights lawyer in Srinagar, says while the PSA does not allow the detention of minors, authorities continue to detain even children, claiming they are not minors. According to a [report](#) in *The Indian Express*, a few families have now approached the high court with habeas corpus petitions against the latest detentions after August 5. The petitions are for their relatives who they say are minors being wrongly held under the PSA.

Beatings and pepper spray

The arbitrarily extended detentions, and repeated targeting of youth and family members of those once named in PSA cases, make it difficult for the community to counsel the youth. According to Ghulam Rasool, 70, a resident of Bandipora who retired from the state transport services, it's become a "cycle of punishment".

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Posters promising development near an Army checkpoint in Ganderbal, Central Kashmir.

"There are boys from our village who were detained under PSA in 2016, and later released," he says. "I and others in our local mosque committee counseled them to focus on work and their families, and to avoid violent protests. They had kept a low profile. But now, after August 5, the security forces again picked them up under PSA, making it a cycle of punishment."

In Manz Mohalla in Hajin block in Bandipora, Waseem Khan is a student of class 11 at Safapora Higher Secondary School. He says he and his brother Mushtaq were illegally detained and beaten inside Sumbhal police station between August 6 and 13. Waseem claims the police did not let them go until his older brother Javid — a quarry worker who had two PSA cases slapped against him before they were quashed by the high court — appeared before them on August 11.

"The security personnel broke into our house around midnight on August 6," Waseem says. "When they did not find Javid, they first threatened to take my father and beat him. Then Mushtaq and I went with them in a convoy of 15 to 16 vehicles. The next morning, police officials took me and my brother to a room and hit us repeatedly on our legs, back and hips. They thrashed us again at noon and at 3 pm. An official kept repeating, 'Bring Javid', 'You cannot go till you bring Javid'. He would not let us say anything, he beat us repeatedly."

Waseem adds that among those held along with him that week in Sumbhal police station, the youngest was a class 8 student who was released after three days.

Waseem's father Saifudin tells *Newslaundry* that a team of Army, police and CRPF personnel told him if he did not hand over his children, he would have to go with them. He alleges that the soldiers broke down the door of their house

and smashed the window panes. "As they held my arm and started to take me away, my daughter tried to hold me," he says. "First they hit her with sticks on her pelvis, and then they sprayed something between my collar bones and in my face. It felt like my skin had burnt away. It was terrifying. I could not see anything for two or three hours afterwards."

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Court documents show Javid Ahmad Khan was first detained for a month in Sumbhal on August 10, 2016 and then held in a prison in Udhampur in Jammu for eight months. After the high court quashed this case on December 21, 2016, the police booked him in a second PSA case on March 23, 2017, imprisoning him again in Jammu. The second PSA case was quashed by the high court on August 11, 2017.

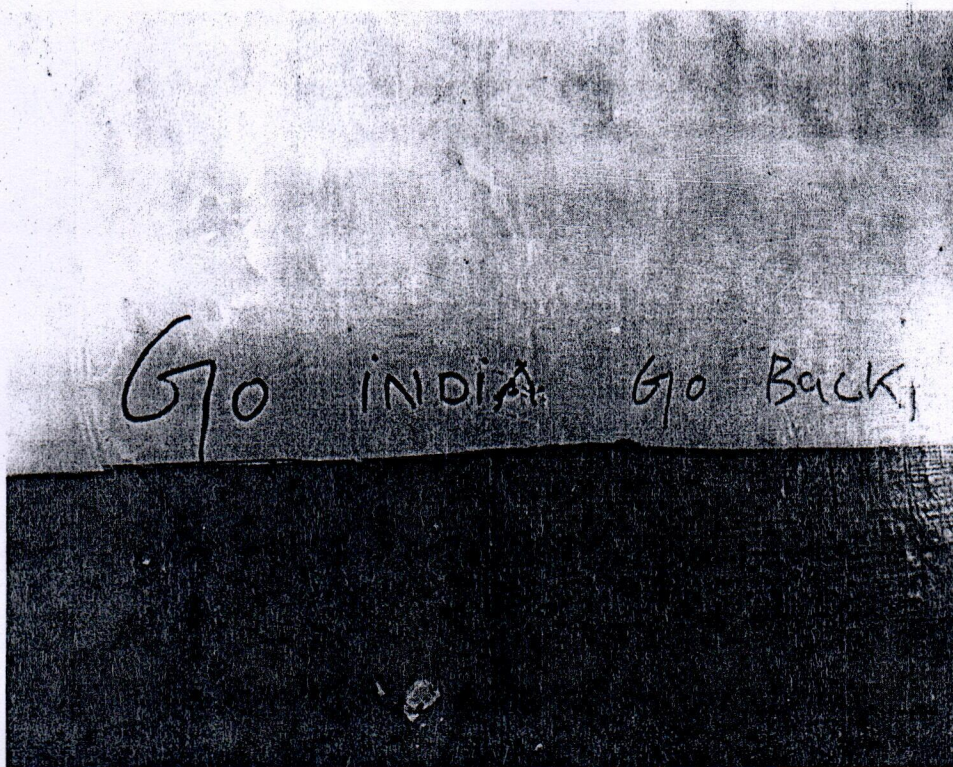
Subsequently, Javid returned to work, his oldest brother Tareekh says. "But now they have booked him again," he says. "Last time they had detained me illegally in Hajin police station till they found and put Javid in preventive detention and this time they took my youngest brothers, Mushtaq and Waseem."

Saifudin, who runs a small shop, says the litigation to free Javid the last time cost ₹1 lakh, which the family could not afford. He also says while his sons were held by the police, he was required to pay ₹100 daily for their meals.

A never-ending punishment

Weeks after the government lifted curfew from most areas in the Valley, roads remained deserted and shops shut as a mark of public protest against the dismantling of the region's relative autonomy.

As a few shops selling bread, vegetables and other essentials opened for an hour in the evening in a village in Bandipora, people huddled in small groups on the streets. A few students and young men gathered in an ice cream parlour, chatting behind half-closed shutters.



Graffiti on the wall of the district hospital in Bandipora.

Adil, a class 10 student, is the nephew of the ice cream shop owner. According to the group, Adil was detained from his house by the security forces at 3 am

to the group, Nani was detained from his house by the security forces at 6 am on August 7.

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Waqar Younis, pursuing his first year of a radiology technician course in Srinagar, says like many youth in his village, he has experienced the arbitrariness of detentions firsthand. He was detained for four days in 2018 because his name matched that of someone the police had identified as having thrown rocks during a protest. "I told them I am a serious student, I had scored 83 per cent in my class 12 exams. They realised the next day that it was someone else, but they still kept me inside the police station for four days without any paperwork," says Younis.

Among those taken away over the past month, Younis is most worried about the detention of his school junior Zahid Basheer. A student of class 10, Zahid, 15, sometimes works in the limestone quarries in the village.

Younis says: "Zahid did nothing, except he had long hair that flowed down to his shoulders. He had spent ₹2,000-3,000 on styling it. He was *shauqeen*, fond of dressing up; he changed clothes two-three times daily. Days after the hartal was declared, we were all sitting together and some Army soldiers were

nearby. Zahid boasted about his hair to the boys, saying he looked like 'Sameer Tiger'. The same night, the security forces detained him."

Sameer Tiger was the nom de guerre of Sameer Ahmad Bhat, a Hizbul Mujahideen commander who was killed by the security forces in Pulwama last year.

Zahid's paternal uncle, Ghulam Ahmed, teaches at a school in Ajas, a village in Hajin. He confirms that the family has filed a habeas corpus petition in the high court against the wrongful detention of Zahid under the PSA. "He had nothing to do with any violence," says Ahmed. "He is a fashionable boy, like a Bollywood actor. His cupboard is full of dozens of small shampoo and perfume packets. He had styled his hair a certain way, that is his only fault."

Ahmed says the security forces damaged their house and first detained Zahid's father, an irrigation department official. The father was released five days later after Zahid went to the police station on August 12.

Younis says being named in a PSA case makes it impossible for the youth to subsequently resume their old lives. "Once the forces get after you, they will not let you study or sleep or be in public places, or breathe any sigh of relief. Then such a boy with PSA is forced to flee."

Sameer Bhatt, 22, agrees. An undergraduate student in Sumbhal, Sameer says his older brother Naser was detained for the first time in 2008, after an agitation broke out against the killing of 14 protesters by the security forces. Naser was again detained in 2017, and for a month in 2018.

"Today, they have revived those old lists. They assume that those who threw a rock once in 2008 would have today become famous militants, 'ultra legends'," says Sameer. He says after his brother was named in a list of stone throwers, their father was beaten ruthlessly by the Army. "This is our routine, our daily lives: of being beaten, abused, detained, slapped. This has become common."

He adds: "Since I was born, I have witnessed only this — curfews, strikes, bullets, raids, detentions, beatings. I am yet to experience what an atmosphere

bullets, raids, detentions, beatings. I am yet to experience what an atmosphere of peace feels like."

All photographs by Anumeha Yadav.

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Annexure-P/2 (Call)

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

CrlM No. 750/2019 in
WP(Crl) No. 262/2019

Abrar Ahmad Ganie

...Petitioner(s).

Through: Mr. Wajid Haseeb, Advocate

Vs.

State of JK and others

...Respondent(s)

Through: Mr. N. H. Shah, Sr. AAG

Coram:

Hon'ble Mr. Justice Sanjeev Kumar, Judge.

ORDER

Notice. Notice accepted by Mr. Shah, learned Sr. AAG. He shall file counter affidavit by next date of hearing.

The issue raised by the petitioner in this petition whether the petitioner-detenu is a minor and, therefore, is required to be treated as Juvenile shall also be addressed in the counter /reply affidavit.

The petitioner has already placed on record the marks card which indicates date of birth of the detenu as 15.03.2003. District Magistrate concerned to look into this aspect specifically and revert to this Court on the next date of hearing.

List on 01.10.2019.

Copy of this order be provided to learned counsel for the respondents under the seal and signature of the Bench Secretary.

**(Sanjeev Kumar)
Judge**

Srinagar
24.09.2019
Imtiyaz

IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

WP(Crl) No. 306/2019
CrIM No. 750/2019

Abrar Ahmad Ganie

..... Petitioner(s)

Through: -
Mr Wajid Haseeb, Advocate.

V/s

State of JK & Ors.

..... Respondent(s)

Through: -
Mr N. H. Shah, Sr. AAG.

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge.

ORDER

Today, when this matter was taken up, Mr Shah, the learned Senior Additional Advocate General, at the very outset, has produced a photocopy of Government order No. Home/PB-V/1970 of 2019 dated 20th of September, 2019 issued by the Principal Secretary to Government, Home Department, in terms whereof, the Government has revoked the detention order bearing No.12/DMA/PSA/DET/2019 dated 8th of August, 2019, subject matter of the instant contempt petition, with a direction to the Senior Superintendent of Police (SSP), Anantnag, to ensure that the subject is got released/ shifted back and, subsequently, handed over to his family. The photocopy of the Government order aforesaid is taken on record.

In view of the aforesaid position, nothing survives for further adjudication in this Habeas Corpus petition, as a sequel thereto, the same shall stand *closed* as settled.

At this stage, Mr Wajid, the learned counsel for the petitioner, submits that the uncle of the detainee, namely, Sajad Ahmad Ganie, through whom

the instant petition has been filed before this Court, has informed him that even though they have come across the aforesaid Government order whereby the detention order of the detainee stands revoked, however, the detainee has not yet been handed over to his family.

In the Government order dated 20th of September, 2019 (*Supra*), whereby the detention order of the detainee has been revoked, the Government has directed the Senior Superintendent of Police (SSP), Anantnag, to ensure that the subject is got released/ shifted back and, subsequently, handed over to his family, therefore, it is for the Senior Superintendent of Police (SSP), Anantnag, to ensure that the detainee is got released/ shifted back and, subsequently, handed over to his family.

When asked, Mr Shah, the learned Senior Additional Advocate General, has produced a photocopy of signal communication from Police Station Srigufwara, in terms whereof it has been intimated that the detainee was released, brought to Police Station, Srigufwara, and, subsequently, handed over to Sajad Ahmad Ganie S/o Mohammad Subhan R/o Hugam (uncle of detainee) on 29th of September, 2019 at 20:00 Hrs., in proper health condition. This communication, when shown to the learned counsel for the petitioner, satisfies him. The said signal communication is taken on record.

Disposed of as above.

(Ali Mohammad Magrey)
Judge

SRINAGAR
October 1st, 2019
"TAHIR"

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HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR.

CrlM 749/2019
In WP (C) 299/19

Date of order 25.09.2019

Umer Bashir Naikoo

...Petitioner/detenu

Through : Mr. Wajid Haseeb, adv.
V/s

State of J&K and ors

...Respondents

Through : Mr. B.A Dar, Sr. AAG

CORAM:

Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

ORDER

1. This Habeas Corpus petition has been filed by applicant namely Umer Bashir Naikoo through his brother-in-law, challenges the detention order no. 25/DMS/PSA/2019 dated 10.08.2019, purporting to have been passed by District Magistrate, Srinagar, which is pending decision before the Court.
2. The applicant-petitioner has filed the instant application seeking a direction for shifting of detenu namely Umer Bashir Naikoo s/o late Bashir Ahmad Naikoo R/o Memender, District Shopian to Juvenile Observation Home, claiming the benefit of Juvenility on the strength of age as recorded 16th March 2005 in the "*Maktabia Islamia High School, Shopian Kashmir*".
3. The claim is made on the strength of photo copy of certificate issued by Principal Maktabia Islamia High School, Shopian on 30.08.2019 under serial no. 126, certifying that the Date of Birth of detenu namely Umer Bashir Naikoo S/o Late Bashir Ahmad Naikoo R/o Memender District Shopian is 16th March 2005. Certificate further mentions that the detenu was enrolled in the institution from 2011 to 2014 and read upto 5th class.
4. When this matter was taken up on motion hearing on 28th August, 2019, the Court while registering the claim made in the petition asked the State counsel Mr. B.A Dar, Sr. AAG to file response by or before 4th Sept.

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2019. Response stands filed by District Magistrate, Shopian, indicating therein that the detenu was admitted in the School on 01.03.2012 vide admission no. 823 in class 3rd and at the time of admission no certificate of birth was produced by the parents of applicant-detenu nor the school administration bothered to procure/demand the same from the concerned offices viz Chowkidar, Municipality or Hospital. However, the brother of the detenu furnished an affidavit mentioning the date of birth of the applicant-detenu as 16.03.2005, and school administration has already issued the certificate to this extent. The District Magistrate's response further indicates that many mutilations were notice in the recorded Date of Birth of many candidates from the Admission Registrar of the School.

5. Since in the instant case, the claim of Juvenility has been raised in terms of Section 8 of the *Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013* (hereinafter referred to as the Act of 2013), an enquiry is required to be made to determine the age of applicant-detenu as on the date of the detention. The Apex Court in case "*Abuzar Hussain v State of W.B., (2012) 10 SCC 489*" and "*Shah Nawaz v State of UP., (2011) 13 SCC 751*" had recorded its satisfaction that the entry relating to the date of birth entered in the marks sheet is one of the valid proof of evidence for determination of age of an accused person. However, it is further revealed from the portion of the judgment in paragraphs (23) & (24), that the certificate had been proved by the statement of the Clerk of the concerned School and corroborated by other documents. The certificate produced in this application in proof of the date of birth of the applicant-detenu is neither the original document nor attested by any person, much less an authorized person, therefore, cannot be taken as conclusively establishing the date of birth of the applicant-detenu.

6. In the aforesaid circumstances and to meet the ends of justice, it is provided as under:

- i) That the Registrar Judicial, High Court Wing of Srinagar, shall hold an enquiry and take such evidence as may be necessary (but not an affidavit) to determine the age of applicant-detenu namely Umer Bashir Naikoo s/o late Bashir Ahmad Naikoo R/o Memendar, District Shopian, as nearly as may be, on the date of the alleged detention, dated on 10.08.2019.

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- ii) The Registrar Judicial shall complete such enquiry within a period of 10 days from today and submit the report in sealed cover.
- iii) Registry to list the main WP (C) 299/2019 together with the present application for arguments and consideration before the Court on 14th Oct. 2019.
- iv) Learned counsel for the parties shall ensure full cooperation as required by the Registrar Judicial during the enquiry enabling her to frame her report.
- v) Registrar Judicial shall have all powers to summon the parties in terms of the High Court Rules and Civil Procedure Code.
- vi) Copy of the order be furnished to learned counsel for the parties.

List as directed i.e (14th Oct. 2019.)

(Ali Mohammad Magrey)
Judge

Srinagar
25.09.2019
S.A Hussain,

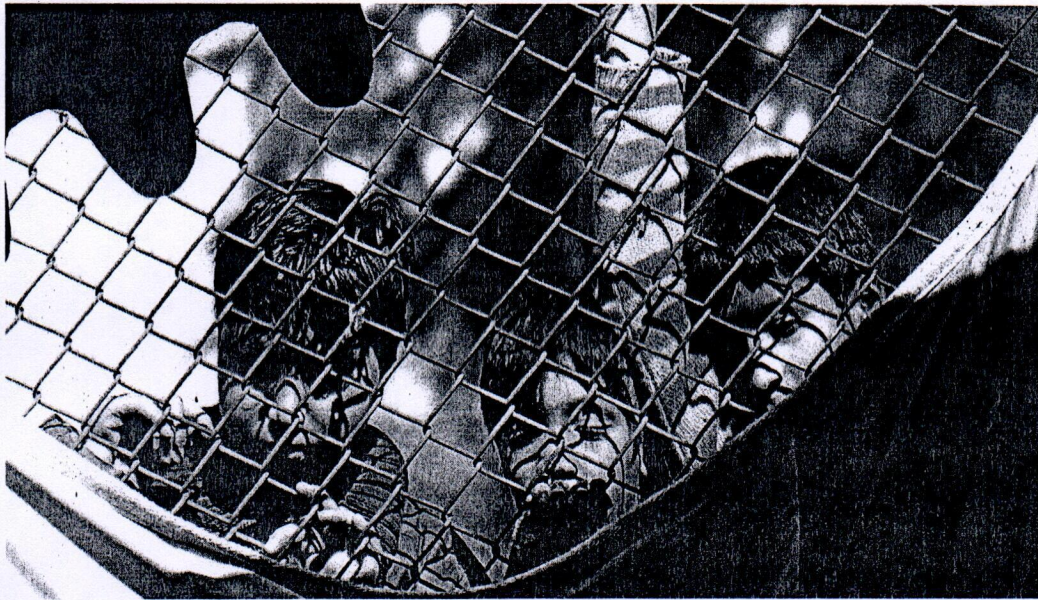
JAMMU AND KASHMIR

In Kashmir, boys aged 14 and 16 held under dreaded Public Safety Act and sent to Uttar Pradesh jails

Using the law to detain minors is illegal.

Safwat Zargar

Oct 06, 2019 · 09:00 am



A representative image | AFP - Red Star

Around midnight on August 8, 14-year-old Mohammed Aftab* got home after finishing work his bakery. Aftab lives in a village in South Kashmir's Shopian district. He had been working late to finish a special order for the crisp, crumbly rounds of bread known as Kashmiri kulchas. They were to be delivered the next morning.

But Aftab could not supervise the delivery. Around 2 am that night, police and army personnel; according to his family, knocked on their door.

"They asked the men to come out and directed all the women to sit together in a separate room," said his 17-year-old sister. "Aftab was still wearing his work clothes. He was too tired to change before sleeping. The police and army took him with them. We didn't resist."

They feared the security personnel would vandalise their house if they tried to resist, Aftab's sister said.

In the morning, when the family went to Shopian police station to seek his release, they said, they found him in the police lock-up. "One of his front teeth was broken and there were swellings and bruises on his left shoulder. He was beaten in custody," alleged Aftab's sister.

The police did not release Aftab, his family said, but they were allowed to meet him and take him fresh clothes. "The last time we met him at Shopian police station was on August 11," said another sister of Aftab. "After his arrest on August 9, we met him every day at the police station. On August 12, we were told that he has been booked under the Public Safety Act and shifted to Srinagar central jail."

Minors under Public Safety Act

The [Jammu and Kashmir Public Safety Act](#) is a preventive detention law which allows the authorities to hold individuals without trial for up to a year, if they consider it necessary for the

The authorities are not required to provide grounds for detention for up to 10 days after the prisoner being held. In some cases, they may withhold the reason even after that if it is deemed "against the public interest to disclose". Individuals are held under executive orders passed by the district magistrate or divisional commissioner.

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In 2012, the Jammu and Kashmir assembly passed an amendment which made it illegal to hold minors under the Public Security Act. Those below the age of 18 are minors as per state law.

But, since August 5, when the Centre stripped Jammu and Kashmir of special status and split the state into two Union Territories, the families of at least four boys have approached the Srinagar bench of the Jammu and Kashmir High Court, asking for the quashing of detention orders under Public Safety Act on the grounds that the detainees are minors. In two cases, including Aftab's, the High Court ordered a probe.

As on October 4, the Jammu and Kashmir government has informed the High Court that three of the four detainees have been released and handed over to their families.

Aftab, however, is believed to be in a jail in Varanasi. How has the government justified holding a 14-year-old under the Public Safety Act?



Kashmiri child shouts pro-freedom slogans during a protest in 2016. Photo: AFP

Minor or not?

In August 28, Aftab's family filed a habeas corpus petition to challenge his detention, appending his school certificate which said his date of birth was March 16, 2005. They also put in an application asking for him to be transferred to a juvenile home.

The court took note of the family's claim that Aftab was a minor that very same day. It directed the state counsel, Bashir Ahmad Dar, to file a response by September 4, an order issued by the court on August 28 said.

At the next hearing on September 25, the Shopian district magistrate sent a response through Dar: "detenu was admitted in the school on 01 March, 2012 vide admission no. 823 in class 3rd and at the time of admission no certificate of birth was produced by the parents of applicant-detenu nor the school administration bothered to procure/demand the same from the concerned offices viz Panchayat, Municipality or Hospital."

According to the state counsel's report, the certificate saying Aftab was born on March 16, 2005, was furnished by the school after his brother filed an affidavit saying that was the date of birth. The report calls into question the authenticity of this certificate. "The district magistrate's response further indicates that many mutilations were noticed in the recorded Date of Birth of many candidates from the admission registrar of the school (sic)," said a section of the counsel's report

The counsel's report was based on verification carried out by the office of Sandeep Choudhary, senior superintendent of police, Shopian. It goes on to say "the school administration without following due process admitted the petitioner in Class 3rd and put up arbitrary and hypothetical figure of the DOB of the petitioner." According to Choudhary, the "actual date of birth of the subject may be determined by carrying medical test."

A court order issued on September 25 directed the registrar judicial of the Srinagar high court wing to conduct an inquiry to "determine the age" of detainee within 10 days and submit a report in a sealed cover. The case is listed for hearing on October 14.

Faraway prisons

Aftab's family has not seen him since August 12. They went to Srinagar Central Jail to meet him, but failed. "We weren't carrying our Aadhaar cards so the guards did not allow us inside," said his sister, who had gone to Srinagar with her mother and a male relative on August 14.

Before the family could plan another trip to Srinagar, they got disturbing news. "A lot of boys from Shopian are lodged in a Varanasi jail," said the sister. "One of the families who had gone to meet their son told us that my brother is also lodged with them there. We were shocked."

The family has no means to go see him. Since 2009, they have been hit by misfortune. That year, Aftab's father died of a brain tumour. He was survived by his wife and six children, including four-year-old Aftab.

"The death of our father meant the family responsibilities passed to my two brothers," said his sister. "Initially, my elder brother used to earn for all of us because Aftab was too young."

In 2014, the elder brother got married, which split up the household. Since money was tight, none of the girls could go to school. After the elder brother's marriage, Aftab quit school to start earning as an apprentice at a local bakery, his sister said. He had studied only up to class five. He is the only breadwinner for his mother and two sisters, the other sister said.

They have given up hope of seeing Aftab anytime soon. "It costs around Rs 40,000 for travel and lodging in Uttar Pradesh," said his sister. "We don't have that kind of money. Since his arrest, we have been making a living by selling our cow's milk. How can we go to Varanasi to meet him?"



Police detain a Kashmiri student during a protest in Srinagar on April 24, 2017. Photo: Reuters

Minor' overground worker?

Another case in which the High Court has ordered a probe is that of 16-year-old Tariq Ahmad*.

In this case, the authorities seem to have conceded that they had detained a minor, although a police officer claims he was an "OGW" or "overground worker" for the Jaish-e-Mohammad. An overground worker is the name given to non-combatant members of armed groups, usually tasked

with logistics.

On the afternoon of August 3, before communication lines were officially shut down in the Valley, Ahmad's uncle, an apple grower, received a call on his mobile phone from the local police station in Srigufwara, in South Kashmir's Anantnag district. It was a summons from the local deputy superintendent of police. "He asked me to bring my nephew, Ahmad, along with me," the uncle said.

Ahmad had been summoned to the police station a few days earlier as well, the apple grower said. "But that time they just took his mobile phone and let him go. I brought him home myself that day," he said.

But on August 3, when Ahmad's uncle presented him at the police station, he returned home alone. According to him, the police promised him that his nephew would be released in "two or three days".

Instead, he was booked under the PSA. "On August 8, we tried to take some tea for Ahmad at the police station," said his aunt. "There, we were told that he has been shifted to the joint interrogation centre at Khanabal in Anantnag [town]. Eventually, he was shifted to a jail in Bareilly, Uttar Pradesh."

According to a date of birth certificate issued by the Jammu and Kashmir State Board of School Education, Ahmad was born on March 15, 2003. But in the police dossier, accessed by *Scroll.in*, Altaf Khan, senior superintendent of police, Anantnag, states that he is "22 years old" and a "class 12 dropout".

"After the subject left his studies, he became a sympathizer of militant outfit JeM and begins to work for JeM as OGW," the dossier reads. "The subject has developed extremist ideology and is sympathizer and supports unlawful activities of the said militant outfit." It goes on to say that Ahmad "possesses a natural bent of mind towards secessionism."

It claims that Ahmad has "colossal criminal records and is involved in number of cases". One of the two cases mentioned in the dossier dates back to the mass protests of 2016, triggered by the killing of Hizbul Mujahideen commander Burhan Wani uprising. Among the many charges under which he was booked in these two cases include offences of unlawful assembly, attempt to murder, acts endangering life or personal safety of others and voluntarily causing hurt to deter public servant from his duty.

A rapid release

Ahmad's family also filed a habeas corpus petition in the Jammu and Kashmir High Court on August 28, arguing that he was a minor and should be treated as a juvenile. As proof of age, they appended a marksheet, which also contained his date of birth.

On September 24, Justice Sanjeev Kumar issued a notice to government to "file a counter affidavit by next date of hearing" and also directed district magistrate Anantnag to "look into this aspect [of his age] specifically and revert to this court on the next date of hearing." The case was listed for hearing on October 1, 2019.

A day after the court notice to the government, Ahmad's family said, they were contacted by their local police station. A police party had set out to bring him back, the family said. "They brought him from Bareilly by road," said his uncle. "He reached the police station at 6 pm and was handed over to us at 10 pm on September 29."

But the written order from the Jammu and Kashmir government's home department, saying that the detention order under the PSA was revoked with "immediate effect", was dated September 20.

The family's counsel, Wajid Haseeb, offered an explanation. "On August 28, when we submitted the habeas corpus application, the court had directed the government to consider Ahmad's case on the basis of his school certificate," he said. "The home department might have issued the quashing order on September 20 in compliance of that direction."

Ahmad's family believe his troubles are not over. "They have named him in two FIRs and we have been asked to take him to the police station again in some days. They told us that he needs to get bail in these two cases," his uncle said.

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The teenager is now back home in Hogam, Srigufwara. "He has grown weak and lost weight," said his aunt. "You can imagine what happens to a grown up inside the jail so far from his home. We can only guess what effect will it have on a boy of his age. He has to focus on his studies. His Class.12 examinations are at the end of this year."

Children under law

Mir Urfi, a Srinagar-based lawyer who has worked on numerous cases under the Public Safety Act, said minors had been detained under the law since the 1990s although it only got attention after the mass protests of 2008 and 2010.

According to Urfi, the authorities often misused the Public Safety Act because there is no provision under the law to ascertain the age of a detainee when he is held. "Unlike ordinary law, where a person arrested by the police has to be presented before the court in 24 hours, there's no such provision under PSA," she said. "It's a purely administrative preventive detention."

"It's possible that if an individual is brought before the court at the time of his detention," she said, "a magistrate can presume his age prima facie or order an inquiry to determine his age if he feels that the person is a minor."

The Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013, raised the age of criminal liability for minors from 16 to 18. It mandated that children should be treated according to juvenile justice laws. The state is mandated to form juvenile justice boards to adjudicate cases involving children in conflict with the law.

On October 1, in submissions made to the Supreme Court, the state police admitted it had detained 144 children since August 5. It claimed most of them were released the same day. Of 46 children who had been sent to observation homes, 25 had been given bail, it said.

But lawyers say several cases of child detentions have gone unrecorded because the police does not acknowledge the detainees are minors.

"We came across many cases where minors were booked under PSA," said Wajid Haseeb, the lawyer who represented Ahmad. "Usually, all the PSA cases involving minors rest on the establishment of a subject as minor. If it's proven that the subject is a minor, PSA is quashed immediately."

Until last year, those detained under the Public Safety Act could not be taken outside the state. But in August 2018, the state government, headed by Governor Satya Pal Malik, removed the provision which barred detainees from being lodged in jails outside Jammu and Kashmir.

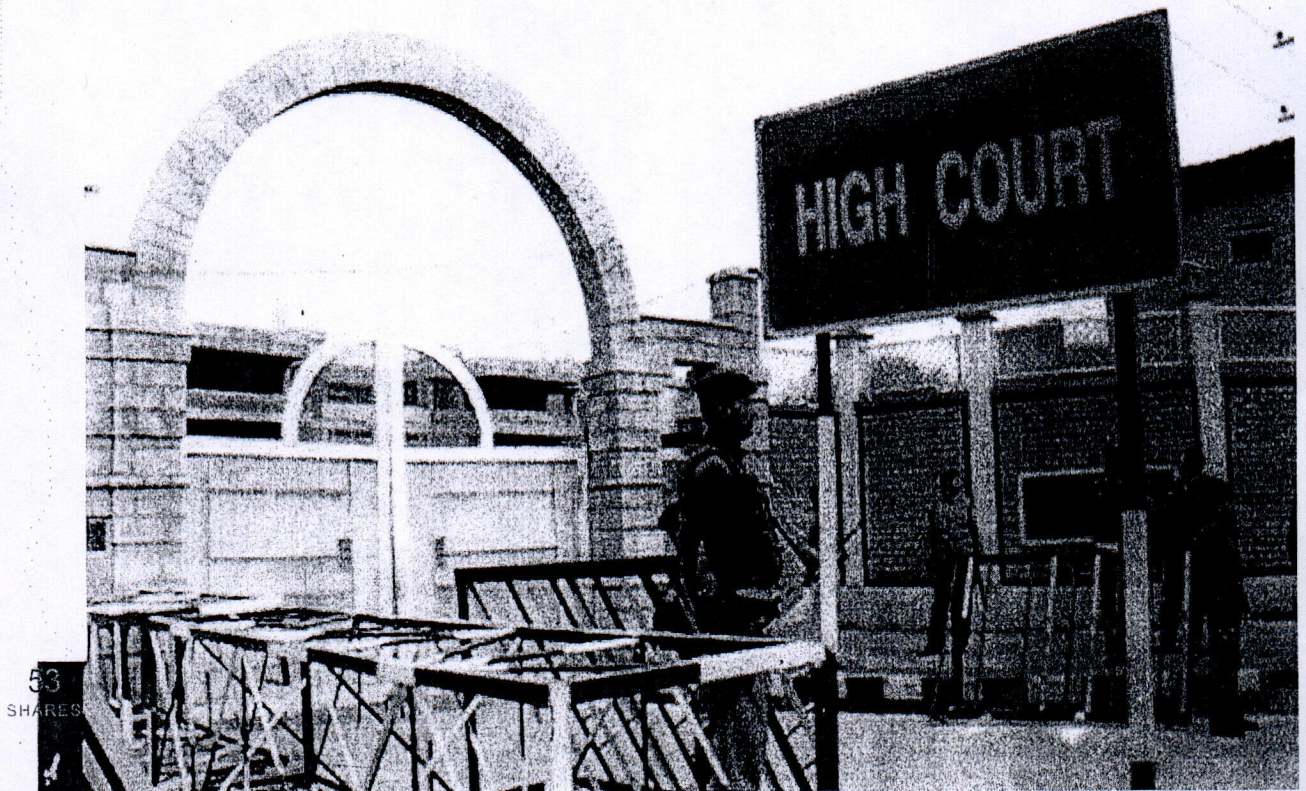
**Names have been changed to protect the identities of the minors.*

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J&K HC Seeks State's Reply And Directs Probe In Two Habeas Corpus Pleas Challenging Detention Of Minors Under PSA [Read Orders]

BY: AKSHITA SAXENA

27 Sep 2019 12:12 PM

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The Jammu and Kashmir High Court has asked the state government to file its reply in a habeas corpus petition filed on behalf of an alleged minor, detained under the Public Safety Act. Considerably, Section 8 of PSA bars detention of persons below the age of 18 years.

Interestingly, the Supreme Court had recently sought a report from the J&K Juvenile Justice Committee on alleged illegal detention and ill treatment of children in Kashmir.

Also Read - What Is Jammu & Kashmir Public Safety Act?

Advocate Wajid Haseeb, representing the petitioner-détenu, Abrar Ahmad Ganie submitted before the court that the Petitioner was a minor, aged 16 years, and his detention was contrary to Section 8 of PSA. In this behalf he placed on record the marks card which indicated Abar's date of birth as 15.03.2003.

Taking note of this argument, Justice Sanjeev Kumar directed the State to file its counter affidavit in light of the above controversy.

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"Notice accepted by Mr. Shah, learned Sr. AAG. He shall file counter affidavit by next date of hearing.

The issue raised by the petitioner in this petition whether the petitioner-detenu is a minor and, therefore, is required to be treated as juvenile shall also be addressed in counter /reply affidavit", he said.

also directed the District Magistrate concerned to look into the matter specifically to revert to the court on October 1.

A separate yet similar plea filed before Justice Ali Mohammad Magrey on behalf of detenu Umer Bashir Naikoo, the brother-in-law of the detenu sought that the detenu be shifted to the Juvenile Observation Home. He raised a plea of juvenility under Section 8 of the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013 (J&K JJ Act), and submitted that detenu was aged merely 14 years, as per her school records.

SHARES

The State contested this position, claiming that there were many mutilations in the recorded Date of Birth of many candidates from the Admission Registrar of the School. AAG B. A. Dar, for the State, remarked that at the time of admission, no certificate of birth was produced by the parents of applicant-detenu nor the school administration bothered to procure/demand the same from the concerned offices.

Faced with this dispute of facts, Justice Magrey said that an enquiry was required to be made in terms of Section 8 of J&K JJ Act, to determine the age of the detenu as on the date of the detention. He observed,

"The certificate produced in this application in proof of the date of birth of the applicant-detenu is neither the original document nor attested by any person, much less an authorized person, therefore, cannot be taken as conclusively establishing the date of birth of the applicant-detenu."

Reliance was placed on *Abuzar Hussain v. State of W. B.*, (2012) 10 SCC 489.

In this view, Justice Margey directed the Registrar (Judicial) to determine the age of Naikoo on the alleged date of detention and submit his report within 10 days.

Accordingly, the matter was posted for October 14.

[Click Here To Download Orders](#)

[Read Orders]

Annexure-p/3

Kin of 2 'minors' challenge PSA order in HC

ADILAKHZER

SRINAGAR, SEPTEMBER 30

THE FAMILY members of two more "minors" in Kashmir have approached the Jammu and Kashmir High Court in Srinagar challenging their detention under the Public Safety Act.

In the first case, a family from Baramulla district has approached the court with a habeas corpus petition seeking directions to quash the PSA detention order passed by the authorities. While the family members claim the detainee is a 16-year-old, Sopore Police have mentioned his age as 21 years.

"You are highly-motivated

stone-pelter of Sopore area. You are motivating gullible youth of Sopore and other adjoining areas for creating law and order problems..." reads the police dossier. Police have also cited an FIR filed in connection with a law and order incident.

According to the birth certificate, attached along with the petition and issued by a school on May 15, the date of birth of the detainee has been mentioned as "2.2.2003".

In the petition filed by his uncle, it has been submitted that the detention order is "prima facie arbitrary illegal and unconstitutional". "The detainee is prima facie a juvenile and has placed all

the relevant records in support thereof in the petition" and "he cannot be placed in custody in any jail which houses adult prisoners", the petition stated.

A single bench of Justice Ali Mohammad Magrey issued a notice on September 20 and fixed October 18 as the next date of hearing.

In the second case, a family from Srinagar has approached the court with a habeas corpus petition, submitting that the detainee is prima facie a "juvenile", and terming his detention "arbitrary, illegal and unconstitutional". A certificate issued by the J-K Board of School Education, attached with the petition, shows the de-

tainee's date of birth as 8.01.2002.

The police dossier which mentions his age as "20 years approximately" cites the detainee's alleged involvement in a case filed this year. "The subject has come to the adverse notice in police records since long owing to his involvement in anti-national activities..." it said.

"When the case came up for hearing last week, the government lawyer informed that the case has been reviewed. The court then asked to provide complete details in the next hearing which has been set for October 3," said advocate Wajid Haseeb, who represented the detainee in the High Court.



(T.C.)

PSA charges against 3 detained J&K minors dropped

TNN Oct 10, 2019, 11:15 PM IST

SRINAGAR: Charges slapped under the Public Safety Act (PSA) on three Kashmiri boys detained since early August were dropped after the date of birth mentioned in the Class X mark sheet of one of them proved decisive in arguing the habeas corpus petitions filed by their families, sources said.

Senior Additional Advocate General B A Dar informed Justice Ali Mohammed Magrey of the Jammu and Kashmir high court last week that the administration had revoked detention orders passed by district magistrates in three cases, all of them involving minors. This was after the court had asked the administration to file replies to habeas corpus petitions on the detention of a boy from Sopore, another from Hugam Srigufwara in Anantnag and a third from Soura in Srinagar.

Sources said the parents of the boy from Hugam Srigufwara submitted his Class X mark sheet, which mentions his date of birth as March 15, 2003, to prove he was a minor. The teenager had been picked up from his home on August 4 and booked under the PSA on August 8. He was later shifted to a jail outside J&K.

Nearly 200 writs of habeas corpus are still pending before the high court.

(T.C.)

J&K situation not normal, but peaceful: police chief

Annex - P/5

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DGP says youth are being picked up and counselled

Vijaita Singh

Director-General of Police, Jammu and Kashmir, Dilbag Singh has said there has been 3,000 cases of young men being picked up and released subsequently in the Kashmir Valley since August 5.

In an interview to *The Hindu*, Mr. Singh said the police's intention was not to cause any harm to the youth in the long term and preventive detentions were a temporary kind of arrangement for the maintenance of law and order.

He said "the situation was not normal but peaceful" as there were no restrictions in place anywhere in the State. "People were cooperative as they had understood that violence doesn't pay."

The DGP said there was no definite timeframe for the release of political leaders or restoration of mobile phone and Internet services in the Valley.

"Detentions are a dynamic process. There are certain areas where youth come and throw stones. Our purpose is to not cause any harm to them... they are subsequently counselled and handed back to their families," Mr. Singh said.

He said some 200 people were retained in jails as they were repeat offenders and multiple cases were registered against them.

"There are cases where an entire village would come and give assurance for a boy. A small kid cannot understand the consequences of his acts. But there are repeat offenders, you counsel them but they do not correct themselves. We cannot allow people to commit crime... but now even that number is going down. More and more people are released. Very few are in detention," he said.

Mr. Singh said the police and security forces were exercising restraint and "pellet guns were used in almost zero cases".

"Earlier pellet gun injuries used to be in hundreds. This time only two such incidents have been reported. Look at the kind of pressure we [police] are working under... as many as 90 security force personnel have been injured, some got stitches, a few have fractured limbs ... but we are using minimum force," he said.

He said the number of people lodged in jails outside the State was not more than 200 and they were shifted due to acute pressure and lack of space in jails here. Those arrested also include Jammu and Kashmir High Court Bar Association president Mian Qayoom.

Regarding Mr. Qayoom's arrest, the DGP said, "The Bar president is very well known for his past records resulting in certain activities that are prejudicial to maintenance of peace and order... They aligned with the Hurriyat in the past and participated in activities not very conducive to maintenance of peace and order."

He said cooperatives were under house arrest and so far their conduct has been

He said separatists were under house arrest and so far their conduct has been decent. "There are restrictions on their movement and some are under house arrest. If any one of them does an activity that is unlawful then strict action will be taken against them," he said.

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Mr. Singh said the situation was getting better by the day and even shops around the house of separatist leader Syed Ali Shah Geelani were open.

He said foreign and local militants were present in equal proportion in the Valley and terrorists belonging to Lashkar-e-Taiba (LeT) and Jaish-e-Mohammad (JeM) have a sizeable presence.

He said the Pakistan Army was making all efforts to push in more militants from the Line of Control in Kashmir and International Border in Jammu sector.

"A large number of militants have been brought closer to the LoC and that is why there are a large number of ceasefire violations and firing on the border. In a couple of places, they not only tried but succeeded in infiltrating. One such group was caught also. Similar attempts are being made in Gurez, Macchil, Keran, Rajouri and Poonch and also in Hiranagar, RS Pura and Akhnoor sectors of Jammu...Pakistani agencies are making all-out efforts to push in militants and it is most likely that some of them were able to cross over," he said.

He said the possibility of militants moving around in Srinagar cannot be ruled out and that kind of possibility was there as movement of vehicles on a large scale has been allowed.

Jammu and Kashmir police takes arrest-release route to 'counsel potential troublemakers' 59

Officials estimate that areas under most police stations have 10-14 potential troublemakers.

By Parul Taneja ET Bureau | Updated: Sep 10 2019 09:57 AM IST

0

Comments

Getty Images



SRINAGAR: Sitting inside a cell in the high-security Raj Bagh police station in Srinagar, a group of youths murmur among themselves. Minutes later, a constable asks them to come out and counts till seven. Once out, the boys aged 15-19 greet the station-in-charge. They are asked to form a queue and follow the constable, who shepherds them to the canteen behind the police station.

After nearly 20 minutes, the constable returns with the first batch and takes with him another set of seven boys, who are not handcuffed either. This is a

daily routine in at least 90 police stations across the Valley, where the police has identified 1,200-1400 youths allegedly involved in stone-pelting and spreading rumours. Since withdrawal of special constitutional status granted to J&K, such youths are picked up by police and released routinely. Each police station maintains a list of suspects who could be potential troublemakers, said officials.

"We try to counsel their parents and ask them to appear at the local police stations. Parents of some younger boys are allowed to meet them on request," a senior J&K police official told ET on condition of anonymity.

Officials estimate that areas under most police stations have 10-14 potential troublemakers while the number exceeds 20 in areas under some police stations in downtown Srinagar and is as low as five in some other places, said officials.

"Youths are released and detained depending upon the situation in what is described as revolving-door arrests. Some of them have been released after seeking assurance from their parents and relatives," said the official.

Director general of police Dilbag Singh had earlier said, "Young people are detained and released

after counselling. It's not possible to share the numbers but it is a small number."

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Another police official, who did not wish to be identified, said that a few youths are lodged in police stations so that they do not create any nuisance. "The food given to them at the canteen is the same as what is being cooked for the police staff," said the official.

A boy who identified himself as Tahir told ET, "At times, we are allowed to go back to our houses during the day but not in groups."

Among those detained are a few minors as well, said officials. "A group of boys lodged at the police station were involved in attacking a TV crew near Dal Gate," said one of the officials cited earlier.

However, parents who had assembled outside the Raj Bagh police station told a different story. "My 12-year-old nephew was brought by the police last week. Cops agreed to release him provided we gave assurance from 15 people in the locality. When my brother went to the police station seeking release of his son, the cops detained him as well," alleged Nisar Ahmed, a resident of Hazuri Bagh in Srinagar.

A police official said the number of detentions was high during the first fortnight after the abrogation of Article 370 and Article 35A of the Constitution on August 5 but most of the youths were released after restrictions were eased. In many cases, the suspected potential troublemakers are asked to mark their attendance every day at the local police station. "This helps the police keep a track of those who go missing or are caught in stone-pelting at any other jurisdiction," said a government official.

There are 12 jails in J&K, including two central jails in Kotbalwal and Srinagar, eight district jails in Jammu, Kathua, Udhampur, Rajouri, Poonch, Baramulla and Kupwara, and three sub-jails in Hiranagar, Reasi and Kishtwar, with a total capacity of 2,775 prisoners.

As per the prison administration, the total number of prisoners below 20 years of age charged with different crimes stands at more than 1,000. The state administration said it was setting up new jails at Pulwama, Anantnag, Kishtwar and Kargil.

Besides, the state administration has declared Centaur Hotel as a subsidiary jail where 50 senior politicians and former ministers of J&K are lodged. Another 320-350 local politicians and workers have been shifted to jails in Agra, Ghaziabad and Jaipur. Former chief ministers Mehbooba Mufti and Omar Abdulla and are lodged at a guest house which has been declared a temporary jail under the orders of the district magistrate.

J&K jails: Inmates below 20 years

Anantnag: 129

Baramula: 179

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Jammu Central Jail: 89

Jammu District Jail: 193

Srinagar: 319

Kathua: 74

Kupwara: 317

Udhampur: 113

(Source: National Prison Portal Information.)

(1.1)

-62- Annexure
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Annex - P/7 Collg

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RIGHTS

'Graves Don't Lie': Srinagar Family Rubbishes Govt Report Denying Their Son's Death

The government has denied 17-year-old Osaib Altaf's death in a report submitted to the Supreme Court, leaving his family running from pillar to post and in shock.



Osaib Altaf's grave. Photo: Mudasir Ahmad

Mudasir Ahmad



GOVERNMENT RIGHTS 04/OCT/2019

Srinagar: For the past two months, the Marazi family from Palpora on the outskirts of Srinagar has been moving from

pillar to post to get a death certificate for their 17-year-old son Osaib Altaf.

The family alleges that Altaf drowned in the Jhelum on August 5 after being chased by security forces.

Altaf's mother Saleema said the administration at the city's Shri Maharaja Hari Singh (SMHS) hospital told her husband that a copy of a first information report (FIR) confirming the drowning incident is a "prerequisite" for issuance of the death certificate.

"For the past two months, we have been continuously visiting police stations and SMHS hospital but to no avail," Saleema says at her residence. "The irony is that police officials are refusing to even register a case."

Every time the family approaches the police for an FIR, the issue of jurisdiction is raised.

"Officials at Qamarwari police station tell us that the area falls within the jurisdiction of Safa Kadal police station, while as policemen at Safa Kadal pass the buck back to Qamarwari police," says Saleema. "We are shuttling between the two police stations."

Also read: Funeral Video Busts 'No Deaths, No Kids in Jail' Report J&K Police Sent Supreme Court

On September 26, the J&K government had submitted a report from Director General Police Dilbagh Singh in the Supreme Court, in response to a petition filed by a group of human rights activists about the detention of minors in Kashmir.

The government denied Altaf's death in the report.

"Osaib Altaf: the incident (of death) as reported as been found to be baseless as no such death has been reported to the police authorities as per verification report received from the field formations," reads the report.

The government's denial of Altaf's killing has shocked the family. "How can the government resort to such a falsehood?" says Saleema. "Do they mean my son is alive?"

And if so please ask them to release him.”

She said there are videos of Altaf's funeral on the internet and that newspapers have reported his death too.

Even after two months, that the house is in mourning is palpable. Altaf's grandmother Noora, who sat in the room silently listening to her daughter-in-law, suddenly burst into tears.



Saleema (left) and Noora (right), Osaib Altaf's mother and grandmother.
Photo: Mudasir Ahmad

“My Osaib was a budding flower. By shamelessly denying his death, is the government trying to say that he never lived? That he was never born? How can people heading the state be so heartless,” says 67-year old Noora.

A class 12 student, Altaf loved playing football, his brother Suhail Ahmad told *The Wire*. On the afternoon of August 5, Altaf had gone to a nearby playground with his friends.

“That was the last time I saw him alive,” Ahmad says, just hours before Union home minister Amit Shah briefed parliament about the decision to scrap Article 370 of the Indian constitution and bifurcate the state into two Union Territories.

Fearing a backlash from people in the Valley, the state authorities had already deployed the police and paramilitary forces in large numbers to enforce strict restrictions on movement. Telephones, mobile phones and internet services were snapped.

“At 1 pm, I went to call my son for lunch but he told me

that he would return soon,” Saleema recalls.

But the young boy never returned. Locals told the family that the security forces chased a group of boys, including Altaf, on a bridge across the Jhelum river.

Also read: SC Seeks Probe Into Alleged Illegal Detention of Children

“All the boys, we were told, managed to swim. But my son drowned because he didn’t know how to swim,” said Saleema. With hope in their hearts, they had rushed Altaf to SMHS hospital, but he was declared brought dead.

The incident was first reported by *Huffington Post* and then *The Wire* and *Hindustan Times*. *The Wire* also published a video story about the funeral.

The Truth Behind Government's 'No Casualty' in Kash...



Altaf was the first civilian casualty in the aftermath of the reading down of Article 370.

Two months on, the family has locked Altaf’s room.

“All his belongings – books, clothes and electronic gadgets are locked in his room,” said Suhail. “We are now left with his memories.”

Altaf lies buried at the ‘martyrs graveyard’ in Eidgah, around three kilometre from his Palpora home.

“Please do visit the graveyard. You will find my son buried there,” said Saleema. “Graves don’t lie.”