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India: Children held unlawfully in Jammu and Kashmir

Jammu and Kashmir (J&K) authorities must end the administrative detention of two children held under the Jammu and Kashmir Public Safety Act (PSA) and further ensure that the practice of unlawful detention of children in the state is put to an end.

Asif Mujeed Shaksaz, aged 15 and Sajad Ahmad Mir, 16, both of Srinagar, were arrested on grounds of “stone-pelting” and “disruption of peace” on 25 March and 8 March respectively. They have been detained under the PSA. The J&K police have not clarified whether they are held in regular prisons with adults or in designated juvenile homes in accordance with the Jammu and Kashmir Juvenile Justice Act (JKJJA).

“The J&K authorities must end the detention without charge of these two children. If they are charged for any offences, they must be tried in accordance with the rules of juvenile justice,” said Shashikumar Velath, Director of Programmes, Amnesty International India.

“Instead of repealing the PSA and ending the entire system of administrative detention, the Jammu and Kashmir authorities are continuing to detain even children without charge. Recently, we have received three reports of children being held under the PSA,” Velath said.

The PSA violates India’s international human rights law obligations. It was partially amended on 18 April 2012 following Amnesty International’s findings published in the 2011 report, *A Lawless Law*, and subsequent campaign for its repeal. One of the amendments stipulates that no person under the age of 18 may be detained under the PSA.

As a party to the UN Convention on the Rights of the Child, India is further obliged to ensure that any detention of persons under the age of 18 “shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”.

In these two cases, authorities claim that the two boys are 19 years old, disregarding documentation and testimony from families that strongly indicate that they are aged younger than 18.

Copies of school records of Asif Mujeed Shaksaz in Amnesty International's possession show his birth date as 30 April 1997, making him a few weeks short of 16 years. While no records are available for Sajad Ahmad Mir – his birth was not registered and he has never been enrolled in a school – his family told Amnesty International that he is only 16 years old. The Committee on the Rights of the Child – which is the authoritative body that interprets the UN Convention – has stated that where “there is conflicting, inconclusive or uncertain evidence of the child's age, he/she shall have the right to the rule of the benefit of the doubt”.

International law also requires that children should be held separate from adults, except where this would not be in the best interests of the child. Asif Mujeed Shaksaz is being held in Baramulla Jail, north of Srinagar while Sajad Ahmad Mir was transferred to Kothawal Jail in Jammu – 300 kilometers away. His family was not informed of the transfer, has been unable to contact him and is unaware of his conditions of his detention. It is not known whether the two children are being held separate from adults.

“These cases are the latest examples of the practice in J&K where the police arrests and detains children claiming they are adults, while completely disregarding evidence or testimony which indicates that they are less than 18 years of age,” said Shashikumar Velath

The J&K authorities must investigate the ongoing detention of the two boys as well as this broader practice to ensure that any practice of unlawful detention of children is ended. Where individuals are found to be responsible they should be held to account in proceedings that meet international fair trial standards.

Amnesty International recently travelled to Kashmir to meet with civil society actors. Following local media coverage of the visit to the region, they received six reports of individuals, including children, being held under the PSA.

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