

AI Index: PRE 01/149/2011  
21 March 2011

## **Jammu and Kashmir: Hundreds held each year without charge or trial**

The Indian state of Jammu and Kashmir is holding hundreds of people each year without charge or trial in order to ‘keep them out of circulation’, a new Amnesty International report released today shows.

A ‘Lawless Law’: Detentions under the Jammu and Kashmir Public Safety Act, documents how the Public Safety Act (PSA) is used to secure the long-term detention of individuals against whom there is insufficient evidence for a trial.

Estimates of the number detained under the PSA over the past two decades range from 8,000-20,000, with 322 reportedly held from January to September 2010 alone.

“The Jammu and Kashmir authorities are using PSA detentions as a revolving door to keep people they can’t or won’t convict through proper legal channels locked up and out of the way,” said Sam Zarifi, Amnesty International’s Asia-Pacific Director.

“Hundreds of people are being held each year on spurious grounds, with many exposed to higher risk of torture and other forms of ill-treatment.”

Detainees include political leaders and activists, suspected members or supporters of armed opposition groups, lawyers, journalists and protesters, including children. Often, they are initially picked up for ‘unofficial’ interrogation, during which time they have no access to a lawyer or their families.

Over the past decade there has been a marked decrease in the overall numbers of members of armed groups operating in Jammu and Kashmir. But in the last five years, there has been a resurgence of street protests.

“Despite this apparent shift in the nature of the unrest, Jammu and Kashmir authorities continue to rely on the PSA rather than attempting to charge and try those suspected of committing criminal acts,” said Sam Zarifi. “The PSA undermines the rule of law and reinforces deeply held perceptions that police and security forces are above the law.”

Amnesty International research shows how the implementation of the PSA is often arbitrary and abusive, with many of those being held having committed no recognizably criminal acts. The Indian Supreme Court has described administrative detention, including the PSA, as ‘lawless law’.

Those held under the PSA can face up to two years in detention. But the Jammu and Kashmir authorities consistently thwart High Court orders for the release of improperly detained individuals by issuing successive detention orders. Many detainees are thus trapped in a cycle of detention and remain, in the words of one high-ranking Jammu and Kashmir official, ‘out of circulation’.

The PSA provides immunity from prosecution for officials operating under it.

“Those being held have no access to legal representation and cannot challenge their detention in any meaningful way,” said Sam Zarifi. “Once released, they cannot seek any redress or compensation for the wrongful detention they have endured and virtually never receive justice for the torture and ill-treatment.”

Amnesty International acknowledges the right, indeed the duty, of Indian authorities to defend and protect their population from violence. However, this must be done while respecting the human rights of all concerned and abiding by international law.

“The use of administrative detention does not conform to international human rights legal obligations and agreements that the Indian government is a party to,” said Sam Zarifi. “The Indian government must ensure that Jammu and Kashmir authorities repeal the PSA and end the odious system of administration detention once and for all.”

Amnesty International is calling on the Government of Jammu and Kashmir to:

- Repeal the PSA and end the system of administrative detention, releasing all detainees or charging those suspected of committing criminal acts with recognized offences and trying them fairly in a court of law
- End illegal detentions and introduce safeguards ensuring those detained are charged promptly, have access to relatives, legal council and medical examinations and are held in recognized detention facilities pending trial

Amnesty International is calling on the Government of Jammu and Kashmir and the Indian Government to:

- Carry out an independent, impartial and comprehensive investigation into allegations of abuses against detainees and their families, including allegations of torture and other ill-treatment, denial of visits and medical care, making its findings public and holding those responsible to account

Amnesty International is calling on the Indian Government to:

- Invite and support visits of UN officials, including the Special Rapporteur on Torture and the Working Group on Arbitrary Detention

A ‘Lawless Law’ is available at: <http://www.amnesty.org/en/library/info/ASA20/001/2011/en>