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Arbitrary Detention of Minors

International agreements, declarations and conventions establish the rights of citizens under the age of 18, both those who walk freely and those who have been detained for an offense. The Convention on the Rights of the Child, the Standard Minimum Rules for the Administration of Juvenile Justice, the Guidelines for the Prevention of Juvenile Delinquency and the Rules for the Protection Deprived of their Liberty are all intended to protect juveniles, but the human rights and due process that should be maintained, particularly when it comes to the procedure of juvenile detention, are not universally applied. All accused, but youths specifically, must be treated as innocent until proven guilty and brought in front of a court or equal legal authority without any unnecessary delay. Maintaining this minimal sense of security and protection of basic rights is not, however, granted across the board to detained minor in Indian Administered Kashmir.

Individuals under the age of 18 who are detained on the suspicion of a crime – a suspicion that is often based on vague facts or the result of minor offenses – are stripped of basic rights, their dignity and safety. They are subject to the whims of the authorities, authorities that, in many cases, show a complete disregard for the existing procedures and rights. Unfortunately the situation in Indian Administered Kashmir makes it abundantly clear that ratifying international agreements hardly implies that they will be enforced on a national, regional or local level.

Even though under Indian law individuals cannot be charged as adults until the age of 18, in Indian Administered Kashmir the juvenile justice laws provide an amendment that deems male youths over the age of 16 as adults and the age of criminality throughout the whole of India is alarming low – set at age seven. These provisions for the detention and custody of juveniles are far from recommendations made on the international level, which are intended to ensure adherence to human rights. The result for Indian Administered Kashmir specifically, implies that an array of protestors, students, activists and minors who are simply in the wrong place at the wrong time can face undue process and harsh treatment while being held pre-trial and in detention.

The numerous cases of detentions with legally unjustified or unclear backgrounds has brought much critique from the international community and amendments to the Jammu and Kashmir Juvenile Act of 1997 were promised. A year after their adoption, however, the situation has not necessarily improved.

Juvenile detention under the PSA

Despite assurances made to the international community and the United Nations, the Indian government has repeatedly tolerated infringements of the human rights of juveniles subject to criminal detention. Under the Public Safety Act (PSA), youths under the age of 18 have been held in police custody without adherence to international standards and under the questionable exceptions provided for under the act. The J&K Juvenile Act further provides exceptions for male youths, who are subject to prosecution at the age of 16. Amendments were promised and, in some cases, implemented, at least in theory. The noted dip in the number of detentions of 16 and 17 year olds between 2011 and 2012 may not, however, be the result of legal changes, but rather the falsification of age documentation.

The Convention on the Rights of the Child proclaims that the detention of minors should only occur as a last resort, instead, in Indian Administered Kashmir, it is used as a commonplace scare tactic. Teens are regularly held for disproportionately long periods of time, often detained on multiple occasions on the basis of the same – or similar – accusation, or re-arrested for a new crime while awaiting bail for their first booking. All justified as measures needed to maintain security, such standards classify any act that is perceived to be in disaccord with the Indian government’s policies to be reason enough for a detention. Individuals are taken in for questioning or what is essentially an unofficial interrogation and later moved between administrative detention centres and police stations. They are not permitted to communicate with their families, who are often left wondering or frantically searching for the whereabouts of their loved ones.

The commonality of such events, which are in direct conflict with article 9, paragraph 1 of the International Covenant on Civil and Political Right, prohibiting arbitrary arrest, detention and imprisonment of minors, are also contradictory to the right to prompt access to legal representation and other relevant assistance as stipulated in the same paragraph. The International Human Rights Association of American Minorities (IHRAAM) would also like to emphasise that the youths detained by state authorities in Indian Administered Kashmir are not held in juvenile detention centres that could offer appropriate and separate facilities for minors. This is in violation of article 37 of the Convention on the Rights of the Child, which provides that detained minors will be held in conditions that take into account their specific needs. Likewise, a distinction should be maintained between the accused and already convicted.

Falsification of documents

IHRAAM insists that despite the promised changes to the Jammu & Kashmir Juvenile act, cases of arbitrary detentions of youths under the age of 18 continue to occur. The apparent drop is merely the result of cover-up strategies that change the age of detained individuals to superficially satisfy external authorities and international pressures. Youths are still far from being protected through a comprehensive legal framework that would provide justice through the avoidance of detentions whenever possible and when it is not, that the provision of conditions that comply with international standards, such as comprehensive information as to the charges, the right to legal representation and a fair and timely trial would be applied. Since the introduction of the relevant amendments, Amnesty International has noted at least three cases of individuals under 18, whose documents were falsified upon their detention. Mohammad Rafiq Sheikh and Murtara Manzoor Panzoo were both 17 when they were taken into custody, but their legal records inaccurately labelled them as 19. An even more drastic age change occurred in the case of Danish Farooq, who was detained for an accusation of stone pelting at the age of 16, approved for bail and then promptly re-arrested for a similar charge. In both sets of documents, Farooq was labelled as aged 19 and housed with adults, not a juvenile detention centre.

International norms and standards establish the protection and well-being of individuals held in custody, paying special attention to vulnerable groups, among them minors. Detainees must be protected from all forms of mental and physical violence, including sexual abuse, and any infringements of this basic right must be promptly investigated. They must be allowed to have communication with a legal authority and when appropriate with their families, especially for minor. IHRAAM insists that those responsible cannot avoid prosecution, nor can the Indian government continue to turn a blind eye to these offenses.

Children suspected of crimes must be protected by the Convention on the Rights of the Child, which India ratified in 1992 and continues to ignore at its convenience ever since. Unless clear evidence that has not been tampered with can be found for the charge of a recognisable crime, individuals should be immediately released. In instances where the necessary evidence is found, the accused should still be afforded a fair trial, as stipulated in international agreements. IHRAAM presses for the need to not only create legal adjustments in the form of amendments but to proceed to create on the ground action that will ensure adherence to them and thereby prevent occurrences of falsification of documents and arbitrary detention of citizens at large and minors specifically. The Indian government must respond to the pressure to adequately protect children, putting special emphasis on the situation of youths in Indian Administered Kashmir, and provide for due process and prosecution of any individuals responsible for torture.