

## 7. Exacting Revenge: Incarcerating children in Kashmir

December 2019

### 1. Introduction

On 13<sup>th</sup> December 2019, the Supreme Court (SC) of India dismissed a Public Interest Litigation (PIL) seeking a detailed inquiry into the illegal incarceration of children by Indian security forces in the former state of Jammu & Kashmir (J&K), concluding that there had been no illegal detention at all. This was in the face of an abundance of media reports indicating largescale detention of minors in security forces crackdown following governments' abrogation of Art 370 of the Indian Constitution in the state. The BBC, in a report on 23 September, spoke to 17 families whose children were detained by the police.<sup>204</sup> Washington Post reported on the detention of two boys.<sup>205</sup> A report by Indian news portal, The Print revealed that Police continued not only to detain children, but also force their families to pay for their food while in custody.<sup>206</sup> Similar accounts were reported by The Quint.<sup>207</sup> Various civil society fact findings of the ground situation in Kashmir corroborate these accounts. The National Federation of Indian Women's (NFIW) fact-finding report from September 2019 claimed 13,000 children had been detained in Kashmir since 5<sup>th</sup> August 2019.<sup>208</sup> Other reports too echo these.<sup>209</sup> Our own research on the ground, conducted between November and December 2019, confirms the detentions.

For the highest court in the land to refuse to take more seriously the grave

204 "The Detained Children of Kashmir." BBC News, September 22, 2019. <https://www.bbc.com/news/av/world-asia-india-49772269/the-detained-children-of-kashmir>.

205 "Among the 3,000 Detained by Indian Authorities in Kashmir: Children." The Washington Post, August 31, 2019. [https://www.washingtonpost.com/world/asia\\_pacific/among-the-3000-detained-by-indian-authorities-in-kashmir-children/2019/08/29/1616b5c0-c91c-11e9-9615-8f1a32962e04\\_story.html](https://www.washingtonpost.com/world/asia_pacific/among-the-3000-detained-by-indian-authorities-in-kashmir-children/2019/08/29/1616b5c0-c91c-11e9-9615-8f1a32962e04_story.html).

206 "J&K Police Not Only Detaining Minors but Making Them Pay for Food in Custody, Say Families." The Print, November 13, 2019. <https://theprint.in/india/jk-police-not-only-detaining-minors-but-making-them-pay-for-food-in-custody-say-families/319677/>.

207 Zahra, Masrat. "Kids Talk Night Raids, Detentions & Curfew: Kashmir's New Normal? ." The Quint, November 14, 2019. <https://www.thequint.com/videos/childrens-day-kids-talk-night-raids-detentions-and-curfew-kashmirs-new-normal>.

208 <https://www.telegraph.co.uk/news/2019/09/25/young-boys-tortured-kashmir-clampdown-new-figures-show-13000/>

209 Kashmir Caged (2019): <https://www.newsclick.in/kashmir-caged>

allegations involving detention and torture of children in Kashmir, raises serious questions about India's refusal to adhere to and uphold its own laws and the various international standards relating to protection of children and the right to life and liberty, that it has committed to. This utter disregard for procedure, let alone morality, to assess state practices in Kashmir, by those whose very raison d'etre is to act to prevent executive excess, speaks of how Kashmir's reduction to being a zone of exception has been further reinforced, where normal rules and laws do not apply, and its citizens denied the most basic rights.

This briefing will try to shine a light on the illegal detention of minors in Kashmir since the security clampdown on the 5<sup>th</sup> of August 2019. It seeks to explore the role of the justice system in enabling the continued violation of the rights of the children to protection from exploitation that they are guaranteed by India's Constitution and her international obligations. We report on a lawsuit brought before the Indian Supreme Court challenging illegal detention of minors in Kashmir, and its casual dismissal there, before examining some of the evidence to the contrary, based on media reports and limited field investigation.

## **2. Kashmiri children: Bearing the community's burden**

The abrogation of Article 370 on 5<sup>th</sup> August 2019 by government of India started what would be a long-drawn haul of uncertainty, protest and a communication blockade that continues five months later. The period has been characterized by protests that are quickly quelled by use of force and by detaining activists, politicians and hundreds of young men labelled as 'stone pelters'. As people in Kashmir continue to protest by following a civil curfew, businesses remain shut and transport keeps off the roads. There have been protests in various areas following which armed forces and police have conducted nocturnal raids and detained young men. To counter these arrests, communities have put up barricades of tin sheet and dug up roads leading to these areas in a bid to prevent forces entry.

The months following the abrogation of Article 370 also saw a ban on gatherings, both political and religious, latter including Eid (August 2019), Muharram (September 2019), and Miladun Nabi (November 2019), when apart from the usual restrictions on congregations and taking out processions, authorities imposed late night curfews. When despite this, processions were taken out, authorities cracked down, tear gassing, pepper spraying, beating and chasing away protesters. Later many young men including minors have been detained. These measures coupled with the way the state managed to abrogate Article 370 – the

assurance against forcible integration with India – has created an atmosphere of an impending doom for Kashmiri youth. Kashmiris have been at the receiving end of gross human rights violations, both documented and undocumented for years, but this year in the garb of 'bringing peace to the valley', government has managed to isolate Kashmir from the rest of the world rendering them helpless. It is significant to note that the total communication ban affected essential services and drastically reduced the access of people to these services. In essence Kashmir continues to be an open prison where millions of people continue to be deprived of the most basic rights, even as international organizations express helplessness.

### **3. The farce of a judicial review**

The PIL that sought judicial intervention into detention of minors after the clampdown in Kashmir on 5<sup>th</sup> August, was filed by two child rights activists in September 2019.<sup>210</sup> Basing their contention on several reports appearing in the international and national media revealing detention and custodial torture of children, the petitioners raised the questions of detentions and instances of physical assault of children and reported deaths, in security forces crackdown against civilians in Kashmir from 5<sup>th</sup> August 2019. They asked for (i) a detailed status report from the government detailing the whereabouts and medical status of all children cited in the media reports, (ii) an age census of all children under detention, and (iii) payment of compensation to affected children.

On 20 September, the Supreme Court (SC) directed the Jammu & Kashmir Juvenile Justice Committee (henceforth JJC), the apex supervisory institution for implementation of juvenile justice law in Jammu & Kashmir and headed by a sitting judge of the J&K High Court, to look into the allegations and file a detailed report within a week. JJC filed its report to the SC on 26<sup>th</sup> September. On close examination, the review turned out to be the J&K Police's report, word by word, with no independent verification of facts by the JJC. The report challenged the petitioners' claims and questioned the veracity of media reports cited in the petition. Yet the report contained a list of 144 children that, information provided in the report revealed, were detained by state authorities from between 5<sup>th</sup> August and 25<sup>th</sup> September. Most of them were released on the day of detention, but 17 spent much longer periods of time in police custody, in complete violation of laws and procedures for minors. Characteristically, the report assured that the Police's dealings with children throughout was "strictly in accordance" with the

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210 WP (civil) 1066/2019, Enakshi Ganguly & Shanta Sinha vs. Union of India.

provisions of the J & K Juvenile Justice (Care and Protection of Children) Act (J&K JJ Act), 2013.

The report of police, rubber stamped by JJC makes for, at once Kafkaesque as well as farcical reading. The J & K JJ Act 2013 extends protection for 'children in conflict with the law'. According to this statute, minors cannot be detained by Police for more than 24 hours without being presented before a (district-level) Juvenile Justice Board and cannot be lodged in a jail with adults. Section 18 of the J&K JJ Act explicitly prohibits the preventive detention of juveniles, under Section 107 of the Code of Criminal Procedure (CrPC).<sup>211</sup> Section 107 CrPC (security for keeping peace) is the statute of choice for forces in Kashmir for preventive detention.<sup>212</sup> A 2012 amendment to the J&K Public Safety Act (PSA)<sup>213</sup> 1978, also used frequently for preventive arrests - also prohibits the preventive detention of minors under the PSA. And yet, the very list submitted by the police to the JJC reveals that 70 children - including a 9-year-old, and two 11-year-olds, all from Srinagar's Batamaloo area - were arrested under Section 107 of the CrPC. An additional 9 children - including a 13-year-old from Budgam, who was kept in custody for 5 days - were shown as being kept under "preventive" detention.<sup>214</sup> Thus, by the police's own admission, at least 79 children - more than half of the cases that were officially acknowledged - were kept under illegal detention, even if some were for only a short period. And yet the report claims no minors were detained and no laws had been broken.

The report has other absurdities galore. The police claimed that a *Washington Post*<sup>215</sup> report on the detention of two boys named Farhan and Junaid, quoted in the petition, was "based on wrong reporting". And yet, 14-year-old Farhan's name is mentioned in the police's own list of incarcerated children (no. 69), listed

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211 Section 107 of Chapter VIII of the CrPC, which permits certain pre-emptive, preventive measures against individuals if there is a likelihood of a future breach of peace or public tranquility.

212 Amnesty International. 2019. Tyranny of a 'Lawless Law': Detention Without Charge or Trial Under the J&K Public Safety Act.

213 The Jammu & Kashmir Public Safety Act, 1978, permits the detention of any person for up to 2 years, without a trial, to prevent him or her from acting in any manner that is inimical to "the security of the state or the maintenance of the public order".

214 Other sections under which the children were booked included Sec 151 of CrPC (prevent commission of cognizable offence), RPC 307 (attempt to murder), RPC 147,148,149 (rioting and punishment for rioting), RPC 341 (punishment for wrongful restraint), RPC 332 (voluntarily causing hurt to public servant during duty) and RPC 336 (act endangering life or personal safety of others).

215 "Among the 3,000 Detained by Indian Authorities in Kashmir: Children." The Washington Post, August 31, 2019. [https://www.washingtonpost.com/world/asia\\_pacific/among-the-3000-detained-by-indian-authorities-in-kashmir-children/2019/08/29/1616b5c0-c91c-11e9-9615-8f1a32962e04\\_story.html](https://www.washingtonpost.com/world/asia_pacific/among-the-3000-detained-by-indian-authorities-in-kashmir-children/2019/08/29/1616b5c0-c91c-11e9-9615-8f1a32962e04_story.html).

as being detained under Section 107 and Section 151<sup>216</sup> of the CrPC. Similarly, the police denied the arrest of 15-year-old Momin and 16-year-old Omar from Srinagar's Umarhair neighbourhood, as reported by TRT World, claiming that the incident was "not corroborated". However, Momin's name figures in the police's list of juvenile detainees (no. 66). The report has several other inconsistencies<sup>217</sup> that are difficult to explain away, forcing one to conclude that either the authorities were confident that SC's bar for cross examining the submission would be deliberately low, or they had utter disregard for the office of the SC and thought that merely following formality would suffice.

Faced with these grave lacunae in JJC's report, and forced their hand by the petitioners, SC directed the JJC to file a fresh report by 3<sup>rd</sup> December, after independently applying its mind. In its fresh second report, the JJC submitted that all detentions of minors in the state were in accordance with the law and that there have been no illegal detentions of children.<sup>218</sup> A 3 member bench of the SC, in its hearing on 13<sup>th</sup> of December, accepted the new findings of the JJC, and dismissed the PIL. When the petitioners sought a copy of the new report of the JJC - which is not available in the public domain - the Court agreed to oblige but warned that it would not entertain any further challenges against the findings. When the petitioners brought up the case of the 79 illegal detentions accepted by the police in its first report, one of the judges remarked, "But they were released on the same day. Are you aware what 15-year-olds are capable of doing these days?"<sup>219</sup>

#### 4. Blind to injustice

Even as Supreme Court judges were asking JJC to file a fresh report, media reports emerged on the 10<sup>th</sup> of Nov. 2019, of the family of the 9-year-old listed in the JJC report, countering the state's version of events. JJC report had claimed, the boy was picked up and released the same day. The boy, an orphan, revealed that he was thrashed before being taken to the police station.

216 Section 151 of the CrPC permits the police to arrest persons if they have knowledge of a "design to commit any cognizable offence", without a warrant.

217 Alam, Mahtab. "J&K Police Denied Media Reports of Illegal Arrests of Minors. Its Own List Is Proof to Contrary." *The Wire*, November 6, 2019. <https://thewire.in/rights/kashmir-minors-2>.

218 "SC Accepts JK Juvenile Justice Committee's Findings Against Allegations Of Illegal Detention Of Children In Kashmir." *Live Law*, December 13, 2019. <https://www.livelaw.in/top-stories/sc-accepts-jk-juvenile-justice-committees-findings-that-no-children-are-illegally-detained-in-kashmir-150774>.

219 *Ibid.* SC Accepts JK Juvenile Justice Committee's Findings Against Allegations Of Illegal Detention Of Children In Kashmir <https://www.livelaw.in/top-stories/sc-accepts-jk-juvenile-justice-committees-findings-that-no-children-are-illegally-detained-in-kashmir-150774>

*"I started bleeding; but they showed no mercy and took me to the police station. My grandmother had sent me to a baker to buy bread. I showed them the loaf and told them I had no parents. But they paid no heed and locked me up for two days,"*  
(-name withheld-, 9 years)

Following his detention and release, the boy has become a recluse. He dreads moving out, "fearing re-arrest."<sup>220</sup>

The Quint reported on another child, Arif<sup>221</sup>, one of the three taken into custody from Srinagar's Soura locality in late October<sup>222</sup>:

*"We were playing in the park when we were picked up. We weren't pelting stones. The SHO (Station House Officer) came and hit us really badly. Then they pushed us into the Rakshak and hit us repeatedly. They even thrashed us with sticks. Then we went to the police station. They kept us in lockup for two days." (Arif, 10 years)*

*"I am scared that the police will pick us up again and lock us up, which is why I don't step out at all," Amir (11 years).*

The J&K JJA 2013 explicitly prohibits detention of children in police station or lock-up at any stage, and states that all dealings with apprehended children should be done in a child-friendly manner by specially trained officers or social workers.<sup>223</sup>

Earlier, *The BBC*, in a report on 23 September, spoke to 17 families whose children were detained by the police.<sup>224</sup>

*"They came around midnight. They took my husband away. Then they asked us to produce our son in exchange for my husband's release," (Mother of 14-year-old boy).*

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220 "Family of 9-Year Old Boy Counters Govt Claim - Kashmir Times." Kashmir Times, November 10, 2019. <http://www.kashmirtimes.com/newsdet.aspx?q=95375>.

221 Names changed to protect the children's identity.

222 Zahra, Masrat. "Kids Talk Night Raids, Detentions & Curfew: Kashmir's New Normal? ." The Quint, November 14, 2019. <https://www.thequint.com/videos/childrens-day-kids-talk-night-raids-detentions-and-curfew-kashmirs-new-normal>.

223 The J&K Juvenile Justice Rules, 2014, issued to operationalise the J&K JJ Act, 2013, defines the term 'child-friendly' as "any process and interpretation, attitude, environment and treatment, that is humane, considerate and in the best interest of the child."

224 "The Detained Children of Kashmir." BBC News, September 22, 2019. <https://www.bbc.com/news/av/world-asia-india-49772269/the-detained-children-of-kashmir>.

The husband, who was released later, said:

*"When I go there to see him (son), he starts crying. He says, 'why did they catch me? I didn't commit any crime. I didn't throw stones.'"*

Another man, whose son was taken away, revealed a similar story:

*"We were asleep. They (police) knocked on the door at 3.30 a.m. They said, open the door or we will break it. I got up, switched on the light and opened the door. They asked me to switch off the light. They surrounded my son with guns. I became numb. When they were taking him away, they said they would release him soon. We were pacing around the garden the whole night. I haven't seen him since then."*

Our own field research conducted through November and December 2019, where we travelled to various parts of Srinagar, Baramulla, Bandipora and parts of South Kashmir, speaking both to minors who had been detained – ages between 11 and 17 years – and to their families, confirmed the systematic targeting of juveniles that news reports seem to suggest. We came across many cases where minors had been detained and tortured in custody. Many children were detained along with adult family members, including their fathers and brothers, and were released only after repeated interventions by community members. We came across minors who were beaten ruthlessly by the police and central paramilitary personnel, resulting in serious injuries, including fractures and rupture of ear drums. Minors and their families narrated painful accounts of how children were detained and beaten in custody. In none of the cases were children produced before a Juvenile Justice Board – a mandatory requirement according to the JJ Act 2013. A common threat used against families was the booking of the children under the draconian Public Safety Act or under other sections of law, with serious penalties.

Despite all efforts, we were able only to document one case from South Kashmir, of a minor who had been booked and lodged in the sole Juvenile Home in Kashmir, at Harwan.

## Testimony

*Victim is a 16 year old male, who, the police admits was one of the 144 detained by them after 5<sup>th</sup> August 2019. Respondent and his family refused to give consent to use the victim's name, and hence names and any identifying markers have been masked. Date of interview: 12<sup>th</sup> December 2019.*

J&K Police along with paramilitary forces broke into the house of the respondent at 8 pm on 11<sup>th</sup> of August and started to ransack everything that came in their way. They smashed windows and vandalized vehicles. Police then dragged the respondent's father from his house and took him to the police station, where he was later tortured. Police asked family members to then bring the respondent to them, which they did the next day, 12<sup>th</sup> of August. Police later filed a case of stone pelting against the respondent. The respondent was detained in the police station and kept in the same cell alongside his father. The father was released from custody on 14<sup>th</sup> August. The same day, the respondent was shifted to Harwan Juvenile centre, along with three other minor detainees, where he was lodged for three further days. Respondents was eventually released from Harwan Juvenile Centre on 18<sup>th</sup> of August.

The respondent's father, a labourer, is the lone bread earner of the family. Family members said that were shattered when police took away the father and then their young son as well. They are haunted by the unsettling thoughts on the day of incident when police broke into their house – among the casualties was respondent's sister who in fear of forces, jumped out of the window, breaking her leg, and had to be hospitalised. Family members live in constant fear of the police, and are afraid of speaking to anyone. The respondent's father is worried about his family and the education of the respondent. The respondent said he was asked in school about his arrest by his classmates, but he is determined to work hard and make his family proud.

*PS: Respondent's father informed later that on 14<sup>th</sup> December, Police charged the respondent afresh, invoking Section 307 IPC (- attempt to murder, a serious charge).*

Despite evidence which was available to the court when it heard the account on 13<sup>th</sup> December, 2019, the 3-member bench, in its concluding remarks challenged the petitioners version of violations, claiming that media reports "...had not been confirmed by the independent evaluation made by the (JJ) Committee, which had been directed to investigate the same", and concluded that the bench was:

*"of the considered view that the (JJC) Committee has made an independent examination and verification of the assertions made in the writ petition alleging excesses against children committed since 05.08.2019. The Committee has also visited various jails in the erstwhile State of Jammu and Kashmir in order to verify whether any juvenile had been lodged there. Nothing adverse was noticed by the Committee to suggest commission of any excesses. We are fully satisfied with the findings recorded in the Second Report of the Committee."<sup>225</sup>*

With that, the Supreme Court bench disposed off the writ.

## **5. Kashmir: A Zone of Exception**

India is signatory to United Nations Convention on the Rights of the Child (UNCRC), ratified in 1992. Article 37 (a) of UNCRC states, no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment; Article 37 (b), that no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child 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; Article 37 (c), every child deprived of liberty shall be treated with humanity and respect; shall have the right to prompt access to legal assistance [Article 37(d)]; and states shall take all measures to protect children affected by armed conflict [Article 38 (4)]. India is also a signatory to International Covenant on Civil and Political Rights (ICCPR), ratified, 1979, which calls for accused juvenile persons to be separated from adults and brought as speedily as possible for adjudication [Article 10 (2)(B)]; and that juvenile offenders are segregated from adults [Article 10 (3)].

Indian Constitution also enjoins on the state to create conditions for healthy growth of children and protect their exploitation [Art 39 (F)]. The National Policy

<sup>225</sup> Writ Petition (Civil) 1066/2019, Enakshi Ganguly & Anr vs. Uoi. Judgement order dated 13th Dec. 2019.

for Children, 2013, calls for creating a caring, protective and safe environment for all children and commits to taking special protection measures to secure the rights and entitlements of children in need of special protection. The regime for children in conflict with the law in Jammu & Kashmir, is the J & K JJ Act 2013, a fine piece of legislation. It states, in no case shall a juvenile in conflict with law be placed in Police lock-up or lodged in a jail, [Section 11 (1)]; and no proceedings shall be instituted against the juvenile under Chapter VIII of the CrPC. [Section 18]. Other provisions are equally protective. The corresponding J&K Juvenile Justice (Care and Protection of Children) Rules, 2014, further elaborate these progressive provisions. It states, among others that juveniles shall be apprehended only in cases of his alleged involvement in serious offences entailing a punishment of 7+ years imprisonment for adults, [Section 11 (1)]; the juvenile shall not be kept in Police lock-up or jail at any stage in the course of preliminary enquiry and investigation, [Section 14 (4)]; and no juvenile shall be handcuffed, chained or tied with ropes or any other material at any stage, [Section 14 (5)].

And yet reality is so far distanced from precepts - only this is more a trend from the past, rather than a recent exception. A 2018 report examining the working of the juvenile justice system in Kashmir had noted many limitations of the J&K JJ Act, 2013. Most damningly, it had concluded that there was virtually no implementation of the JJ Act on the ground, with many of the provisions of the law being completely ignored.<sup>226</sup> The authors claimed children continued to be routinely arrested or 'picked up' by the police, as if they were adults. Police enter children's homes with guns, handcuff them during their arrest and transportation to Police station. There they are often kept for days, along with adult detainees, before ever being produced before a magistrate. But due to the police's practice of deliberately recording apprehended children as being above 18 years of age, it is difficult to estimate accurate numbers of detainees.

Lawyers at the J&K High Court confirm these trends, maintaining that the preventive detention of children in Kashmir has been continuing unabated since the 1990s. As an indicator, Advocate Shafkat Hussain, a senior lawyer has represented over 200 children booked under the PSA in the year 2016 alone.<sup>227</sup> The sheer ubiquity and arbitrariness of the use of illegal practices by the police against juveniles, whilst a juvenile justice system is in place - with

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<sup>226</sup> Bhat & Mander, 2018

<sup>227</sup> "Terrorized: Impact of Violence on the Children of Jammu and Kashmir." Jammu Kashmir Coalition of Civil Society (JKCCS), March 30, 2018. <http://jkccs.net/terrorized-impact-violence-children-jammu-and-kashmir/>.

laws, institutions and procedures - has, according to the authors, resulted in a complete breakdown of trust in the justice system.<sup>228</sup>

In 2008, the UN's Working Group on Arbitrary Detention (UNWGAD) had taken note of the prevalence of the use of arbitrary detention of children in Kashmir. Commenting on the case of 16-year-old Mehraj-ud-din Khanday, the UNWGAD remarked that his detention was not only arbitrary, but also a violation of the International Covenant on Civil and Political Rights (ICCPR), of which India is a signatory. (Box 2) A June 2018 report of the Office of the UN High Commissioner for Human Rights (OHCHR) also took note of the practice of arbitrarily detaining Kashmiri children. In October 2016, Human Rights Watch (HRW), Amnesty International and the International Commission of Jurists (ICJ) jointly called on the Indian state to cease arbitrary detentions under the J&K Public Safety Act (PSA), particularly of children.<sup>229</sup>

## 6. Conclusion

Observers have noted that no examination of the failings of the juvenile justice system in Kashmir can be complete without factoring in the region's unique political context of securitisation and militarisation. The arbitrariness of the security forces, the massive and all-pervasive surveillance state, and the state's concerted efforts to discipline Kashmiri youth using the instruments of torture, abuse and illegal detention, have all contributed to the entrenchment of a culture of oppression in the region. The first step in dismantling this culture would be to acknowledge the existence of a problem, and to commence efforts to ensure the complete disengagement of security forces from dealing with children. Instead, the state administration and the security forces have peddled lies at every level about their steadfast and systematic attempts to browbeat an entire generation into submission, thus perpetuating a vicious cycle of criminalisation and alienation.

With Jammu & Kashmir now formally downgraded to Union Territory (UT) status, essentially coming under the direct control of the central government in New Delhi, the last vestiges of hope are being stripped even from those who once clung to the possibility of a reconciliation with the Indian state. The talk in New

<sup>228</sup> Bhat & Mander, 2018:

<sup>229</sup> "India: Cease Wrongful Detentions in Jammu and Kashmir." Human Rights Watch, October 15, 2016. <https://www.hrw.org/news/2016/10/15/india-cease-wrongful-detentions-jammu-and-kashmir>.

Delhi, meanwhile, has shifted to giving the security forces in Kashmir a “free hand”. Kashmir’s children are bound to continue to be caught in the crossfires.

The Supreme Court, the highest court in the land, has in the past stressed the importance of prioritising rehabilitation and compassion when it comes to dealing with children. “It is the atmosphere of the jail which has a highly injurious effect on the mind of the child, estranging him from the society and breeding in him aversion bordering on hatred against a system which keeps in jail,” the Court had noted once.<sup>230</sup> Today, however, the Court cannot spare more than “an hour” to entertain an attempt to introduce at least a semblance of transparency and accountability.<sup>231</sup> As the supposed *parens patriae* of the children of Kashmir, the state is expected to act as the parent of all children in need of protection. Instead, justice institutions has opted to follow policies in Kashmir that inflict deep and long-lasting physical and psychological damage upon Kashmir’s innocent children. History is unlikely to judge this kindly.

## Annexure<sup>232</sup>

### Case study – 1: Baramulla district

*Baramulla district in North Kashmir was one of the areas that saw protests post the abrogation of Article 370 and also detention of many people including minors. Our researcher travelled to parts of Baramulla to speak with minors who were illegally detained. Although making time to speak with the researcher, the minor and their parents refused consent for documentation. We therefore decided not to use individual testimonies. Researchers then talked to other people in the community to corroborate the version of the minor and their families. Consent was taken to document a synthesised narrative – drawing on several interviews. There were 7 minor boys picked up from the area and kept in custody unlawfully for 3 to 4 days. The names of the victims, their families, names of villages and police station too are not being used. According to the families, Police have noted down the details of the minors and kept their pictures to be able to continue to keep up the pressure on the children and their parents*

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230 Sheela Barse & Ors vs Union of India & Ors on 13 August, 1986: <https://indiankanoon.org/doc/525548/>

231 SC Accepts JK Juvenile Justice Committee’s Findings Against Allegations Of Illegal Detention Of Children In Kashmir <https://www.livelaw.in/top-stories/sc-accepts-jk-juvenile-justice-committees-findings-that-no-children-are-illegally-detained-in-kashmir-150774>

232 The names of victims, FIR details, court details and names of village etc have been left out to protect the identity of minors.

### ***A stroll through the market***

One of the seven minors picked up from a village left home after helping his mother with household chores. He was on his way to buy medicines and was accompanied by some friends. On the highway, near a CRPF camp, the minors got involved in a protest. According to the victim's father, the minor got emotional and threw a stone at the armed forces personnel. The boy, a 13 year old was immediately apprehended by a joint team of police and CRPF who beat him ruthlessly on the road itself. The account was corroborated by a woman who happened to be an eye witness and later came looking for the boy in his village. She narrated how the armed forces had descended on the child like a 'pack of wolves hungry for blood' and how she had to look away as she feared the boy would be dead by the time the police personnel were done with him. Later when the mother of the child was informed by local boys of her son being detained, she went to the protest site to plead with the SHO of the local police station and asked the whereabouts of her son. She was redirected to the major of the Army camp who showed the mother a video of the minor taking part in a protest. By that time though the minor had been detained along with his friends, also minors in the local police station. During the detention, children all aged between 12 to 14 years, were severely beaten resulting in injuries to all of them. A couple of them were left with serious injuries; one with a fractured arm and another with a ruptured ear drum. No charges were filed against the children and they were detained unlawfully in the police station for four days, during which period the families of the minors and elders of the village repeatedly visited the police station to plead with the SHO for the children's release. For four days in succession, family members were asked to revisit the station but the children were not released. However, finally on the eve of Eid al Adha, the boys were released after the elders and the families assured the Police that their children would never be involved in any protest. The Police however told the families that they had photographed their children and taken their details for 'necessary action' in case they were found to be involved in any act against the police in the future.

### ***Deep sense of fear***

The minors that we talked to were severely traumatised; they complained of physical pain and discomfort and of recurring nightmares and sleep disturbances. The threats made by the police have affected the mobility of the minors, with families being reluctant to let them out of their sight for long. Family members of the minors have been accused by authorities of encouraging their children in

acts that they perceive as being against the law and 'detrimental to social order'. The impunity that the Police enjoys is reflected in their blatant disregard for the law – JJ Act 2013 - that is meant to protect minors from unlawful detentions. Given these circumstances it is understandable that the families do not want the cases of their minor children to be highlighted. As the father of one of the boys said to us, "we understand that our child was injured badly, but we have put it behind us. We don't want any kind of justice; we are just happy that there is no record against him right now". There is no accounting for the tremendous psychological fallouts of the detention and subsequent torture of the minors, either on them or their families. There is absolutely no mention of the costs involved in getting the treatment for the injuries these minors have sustained in detention; there is just a relief that there is no 'criminal record' against their names and their future can still be salvaged. In such a scenario, where the Indian state has managed to enter deep into minds of people to create a fear for their very existence, silence seems to be the only response.

### **Case study – 2: South Kashmir**

The detainees were held on the charges of stone-pelting on 11<sup>th</sup> of August 2019. The situation in south Kashmir was very volatile in the aftermath of abrogation of Article 370. Stone-pelting and clashes with armed forces at different place was a constant feature. On August 11, 2019 there was heavy stone-pelting on NH-44 near railway flyover. Police, on the same evening arrested one of the minors while he was travelling home on a scooter. He was then frisked, threatened and beaten up by Police personnel. "He was forced to take the name of other friends from the same village, also minors" said one of the eye-witnesses. The police along with paramilitary forces then came to the village as night was setting in for a raid. They vandalized every vehicle parked outside of the houses of residents. They forcibly entered into the houses of the other three minors and broke windows of the houses. There was a palpable fear in the air that evening and the following days. Everyone in the village seemed to be terrified by the unfolding of events. The fathers of the two minors were dragged out from their houses and taken to the nearest police station. One of the minor's father said that they were beaten ruthlessly in the police station. The police asked them to produce the accused immediately. However, when their sons were produced before the police, they were not released for two days. The accused minors were lodged in the same jail alongside their fathers, in clear violation of the juvenile justice rules. The father of one of the minors was threatened by the Police, holding him responsible for any stone-pelting incident that took place in the area in future.

The family then hired a lawyer and went to the district court to apply for bail – which was finally granted on 14th of August 2019. They children were then shifted from police lock up to Harwan Juvenile home where they were held for another three days. One of the accused, said that he felt relieved in the juvenile home because he was allowed to play and move around. They were released from the Harwan Juvenile centre on 18th of August 2019. However, the Police has filed a fresh report in the court on 14th of December and charged the four minors under section 307 IPC – attempt to murder. This is devastating news for the families.

Parents of all minors are poor – typically, fathers are labourers the only earning members of the family, mothers are carers. This incident has impacted their daily lives greatly and there is terror in their eyes as they recall the incident. The criminal proceedings has highly demoralised them and crushed their hopes of getting out of this mess. The families are worried about their sons' education and welfare. They seem to be so traumatized by the unfolding of the events.