

AMNESTY INTERNATIONAL INDIA PUBLIC STATEMENT

Bangalore, 25 June 2014

Index: ASA 20/023/2014

India: State authorities must ensure right to speedy trial under the “amnesty” scheme in Jammu and Kashmir

Amnesty International India has found evidence of possible violations of the right to a speedy trial in cases involving alleged stone-pelting in Jammu and Kashmir. The state government's efforts to respect the fair trial rights of people named in stone-pelting cases by ordering the review of more than 50 additional cases are welcome. Authorities must also avoid inordinate delay in investigating all the other pending cases.

In 2011, the J&K state government announced the introduction of an “amnesty” scheme to withdraw cases against people allegedly involved in stone-pelting that occurred during unrest in the state in 2010. As of May 2013, 230 cases of stone-pelting – out of 1,697 cases - had reportedly been withdrawn. Recent media reports say that another batch of between 50 and 56 more cases have been placed under review.

Information provided by the office of the Inspector General of Police shows that 8,072 people have been accused in cases involving stone-pelting since 2010. Cases against 1,811 people have been withdrawn. Amnesty International India has issued repeated requests for information on the status of investigations and charges filed against the accused in the remaining cases, in which 6,261 individual are accused. No response has been received from the Inspector General of Police's office.

In interviews conducted with lawyers, public prosecutors, other public officials, detainees' families, and members of civil society in 2013, Amnesty International India has encountered concerns that undue delays in investigations into stone-pelting cases are being used as a punitive measure.

Sources in the public prosecutor's office said that charges in very few cases had been filed and even fewer trials carried out in relation to stone-pelting cases. According to these sources, virtually nobody has been convicted for these offences.

Many activists and families of those with criminal investigations ongoing against them have told Amnesty International India that persons in J&K who have ongoing cases against them face difficulties in finding employment. Even though they are not detained, these individuals can face considerable uncertainty and stigma, and the risk of being detained again in order to aid investigations. It is unclear why authorities have not made more significant progress into the investigation and prosecution of these cases.

Authorities have an obligation under international law and the Constitution of India to bring cases to trial in a timely manner. Any individual charged with a crime, whether in custody or not, has the right to a fair and speedy trial. This right is tied to the right to liberty, the presumption of innocence and the right to defend oneself.

Amnesty International India acknowledges that lengthy pre-trial detention and inordinately long investigations are unfortunately common features of the criminal justice system throughout India.

Further to this, the organization urges authorities to ensure thorough and impartial investigations into the deaths of 120 individuals during the summer of 2010, allegedly from firing by security forces. Where sufficient evidence is found, those suspected of human rights violations must be prosecuted by a civilian court of law meeting international fair trial standards

On 19 June 2014, the authorities in J&K announced the re-constitution of a Commission of Inquiry into the deaths that occurred in 2010. The state government had been reluctant to re-establish the Commission as it stated in February that investigations into the majority of complaints received at the time had been completed and charges established. No security force personnel have yet been prosecuted in a civilian court. The previous Commission, constituted in 2010, did not complete its investigation within its mandated time, and lapsed.

Continued detentions under the Public Safety Act

The J&K state government told the state legislative assembly in February 2014 that there are currently 35 individuals being held in administrative detention under the Public Safety Act. In 2013, Amnesty International documented the continued detention of juveniles under the Public Safety Act, despite amendments to the Act in 2012 prohibiting the detention of those under 18 years old.

In 2011, Amnesty International reported that state authorities used the PSA to detain individuals who challenged the state through political action or peaceful dissent, thus violating their right to free speech and expression. Authorities also used the PSA to detain individuals who participated in 'stone-throwing' protests in 2010, instead of charging them with criminal offences and prosecuting them. Amnesty International noted its concern that the PSA is being used as an 'informal justice system' in J&K to secure the long-term detention of individuals instead of charging and prosecuting them in a court of law. In facilitating this failure to prosecute individuals openly and fairly, systems of administrative detention like the PSA deprive victims of justice, circumvent the safeguards of a fair trial, and undermine the rule of law.

Amnesty International reiterates its demand for the repeal of the Public Safety Act, 1978.

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