



## **India**

### **Submission by the Kashmir Institute of International Relations Islamabad for the Universal Periodic Review of India in the 13 session to be held from 21 May to 1 June 2012**

Kashmir Institute of international relation (KIIR) is a non profit, non government and non partisan organization striving for peace, conflict resolutions and human rights advocacy. KIIR contribute sufficient information during the first cycle of the UPR on India and wants to submit this information for up coming UPR of Democratic republic of India.

Despite being a member of United Nations Human rights council and its clear intention to secure its seat in United Nations Security Council, India has yet to ratify two of the main human rights treaties. UN convention against torture, other cruel and inhuman or degrading treatment or punishment and UN convention of the rights of all migrant workers and their families and the two optional protocols to international convention on civil and political rights and Indian has also yet to sign the Rome statute on international criminal court.

India has signed the convention on involuntary or enforced disappearances but has yet to ratify it. India must implement the UN Convention for the Protection of All Persons from Enforced Disappearance without reservation, including the declarations pursuant to Articles 31 and 32, to recognise the competence of the Committee on Enforced Disappearances

India also continues to display an unwillingness to cooperate with the United Nations human rights procedures and its mandate holders. Significant delays are the invitation to the special Rapporteur on extrajudicial summary execution despite the request dating back to 2000 and the special Rapporteur on torture and on the in human and degrading treatment despite the request dated back to 1993. The invitation to the working group on arbitrary detention and working group on enforced and involuntary disappearances are also outstanding.

Human rights desk of Kashmir institute of international relations remains concerned about the human rights situation in India and especially in the part of Jammu and Kashmir that remains under Indian occupation. KIIR during the first cycle of UPR submitted wealth of information on the human rights situation in IOK and the response of the Indian state is not positive. The situation remains the same and nothing has improved on human rights front. The peaceful assemblies of people are met with brute force, right to freedom assembly and expression has been muffled. Arbitrary arrest and detention, torture, disappearances, extrajudicial killings, rape has become order of the day. The Indian government has enacted a series of laws in contravention to the international human rights and humanitarian laws and even these laws violate the basic principles of human rights enshrined the Indian constitution. Laws like armed forces special powers act AFSPA 1958 enacted in IOK in 1990 and Jammu and Kashmir public safety act of 1978, Jammu and Kashmir disturbed area act of 1990, provide immunity to the security forces and other agencies from prosecution.



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Section 4 of the Armed forces Special powers act empowers ,Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area, -

(a) If he is of the opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances;

(b) if he is of the opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as a training camp for armed volunteers or utilized as a hide-out by armed gangs or absconders wanted for any offence;

(c) Arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest;

(d) Enter the search, without warrant, any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary, and seize any such property, arms, ammunition or explosive substances;

(e) Stop, search and seize any vehicle or vessel reasonably suspected to be carrying any person who is a proclaimed offender, or any person who has committed a non-cognizable offence, or against whom a reasonable suspicion exists that he has committed or is about to commit a non-cognizable offence, or any person who is carrying any arms, ammunition or explosive substance believed to be unlawfully held by him, and may, for that purpose, use such force as may be necessary to effect such stoppage, search or seizure, as the case may be.

5. Power of search to include power to break open locks, etc. Every person making a search under this Act shall have the power to break open the lock of any door, almirah, safe, box, cupboard, drawer, package or other thing, if the key thereof is withheld.

6. Arrested persons and seized property to be made over to the police. Any person arrested and taken into custody under this Act and every property, arms, ammunition or explosive substance or any vehicle or vessel seized under this Act, shall be made over to the officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest, or as the case may



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be, occasioning the seizure of such property, arms, ammunition or explosive substance or any vehicle or vessel, as the case may be.

### 7. Protection of persons acting in good faith under this Act.

No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

Jammu and Kashmir Public safety act of 1978.

The PSA provides immunity from prosecution for the officials operating under it. Those being held have no access to legal representation and cannot challenge their detention in any meaningful way. Once released they cannot seek any redress or compensation for the wrongful detention they have endured and virtually never received justice for the torture and ill-treatment.

Administrative detention does not conform to the international human rights legal obligations and the agreements which the Indian government is party to. Despite severe criticism from the international human rights organization the government of India and the authorities in Indian occupied Jammu and Kashmir have not taken any measures to repeal this lawless law and end the odious system of administrative detention once for all.

Report released by Amnesty International on 21st of March 2011, A Lawless Law; detention under the Jammu and Kashmir public safety act documents, how public safety act PSA is used to secure long term detentions of individuals against whom there is insufficient evidence for trial. Estimates of number of detained under PSA over the past decade range from 8000 to 20000, with 641 reported held from January 2011 to July 2011 alone.

Detainees include political leaders, activists, lawyers, journalists and protestors, people from civil society and all walk of life including innocent women and children. They are initially picked up for unofficial and unlawful interrogation and their access to the lawyers or to their families is strictly denied. They are physically and mentally tortured and in thousands of cases such innocent victims have been brutally murdered and buried in unmarked graves.

Those held under PSA can face up to two years in detention. The Jammu and Kashmir authorities consistently thwart high court orders for the release of illegally detained individuals by issuing successive detention orders. Many detainees are thus trapped in cycle of detention and remain, according to a high ranking police official of Jammu and Kashmir “out of circulation.”

Government of India must Repeal the PSA and end the system of administrative detentions, release all detainees or charging these 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,



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have access to relatives' legal counsel and medical examination and are held in recognized detention facilities for pending trials. Amnesty International is calling on the government of Jammu and Kashmir and the India to carry out an independent, impartial and comprehensive investigation into the allegation of abuses against detainees and their families , including allegation of torture and ill treatment , denial of visit and medical care , making its findings public and hold those responsible to account .

Torture is one of the heinous crimes against humanity. The 'United Nation's Convention Against Torture' states that torture cannot be "justified under any exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency".

It doesn't only include physical torture but psychological one as well. It is forbidden under the provisions of Universal Declaration of Human Rights, Covenant on Civil and Political Rights. There is a specific convention pertaining to it in the form of Convention Against Torture (1984). India is yet to become party to this convention despite recommendations by the National Human Rights Commission for its ratification. Common Article 3 of the Geneva Conventions prohibits its use in Non-International armed conflicts.

India is a party to Geneva Conventions. Protecting people against torture remains an obligation for Indian State under various instruments of international law. In United States, courts have declared protection against torture, a rule of customary international law thus, binding upon parties as well as non parties to various international instruments.

Human Rights groups and political formations of Indian occupied Jammu and Kashmir have always been complaining against rampant use of torture in IOK by the state and its various instruments.

Recently WikiLeaks has confirmed that torture is rampant in IOK and is commonly used against civilians. The various forms of torture enumerated in the WikiLeaks include use of rollers, electric shocks, sexual abuse, beating, suspension from ceiling, crushing of muscles and other forms of physical assault. The embassy cables leaked are based on information gathered by the International Committee of Red Cross through interviews of 1296 detainees. Of these 65% (852) reported ill treatment, 52.54% (681) complained about being subjected to torture. 38.42 % ( 498) were given electric shocks, 29.38% (381) had being suspended from ceiling, 23.3% (302) subjected to sexual assault and 22.68% (294) had suffered from crushing of muscles during torture. All the cases interviewed were from jails. Detention centers other than jails did not remain open to the delegations of Red Cross.

### **Prevention of Torture Bill**

India's Prevention of Torture Bill, PTB, 2010 was introduced and passed without a debate and consultation with the stakeholders. Considering that the bill fails to comply even with the existing Indian Penal Code and the Criminal Procedure Code, necessary interventions have been recommended by human rights groups to the Indian government to ensure that the PTB complies with national and international laws.

Bill blatantly violates the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment that India sought to ratify through enactment the PTB, 2010.



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It is an acknowledged fact that most of the torture occurs in detention centers other than jails. Thus the existence of torture in all its forms and manifestations pursued in Indian occupied Kashmir is not wholly covered by the Leaks. Rape too has been used as a mode of torture in Kashmir indiscriminately. The incidents from Shopain to Kunan poshpora are just symbols of malaise that has overtaken Kashmiri population.

Regardless of their age or their role in the freedom struggle in Kashmir, detainees are isolated for days in dark dingy, unhygienic and cramped spaces. Often, under draconian and unconstitutional laws, youth and children as young as 10 are hunted down, held and then not produced in court. Human rights lawyers in Kashmir complain that the details of the detention of these cases are not recorded, giving the forces involved impunity from prosecution. Indian central bureau of investigation CBI sets aside the inquiries of the high court and other judicial commissions formed to investigate the gang rape cases in IOK.

"Torture is a routine practice that has been going on in interrogation centers, police stations, and army camps throughout Kashmir since the beginning of the conflict in the early 1990s. In the Valley, even in the 1990s, at the start of the present uprising, stories of torture were passed on from generation to generation, along with accounts of intimidation and humiliation faced by other family members who frequently visited police stations, military and paramilitary camps and well-known places of interrogation. Torture is the element of every case of human rights abuse, be it enforced disappearance, custodial killing or detention under the draconian Public Safety Act.

The current definition does not comply with the UN Convention Against Torture and the amended/recommended text reproduces the text of the UN Convention Against Torture.

By restricting the definition of torture to "(i) grievous hurt to any person; or (ii) danger to life, limb or health (whether mental or physical) of any Person", the PTB excludes a number of offences recognized under the Indian Penal Code (IPC). The IPC also provides sentences for voluntarily causing hurt (Section 323), voluntarily causing hurt by dangerous weapons or means (Section 325), voluntarily causing hurt to extort property, or to constrain to an illegal act (Section 327), causing hurt by means of poison etc with an intent to commit an offence (328). However, by restricting definition of torture strictly to "grievous hurt", the Prevention of Torture Bill, 2010 has excluded other forms of hurt recognized under Indian Penal Code.

By lessening the punishment to 10 years under the PTB, 2010 the Government of India has effectively kept the menace of custodial death out of the purview of the Prevention of Torture Bill, 2010 and grievous hurt with dangerous weapons. Under Section 5 of the PTB, 2010 "no court shall take cognizance of an offence under this Act unless the complaint is made within six months from the date on which the offence is alleged to have been committed".

Section 6 of the PTB, 2010 states that "no court shall take cognizance of an offence



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punishable under this Act, alleged to have been committed by a public servant during the course of his employment, except with the previous sanction” of the government. The United States state department in its report on global human rights abuses has discussed situations in other countries including India. This report has dwelled at length on the gross human rights violations committed by Indian armed forces and security agencies in Indian occupied Jammu and Kashmir. The report states that there were numerous reports that the government and its agents committed arbitrary or unlawful killings, including the extrajudicial killings in India occupied Jammu and Kashmir.

Due to the total impunity enjoyed by the armed forces and Para-military forces there is no rule of law and administration justice in Indian occupied Kashmir. Rape, torture, custodial killings, disappearances, harassment and oppression against human rights defenders and print and electronic media, declared and undeclared curfew constitutes an important part of the daily life.

In short the laws enacted in Indian occupied Jammu and Kashmir are contrary to the international human rights law and international humanitarian law and violates the Universal declaration of human rights notably the article 1, article 3 article 7 article 9, and article 19.

We call up government of India to repeal all those laws which do not conform the international human rights standards, notably Armed forces special powers act, Public safety act , Jammu and Kashmir Disturbed area act and National security act which provide impunity to Indian army and other security agencies

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