



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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November 22, 2021

To
Mr. C.S Mawri,
National Focal Point - Human Rights Defenders & Assistant Registrar,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex, INA, New Delhi –110 023
Email: hrd-nhrc@nic.in

Dear Sir,

Sub: HRD Alert-India – Urgent Appeal for Action – Jammu & Kashmir: Arrest of Kashmiri human rights defender Mr. Khurram Parvez under the draconian UAPA by the National Investigation Agency.

Greetings from Human Rights Defenders Alert -India!

HRD Alert-India is a forum of Human Rights Defenders for Human Rights Defenders. It endeavours to initiate actions on behalf of Human Rights Defenders under threat or with security concerns.

We are writing to express our grave concern over the National Investigation Agency (NIA) arresting Mr. Khurram Parvez, a prominent Kashmiri HRD, under the draconian anti-terror law the Unlawful Activities Prevention Act (UAPA). We believe this is a case of reprisals against HRD like Mr. Parvez for carrying out their human rights endeavours in a non-partisan manner and covering issues pertaining to human rights abuses by the State and its security agencies. Such acts are also aimed at deterring other HRDs in Kashmir from documenting, publishing and intervening in cases of human rights violations.

About the Human Rights Defender:

Mr. Khurram Parvez (44) is the Chairperson of Asian Federation Against Involuntary Disappearances (AFAD) and Coordinator of Jammu Kashmir Coalition of Civil Society (JKCCS) which is a coalition of human rights and civil liberties organisations, based in Srinagar that works on documentation, litigation and advocacy on the human rights situation in Kashmir. Mr. Parvez is a recipient of the 2006 Reebok Human Rights Award.

Source of the Information:

Communication with other HRDs
Media reports

The Perpetrators:

National Investigation Agency (NIA)

Date of Incident:

November 22, 2021

Place of Incident:

Srinagar, Jammu & Kashmir

Background:

In October 2020, NIA conducted the raids at several locations in Kashmir including at the offices of JKCCS. These raids were conducted under the NIA FIR (No. RC-37/2020/NIA/DLI) under Section 120-B and 124-A of IPC and 17, 18, 22A, 22C, 38, 39 and 40 of the UAPA. NGOs, trusts and societies, were charged with collecting funds domestically and abroad through donations, business contributions etc. in the name of charity and various welfare activities while having links with proscribed terrorist organisations and for publishing anti-national and incriminating material to bring into hatred, contempt and disaffection towards the Government of India.

In 2016, Mr. Parvez had been slapped with the Public Safety Act (PSA). His arrest had come a day after he was barred from travelling to Geneva to participate in a session of the UN Human Rights Council. He was released after 76 days of prison after an international outcry against his arrest.

Details of the Incident:

On November 06, 2021, a case 30/2021/NIA/DLI was filed by the NIA. In the afternoon of November 22, 2021, the NIA officials conducted a raid on the office premises of JKCCS as well as the residence of Mr. Parvez in Srinagar, Kashmir. His laptop and phone were seized and he was taken for questioning to the NIA office at Church Lane.

In the evening, Mr. Parvez's family received an arrest memo under sections 50(1) and 50A(1) of the CrPC mentioning his name. At 5:55 pm on November 22, 2021, he was arrested at the NIA camp office at Church Lane in case 30/2021/NIA/DLI under sections 120B, 121 and 121A of IPC and sections 17, 18, 18B, 38 and 40 of the UAPA by Mr. G. Siva Vikram, an official of NIA. No official statement has been given by the NIA. Mr. Parvez's family was told that he will be taken to Delhi on November 23, 2021.

We believe that an internationally renowned HRD like Mr. Parvez has been arrested under the fabricated charges of the UAPA and a blatant misuse of powers to intimidate him and as an act of reprisal for covering issues pertaining to human rights abuses by the State and its security agencies and means to deter other civil society organisations in Kashmir.

We would like to highlight that the UAPA is draconian and its provisions are in violation to the underlying principles of natural justice, rule of law, due process and principles of fair trial. The United Nations Security Council Resolution 1456 states that States must ensure that any measure taken to combat terrorism must comply with all their obligations under international law in particular international human rights, refugee and humanitarian law. However, the various provisions of the UAPA run in contradiction to the international obligations of India under International law.

Arrests made under the anti-terror law UAPA assume the guilt of the accused and stand in contradiction to the underlying criminal law principle of presumption of innocence. The draconian provisions of the UAPA do not only run against the

principles of a fair trial but also violates the principle of natural justice and due process. After the recent 2019 amendments to the Act, for any allegation by a state agency, the onus to contradict the guilt is on the accused. This is in sheer violation of the natural principles of justice and moral values of democracy. It further undermines the constitutionally guaranteed right to a fair trial, creating an enormous risk of wrongful prosecution, given the intolerance of the state towards human rights activists.

The International Convention on Civil and Political Rights (ICCPR), to which India is a party stipulates that presumption of innocence is a universal human rights principle. In contradiction to this, the UAPA reverses the burden of proof. This is not only inconsistent with the fundamental norm but also impels the deliberate planting of evidence.

The provisions of UAPA are in contravention of the requirements of Article 14 of the ICCPR and General Comment No. 32. Article 14(1) provides: "...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." General Comment No. 32 clarifies that this requires access to first instance judicial remedies, and not appellate remedies as currently available under UAPA. Similarly, the absence of a hearing, the lack of a requirement for a reasoned decision, and the fact that the available review mechanisms are not impartial, all contravene the requirements of Article 14 and General Comment No. 32.

According to the Crime in India, published by the National Crime Records Bureau (NCRB), between 2014 and 2017, 68 per cent of cases under the UAPA ended in either acquittal or discharge. This clearly shows that without material evidence on record, charges under the UAPA are being levied. The legislation is being used over the years as a tool of repression — a weapon to keep people entangled in the legal system and throw people in jails for indefinite period at the fancies of the state. The UAPA gives disproportionate power to the government to implicate individuals for being proactive members of the society, ban critical thinking and criminalize dissent by designating them as terrorists.

Appeal:

We appeal to the NHRC to urgently treat this as an act of reprisal by the State and:

- Direct the concerned officials to submit to the NHRC in writing within 24 hours on grounds for arresting Mr. Khurram Parvez under the anti-terror law UAPA.
- Submit to the Government of India and the Indian Parliament expressing concerns on a series of prominent HRDs being charged under the anti-terror law UAPA and subjected to prolonged detention without trial.
- Exercise Section 12 (d) of the Protection of Human Rights Act and undertake a review of the UAPA based on the framework of international human rights law.

Looking forward to your immediate action in this regard.

Yours sincerely,



Henri Tiphagne

National Working Secretary