



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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April 29, 2020

To,
Justice (retd.) H.L. Dattu,
Chairperson,
National Human Rights Commission,
Manav Adhikar Bhawan, Block-C, GPO Complex, INA,
New Delhi – 110 023.
Email: chairnhrc@nic.in

Respected Justice (retd.) Dattu and Members of the NHRC,

Sub: Urgent Appeal for Action – Jammu & Kashmir: Cases of police intimidation and misuse of law to implicate journalists in Kashmir – Regarding

Human Rights Defenders Alert – India (HRDA) 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.

Jammu Kashmir Coalition of Civil Society (JKCCS) which is a coalition of human rights and civil liberties organizations, based in Srinagar that works on documentation, litigation and advocacy on the human rights situation in Kashmir.

We are writing to express our grave concern over the recent cases of police abusing their powers and misusing certain provisions of the law, including the draconian Unlawful Activities Prevention Act (UAPA), to intimidate and harass journalists in Kashmir. We believe these are cases of reprisals against journalists for carrying out their professional endeavours in a non-partisan manner and covering issues pertaining to human rights abuses by the State and its security agencies. Such acts of police are also aimed at deterring other journalists in Kashmir from pursuing such endeavours.

Through this petition we seek your urgent intervention in the cases mentioned in this submission and urge you to undertake independent assessments in each based on the parameters of the fundamental rights guaranteed by the Indian Constitution, more

specifically Article 19 (1) (a) – freedom of speech and expression and several Supreme Court judgements on the freedom of the press.

About the Human Rights Defenders

Ms. Masrat Zahra is a 26-year-old freelance photojournalist from Srinagar, Kashmir, and her work involves reporting on issues of encounters by security forces, protests, stone pelting incidents, funerals of militants and mourning over killings of civilians. She also covers regular life in Kashmir amid the heavy militarization. Her images often depict the side of Kashmir that is absent from mainstream media's portrayal of Kashmir.

Mr. Peerzada Ashiq is a senior journalist and special correspondent for *The Hindu*, a daily newspaper in India. His reporting has been focused on human rights issues that arise from the dense militarization of the region of Jammu & Kashmir. He was targeted for his honest reporting in the past also. On September 1, 2019, he was summoned to the Kothi Bagh Police Station in Srinagar where he was pressurised to reveal the sources of his story on detentions.

Mr. Gowher Geelani is a senior journalist, political commentator on the situation of Kashmir and author of book, 'Kashmir Rage and Reason' published in 2019 which talks about many facets in Kashmiri nationalism. He has been openly critical of the Indian government's policies with regard to Kashmir and has spoken and written extensively against the occupation and militarization of Kashmir. In the intervening night of August 31, 2019, and September 1, 2019, post the abrogation of Article 370, he was prevented by the immigration authorities at the New Delhi airport from travelling to Germany where he was to take up the editorship of *Duetche Welle*.

Date of Incident

April 18 – 21, 2020

Place of Incident

Srinagar, Jammu and Kashmir

Perpetrators

Police Personnel of Cyber Police Station, Srinagar, Jammu and Kashmir

Source of Information

Communication with the HRDs

Media Reports

Details of the Incidents

At around 4 PM on the April 18, 2020, **Ms. Masrat Zahra** received a call from the Cyber Police Station in Srinagar and was asked to pay a visit to the police station immediately. Despite her repeated requests, she was denied any reason and the policeman on the call insisted that the Superintendent of Police (SP) wanted to see her. She was told that she would know the reason after paying a visit to him. Given the restriction on movement during the COVID-19 lockdown, she could not make it to the police station. At about 5 PM, she called back the police officer and informed him about the same.

The police officer continued insisting that she should visit the police station immediately and provided a phone number on which she could call in case she was stopped by the police on the way. Despite this, Ms. Masrat Zahra could not make it to the police station.

On the same evening, Ms. Masrat Zahra consulted friends and seniors from the journalist community who showed her support and asked her to speak with the Director Information of the Jammu and Kashmir Administration. The Director Information informed her that the situation had been managed and that she should take precautions while using social media. This led her to believe that she was under surveillance and her activities on social media were being used to attack her.

On April 20, 2020, Ms. Masrat Zahra received a message from a friend who informed her that she has been booked under section 13 of Unlawful Activities Prevention Act (UAPA) and Section 505 of the Indian Penal Code (IPC)¹ in the Cyber Police Station. The *Indian Express* reported that she had been booked for “*uploading anti-national posts with criminal intention to induce the youth and promote offence against public tranquility.*”² Newspapers reported based on a tweet by the Cyber Police Station announcing charges against Ms. Masrat Zahra.

On April 21, 2020, Ms. Masrat Zahra met with the police officials at the Cyber Police Station where she responded to questions about her work. According to her, the police

¹ Section 505 of the Indian Penal Code makes statements, rumours or reports an offence if there is an intent to cause fear or alarm to the public or to any section of the public whereby a person may be induced to commit an offence against the State or against public tranquility.

² <https://www.google.com/amp/s/indianexpress.com/article/india/uapa-against-kashmir-photographer-for-posts-journalist-faces-fir-6371784/lite/>

officials told her that the case against her would be withdrawn and that she would not be arrested. But there has been no formal statement from the police about this and the FIR continues to be in place. She wasn't presented a copy of the said FIR and till today has no access to the same.

It is important to mention that the COVID-19 lockdown period was enforced in Kashmir since March 19, 2020. During this period, Ms. Masrat Zahra did not venture outside her house and spent time arranging her photo archive and sharing old pictures on her social media handles which she clicked during her journalistic endeavours.

On April 19, 2020, **Mr. Peerzada Ashiq's** news report regarding the family of a slain militant from the southern region of Kashmir Valley was published in *The Hindu*³. Based on quotes from his sources, the report stated that the kin of the slain would be allowed to exhume the body. For the said report, he attempted to contact the authorities which is on record, however, there was no response from them. Mr. Peerzada Ashiq received a call from the Cyber Police Station in Srinagar on the same day and he was questioned about the said news report and orally summoned over a call to the police station. A general FIR was also registered in this case on the same day, followed by a press conference on April 20, 2020.

On the same evening, he was orally summoned over a call to the Anantnag Police Station in South Kashmir. A general FIR that was filed stated that the details in the news report were factually incorrect and could cause fear or alarm in the minds of the public.

On April 21, 2020, Mr. Peerzada Ashiq went to the Cyber Police Station in Srinagar and then to the Anantnag Police Station in South Kashmir. He was questioned at the Anantnag Police Station, however, the FIR copy that was furnished to Mr. Peerzada Ashiq did not mention his name and not match up with the statement of the police about the fake news. This FIR under section 505 of the IPC was filed based on a written complaint by the District Magistrate of Anantnag.

³ <https://www.thehindu.com/news/national/families-of-slain-militants-given-curfew-pass/article31378804.ece>

On April 20, 2020, an FIR numbered 11/2020 under section 13 of the UAPA and Section 505 of the IPC was filed at the Cyber Police Station in Srinagar against **Mr. Gowhar Geelani** for his social media posts. The FIR states that Mr. Gowhar Geelani *“has been indulging in writings on social media which threaten the territorial integrity of India”*. He was not summoned to the police station and found out about the FIR through the press release issued by the police on the same day.

The police have claimed that certain posts, failing to mention even one post in the FIR, by Mr. Gowhar Geelani have sought to glorify terrorism in Kashmir and can be considered as ‘prejudicial to the national integrity, sovereignty and security of India’. Mr. Gowhar Geelani has not yet been interrogated by the police authority and has also not received any official communication or request regarding this FIR against him.

We would like to mention here that in February 2020, other journalists including Mr. Naseer Ganai, a senior journalist based in Srinagar who works for *The Outlook*, were also detained and questioned for their journalistic pursuits.

Misuse of Law to Harass Journalists

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 of 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 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, the charges under 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 Act 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. UAPA has been and is being rampantly used by the Indian government to stifle dissent and crush political opposition, as well as for reprisals on journalists and human rights defenders. UAPA is violative of international principles of human rights and must be repealed.

Appeals

HRDA and JKCCS are concerned with regard to misuse of IPC provisions and legal actions under the draconian UAPA against journalists and human rights defenders in Kashmir for carrying out their professional endeavours in a non-partisan manner. We believe these actions are acts of reprisals for covering issues pertaining to human rights abuses by the State and its security agencies and means to deter other journalists in Kashmir.

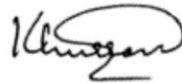
Through this petition, we submit before you three cases of intimidation and harassment of journalists by the Cyber Police Station in Srinagar. We are extremely concerned about slapping of the UAPA. It is in this context, we appeal for your urgent intervention and –

- Immediately issue directions to the Director General of Police of Jammu and Kashmir to refrain from any legal actions against Ms. Masrat Zahra, Mr. Peerzada Ashiq and Mr. Gowhar Geelani for their journalistic endeavours and exercising freedom of speech and expression.
- Direct the Director General of Police of Jammu and Kashmir to submit in writing within 72 hours the reasons for FIRs against Ms. Masrat Zahra, Mr. Peerzada Ashiq and Mr. Gowhar Geelani.
- Recommend the Director General of Police of Jammu and Kashmir to quash the FIRs against Ms. Masrat Zahra, Mr. Peerzada Ashiq and Mr. Gowhar Geelani.
- Given the reprisals against journalists, develop and issue guidelines for the police to respect, uphold and promote free speech and expression.
- As done in the past by the NHRC, exercise Section 12 (d) of the Protection of Human Rights Act and undertake a review of the UAPA based on the framework of the international human rights law.

Sincerely,



(Henri Tiphagne)
National Working Secretary
HRDA



(Khurram Parvez)
Coordinator
JKCCS