



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

No.32, Besant Road, Chokkikulam, Madurai - 625 002, Tamil Nadu, India.
P: +91-452-2531874 & 2539520 Fax: +91-452- 2531874 Mobile: 99943-68540
E.mail: hrda.india@gmail.com Web: www.hrdaindia.org

Ref No: HRDA/North/JK/07/02/2020

February 10, 2020

To,
Mr. Debindra Kundra,
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 and Kashmir: Immediate intervention for immediate medical attention of Jammu Kashmir High Court Bar Association President and Senior Advocate Miyan Abdul Qayoom – Detention under PSA in the Agra Central Jail, Uttar Pradesh – Regarding

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.

HRDA expresses grave concern regarding the deteriorating health condition of one of the most prominent lawyers and current president of Jammu Kashmir High Court Bar Association (JKHCBA) Senior Advocate Mr. Miyan Abdul Qayoom, who was lodged in the Agra Central Jail in Uttar Pradesh – over 1050 kilometres away from his home, since August 4, 2019. Mr. Qayoom is aged over 70 years and is a noted lawyer in the Jammu and Kashmir High Court. Elected for first time in 1986 as the JKHCBA president, Mr. Qayoom has been re-elected 20 times. He is currently lodged in Delhi's Tihar Jail, since February 1, 2020.

About the Human Rights Defender

Senior Advocate Mr. Miyan Abdul Qayoom is the President of the JKHCBA and has led the legal fight for hundreds of victims of state violence in the Jammu and Kashmir High Court. Mr. Qayoom has been providing free legal aid to the poor and needy detainees.

Mr. Qayoom suffers from multiple ailments, including diabetes, double vessel heart disease and survives only on one kidney.

On the intervening night of August 4-5, 2019, Mr. Qayoom along with scores of other Kashmiri leaders, activists, and political workers, was arrested by the Jammu and Kashmir Police and booked under the repressive Public Safety Act (PSA). On August 8, 2019, Mr. Qayoom was shifted to the Agra Central Jail in Uttar Pradesh. The arrest of Qayoom was part of the mass crackdown by state to stifle any dissent arising out of the abrogation of Article 370 of the Indian constitution and bifurcating the state into two union territories.

Source of Information on the Incident

- The Coordinator of HRDA for the North of India
- Communication with HRDs from Jammu and Kashmir Coalition of Civil Society

The Perpetrators

- Jail Authorities at the Agra Central Jail, Agra, Uttar Pradesh
- District Commissioner, Srinagar
- Jammu and Kashmir Administration, Srinagar

Date and Place of incident

- Arrest under PSA on the intervening night of August 4-5, 2019
- Hospitalisation in Agra on January 29, 2020
- Transfer to New Delhi's Tihar Jail on February 1, 2020

Details of the Incident

According to the information received, without any proper medical care, Mr. Qayoom was battling multiple ailments inside the Agra Jail in Uttar Pradesh. HRDA was informed that on the evening of January 29, 2020, Mr. Qayoom's family received a call from jail authorities in Agra informing them that he has developed health issues in the jail. The family was told that he had been shifted to the SN Medical College after complaining of chest pain. The jail authorities asked the family members to visit Mr. Qayoom at the jail. Upon reaching the Agra Central Jail on the very next day, i.e. January 30, 2020, Mr. Qayoom's relative found that he had been shifted back to the jail dispensary – even though his health condition was still bad. Mr. Qayoom suffers from 60 percent artery

blockade in his heart besides being diabetic and having issues in his kidney and needed immediate medical attention and treatment. The family fears that if immediate medical attention is not provided to Mr. Qayoom, it could be fatal.

According to the Jammu and Kashmir Coalition of Civil Society (JKCCS), Mr. Qayoom's heart rate has significantly dropped to 44 pm, which can be fatal and requires angiography or possibly an open-heart surgery for his blocked artery. According to the JKCCS, Mr. Qayoom had difficulty in breathing and could barely walk.

According to the Press Release of the 'Extra Ordinary General-Body Meeting of the J&K High Court Bar Association', dated January 31, 2020, 3 ECG's and 1 Echocardiography Cardiography was conducted on Mr. Qayoom at the Agra Hospital. All test reports indicated serious problems including artery blockage of 60% which is near fatal at his age. His illness has aggravated to such an extent that he has been unable to walk for the past 2 days due to breathlessness and severe chest pain and has been relegated to a wheelchair. Further, Mr. Qayoom has suffered complete neglect at the Agra Hospital, where he was given nothing to eat despite being diabetic for the entire day. There was no drinking water available to him other than 1 water bottle he had bought along with him from the jail and he had to bear with this torment for the entire night. Subsequent to all the various tests and identification of serious health ailments, he was discharged the next day anyhow. His health quickly worsened as soon as he was back in prison and was in grave pain and required immediate advanced treatment.

It was reported that Mr. Qayoom was shifted to the Tihar Jail in New Delhi on February 1, 2020 at around 8 PM. He continues to suffer from life threatening multiple ailments which needs to be addressed forthwith without any delay.

Additional Submissions

In addition to drawing the urgent attention on the Hon'ble Commission to the deteriorating health of Mr. Qayoom, HRDA would like to submit that the PSA allows for administrative detention for up to two years "in the case of persons acting in any manner prejudicial to the security of the State," and for administrative detention of up to one year where "any person is acting in any manner prejudicial to the maintenance of public order". Under Section 8 of the PSA, a Divisional Commissioner or a District Magistrate - both executive authorities - may issue a detention order to prevent any person from acting in a manner prejudicial to the "security of the State or the maintenance of the public order". As per Section 22, "no suit, prosecution or any other legal proceeding shall lie against any

person for anything done or intended to be done in good faith” under the PSA. The J&K government has not framed any rules or standard operating procedures, as required under Section 23 of the PSA, to be followed by the executive authorities who pass detention orders under the PSA.

Hon’ble Commission must note that that the PSA is not in accordance with the international human rights law and since 1978 several governments and administrations have misused it to curb dissent. PSA restricts fundamental freedoms guaranteed by the Indian Constitution and provisions of the Universal Declaration of Human Rights and the International Convention on Civil and Political Rights, i.e. freedom of association, freedom of speech, freedom of movement and impose restrictions on the rights to a fair trial.

A three-judge bench of the Supreme Court in the case *Rekha vs State of Tamil Nadu* stated that *"Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law..... however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles."*

In the case of *V.Shantha vs State of Telengana*, the Supreme Court stated that *"Preventive detention cannot be resorted to when sufficient remedies are available under the general laws of the land for any omission or commission under such laws... The order of preventive detention, though based on the subjective satisfaction of the detaining authority, is nonetheless a serious matter, affecting the life and liberty of the citizen under Articles 14, 19, 21 and 22 of the Constitution. The power being statutory in nature, its exercise has to be within the limitations of the statute, and must be exercised for the purpose the power is conferred... if the power is misused, or abused for collateral purposes, and is based on grounds beyond the statute, takes into consideration extraneous or irrelevant materials, it will stand vitiated as being in colourable exercise of power."*

In addition to the above, HRDA would like to submit that HRDA’s petition dated September 9, 2019, numbered as 106/09/09/2019, expressing concerns on grave human rights violations in Jammu and Kashmir, including arrests under PSA, is still not being responded by the two respondents, i.e. the Secretary, Ministry of

Home Affairs, Government of India and the Chief Secretary, Jammu and Kashmir. Hon'ble Commission has heard this matter on three occasions (September 9, 2019, November 6, 2019 and January 29, 2020) and ignoring the serious human rights concerns, only allowed additional time to the respondents.

Appeal

- Direct the Jammu and Kashmir Administration, Director General of Prisons – Uttar Pradesh and Director General of Prisons – Delhi to urgently submit all the health assessment records pertaining to Senior Advocate Mr. Miyan Abdul Qayoom during his entire period of his detention since August 4-5, 2019.
- Order for Senior Advocate Mr. Miyan Abdul Qayoom's medical assessment to be made by a team of medical experts from the All India Institute of Medical Sciences (AIIMS), New Delhi, with all the cost being borne by the Government of India and Jammu and Kashmir Administration.
- Based on the above-mentioned assessment, order proper medical procedures and treatment, with all the cost being borne by the Government of India and Jammu and Kashmir Administration, in a hospital – government or private – at the choice of Senior Advocate Mr. Miyan Abdul Qayoom or his family.
- Exercise powers under the Protection of Human Rights Act 1993 and undertake an independent investigation in the PSA arrest of Senior Advocate Mr. Miyan Abdul Qayoom. This is a case of indiscriminate and arbitrary use of PSA and it shouldn't be restricted to calling for comments from the authorities. Given that over six months have lapsed after his arrest and this being determined by a non-judicial administrative tribunal, the Hon'ble Commission should also note the urgency in this matter as the life and liberty of Senior Advocate Mr. Miyan Abdul Qayoom guaranteed by Articles 14, 19 and 21 of the Indian Constitution is being affected.

Yours Sincerely,



(Henri Tiphagne)

National Working Secretary