



General Assembly

Distr.: General
14 March 2024

English only

Human Rights Council

Fifty-fourth session

11 September–13 October 2023

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by World Muslim Congress, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 August 2023]

* Issued as received, in the language of submission only.



Flawed Criminal Justice System in Indian Administered Jammu and Kashmir

India's claim to fame as the largest democracy fails the test as its judiciary continually displays gross and crude bias against everyone but the elite and right-wing Hindus. India's democratic deficit and judicial partisanship are laid bare in the Indian-Administered Jammu and Kashmir. The administration does not even pretend to respect the judicial process. There is not even a semblance of a functional justice system as everything is justified or tolerated in the name of security and so-called national interest. When Justice Chandrachud presently Chief Justice of India publicly acknowledged the unending number of cases pending before courts for granting bail to under trial, he struck a chord with the people of Indian Administered Jammu and Kashmir because denial of bail is the norm in Indian Administered Jammu and Kashmir. Even in cases where bail is finally granted after a criminally long process, the investigation agencies rush to book the accused under new cases on flimsy grounds invoking draconian anti-terror laws. The case in point is well-known Journalist Fahad Shah, who wrote a report shedding light on the ground realities unfolding in Indian Administered Jammu and Kashmir and has been incarcerated since under a plethora of unfounded cases just to deny him freedom.

Human Rights activist and coordinator Jammu Kashmir Collation of Civil Society Khuram Parvez who was awarded the Martin Ennals Award, one of the world's most prestigious human rights prizes, and named as one of the 100 most influential people of 2022 by the United States of America-based Time Magazine was booked by the National Investigation Agency under the draconian Unlawful Activities (Prevention) Act. Despite getting bail from the courts, he remains in chains since his arrest on 22 November 2021. It is almost two years now and the authorities have yet to prove any of his alleged crimes.

The role of judiciary in Indian Administered Jammu and Kashmir after the abrogation of its special status on 5th August 2019, presents a paradox of Indian democracy. Although the courts in Indian Administered Jammu and Kashmir operate under the same structure and fundamental laws as courts in the rest of India Justice is one of the main commodities that is unavailable to Kashmiris. Article 226 of the Indian Constitution grants the state High Court power to issue and enforce writs to protect fundamental rights, including habeas corpus and mandamus but the justice system—both the courts themselves and the legal process for victims seeking to bring human rights claims—falls way short of international standards. The legal fraternity is of the view that although “the system is the same as the rest of India, governed by the same constitution, and the same set of laws, there is a difference in outcome in Indian Administered Jammu and Kashmir.

In the past the judiciary has, on occasions, tried to assert, and addressed some cases on merit and snubbed the administration, however, after the Hindu extremist BJP's ascent to power, the judiciary works under constant pressure, where executive and military prerogatives are regarded as sacrosanct. The people of the state are of the considered opinion that the judiciary is functioning as a branch of the BJP government and by design refuses to dispense any relief to the victims of the state. As such, the judiciary plays an instrumental role in ensuring the Indian government's ability to maintain its control over Indian Administered Jammu and Kashmir and combat those who demand the implementation of Indian commitments to Kashmiris – the promise of right to self-determination as enunciated via the United Nations resolutions on Indian Administered Jammu and Kashmir.

The deliberate immobilization of legal structure in Indian Administered Jammu and Kashmir violates basic tenets of international human rights law and the Indian Constitution. Litigants routinely ask the court system to respond to claims against security forces for human rights violations that include a litany of assault, torture, rape, extrajudicial killings, and arbitrary detention.

In becoming a party to key international human rights treaties, India pledged to ensure effective remedies were available to the victims of such human rights abuses. As part of a remedy for gross human rights violations, India may be required to effectively prosecute perpetrators. However, India fails to meet its international obligations.

Government actors refuse to investigate claims, refuse to participate in investigations and prosecutions, and ignore their participation in proceedings concerning human rights claims. The Kashmiri court system is riddled with delays and backlogs that deny victims effective and timely remedies. It also applies procedural double standards for claimants and the military that are favorable to the latter. By failing to ensure effective remedies to the victims of human rights abuses in Indian Administered Jammu and Kashmir, India violates its international treaty obligations.

International law gives detained persons the right to challenge in court the lawfulness of their detention. In Indian Administered Jammu and Kashmir, detained persons may challenge their confinement by seeking a writ of habeas corpus, which requires the legal system to respond to claims of illegal detention. India has ratified international conventions that require it to ensure that no one is subjected to arbitrary arrest or detention or deprived of liberty, except in accordance with grounds and procedures established by law. India is also obligated under international human rights law to bring all detained persons before a judge “promptly” and to give all persons the right to trial “within a reasonable time” or to release them.

Various reports have brought to the fore the despicable state of under-trials in Indian-Administered Jammu and Kashmir. It is appalling that jails across Indian Administered Jammu and Kashmir are overflowing with prisoners beyond their holding capacity, while about 90 percent of the jailed are under trial. Moreover, less than two percent of all individuals arrested for asking implementation of UN resolutions have been convicted. The proportion of under-trials to convicted prisons in Indian Administered Jammu and Kashmir is much higher than India’s national average of seventy percent in all jails, according to National Crime Record Bureau India.

Indian Administered Jammu and Kashmir has the largest under-trial population as compared to other Indian states and the trials have been pending for decades and the accused person is condemned to suffer inordinate periods of imprisonment while still awaiting trial. It has become a general practice that law enforcement agencies, instead of conducting an investigation into the alleged offenses committed at one time and taking steps for ascertaining complete facts and circumstances, make piecemeal investigations on arresting the accused and filing police report/challan against them one after other for years. The apathy is that the courts have refused to respond to endemic, continued, and willful negligence on the part of Indian military forces that has institutionalized the practice of rotting Kashmiri detainees in prisons for decades. Although the Supreme Court of India has reiterated time and again that pre-trial detention can only be justified if there is a real anticipation of the accused person prejudicing the trial, influencing witnesses, or absconding, in Indian Administered Jammu and Kashmir, India operates a brutal wherewithal that justifies every ilk of departure from the constitutionally or internationally approved legal norm and practice.
