**Repugnance of government to adopt a democratic-conciliatory approach towards Kashmir**

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Last month a picture of former chief minister of erstwhile Jammu and [Kashmir](https://dailytimes.com.pk/480088/indian-fire-kills-woman-in-azad-jammu-and-kashmir-police/) State, Omar Abdullah got viral on social media, wherein his long grown grey beard was the point of discussion. The mainstream media also carried clips in their news bulletin, showing the condition of former chief minister, who has been in preventive detention since August 4, 2019. Not only Omar Abdullah, but three times chief minister and current Member of Parliament Dr Farooq Abdullah and former chief minister and allied partner of Bhartiya Janta Party (BJP) Mehbooba Mufti are also reeling under house arrest. In addition to these bigwigs of the erstwhile state, many democratically elected leaders and politicians have also been in custody since last more than six months. These were the people in Kashmir, who braved all challenges and situations to keep Jammu and Kashmir integrated with the union of India, despite huge resistance from the separatist groups, apparently supported by Pakistan.

These democratic leaders were optimistic about their role in negotiating Kashmir issue out of this impasse of more than seven decades by carrying the torch of democracy in Jammu and Kashmir despite facing criticism and low voter turnout, with only motive to keep Jammu and Kashmir a part of India, but this hopefulness could not last long when all of them were invoked with the draconian Public Safety Act (PSA) 1978. The invocation of the Public Safety Act (PSA) against senior political leaders in Jammu and Kashmir has, once again, underscored the aversion on the part of the union government to adopt a democratic-conciliatory approach towards Kashmir.

The scrapping of Article 370 and demotion of the state into union territory washed away the hopes that these democratic leaders had from the centre and it ended a concept of mainstream politics in Jammu and Kashmir by converting all Kashmiri leaders into separatist leaders or treating them like separatists. What clarifies such excess against the mainstream democratic leaders who have continuously participated in electoral processes and stood by the rule of law as given in the Constitution? The dossiers prepared by the Jammu and Kashmir police against these leaders are terribly inadequate to establish any case against them by way of presenting conclusive proof of the threat they pose to public security and maintenance of order. In fact, some charges against the leaders of the NC and PDP are evidently absurd and some also the stench of suitable and selective targeting.

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A topper of the Indian Administrative Services (IAS) Shah Faesal, 37, resigned from his promising administrative job and jumped into J&K democratic politics had high ambitions that he will change the course of problems people in the erstwhile state are confronting. In his resignation Shah Faesal cited among other things, a reason of “unabated killings” in Kashmir. His mission to launch a new democratic outfit was to protest the “unabated killings in Kashmir and marginalization of Indian Muslims. He also expressed his desire to work for peaceful resolution of the Kashmir issue according to the wishes and aspirations of the people. Through his political outfit Faesal announced promising a youth-oriented politics and to become a voice to help bridge the gap between the state and the Centre and India and Pakistan.

After the abrogation of Article 370 and downgrading the status of Jammu and Kashmir (J&K) Shah Faesal, who was bound for Istanbul, was detained at the Indira Gandhi International Airport during the intervening night of August 13 and August 14. He was brought back to Srinagar and put under house arrest. Later, Faesal was detained under Public Safety Act (PSA) 1978 like several other democratic leaders of J&K. Shah Faesal has moved a habeas corpus plea in Delhi HC challenging his detention at the Delhi airport on August 14. Even before his political outfit could take off, he finds himself in jail.

The leaders like Naeem Akhtar, National congress General Secretary Ali Muhammad Sagar, former NC MLC Bashir Veeri and PDP leader Sartaj Madni — the maternal uncle of Mehbooba Mufti. Besides these top leaders, dozens of other leaders and young boys have been under detention since August 5, last.

Considering the dossiers, if these leaders pose any grave threat to security and order, why were they not booked under the PSA in the first place? Since their previous actions have been cited as evidence, why was the ruling party at the centre having discussions with or working together in the government with these very forces despite the knowledge of the same? No reasonable explanation given to these logical questions is forthcoming from the government, and thus, it appears that the action against these leaders is not based on any serious investigation. Instead, this is a manifestation of the executive intent that seeks to throttle the mainstream democratic voices in Kashmir as their unimpeded expression is deemed inconvenient. In fact, the Prime Minister himself justified the detention of the leaders by arguing that some of their statements were unacceptable. While the factual basis of this argument itself appears to be on shaky grounds, a deeper problem with this line is the arbitrary and subjective definition of acceptability. If acceptability for the continuance of the government-sponsored narrative is the yardstick, then the existence of political opposition itself would be redundant.

In response to Omar Abdullah’s sister Sara Abdullah Pilot petition challenging his detention in the Supreme Court sought response from the Jammu and Kashmir administration. Sara Abdullah Pilot on Friday (February 14, 2020) last said all Kashmiris should have the same rights as other citizens of the country.

Under the PSA, the purpose of preventive detention is to prevent crime, the intention is to bypass the lengthy legal procedures such as those of a criminal trial which would defeat the law’s purpose. Preventive detention processes come without procedural fairness which one takes for granted in regular criminal law. Under the PSA there is no need for a person arrested under the exceptional preventive detention process to be informed of the grounds immediately. One is not required to be produced before a court. All the grounds of arrest and decision to arrest is based on executive assessment, which can’t be challenged in the court of law. There is no judicial requirement to produce the detenu in the court where detention not beyond three months. And even in those cases which go to a Tribunal comprising judges, there is no public hearing involved and no guaranteed oral hearing for the detenu. Even court orders or judgments are not published about the ultimate decision. During the legal process, there is no right to legal assistance for detenues. The only legal remedy available is to file a writ of habeas corpus before the High Court, where only preventive detention orders can be tested on limited grounds. There is no provision to undertake a full-scale review of this executive process.

Public Safety Act of 1978, which allows for detention without trial for up to two years. The arrest and detention of persons without requiring them to face a public trial, which is driven towards proving innocence or guilt of an accused person alleged to have committed an offence is referred to as ‘preventive detention’ in Indian law. Preventive detention statutes exist at both the national and state levels and are intended to serve as effective measures to prevent the occurrence of crime. These different statutes adopt a similar logic. Under these laws, executive officers such as District Magistrates and Commissioners of Police are empowered to pass orders for arrest and to take persons into custody.

These powers can be exercised if the officers are “satisfied” that the person’s conduct is posing a risk to certain kinds of interests that the law deems important. For instance, the National Security Act of 1980 permits arrest and detention of persons when it is in the interest of maintaining “public order”, which can occur even without any allegations of the person breaking any existing laws.

According to the Crime in India Report for 2018 released by the National Crime Records Bureau (NCRB) about one lakh people were arrested and detained under Exceptional circumstances and justified with exceptional measures. According to the human rights activists, there is hardly any scope for justice under this obnoxious act. The courts in India also refrain from going too deep into the issues of human rights and liberty and litigants do not have much faith in them. The detenus do not hope a fair train and expect justice under the PSA and other similar prevention acts prevailing in India.

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