

Kashmir has ignored its juvenile justice law for years and is now moving to weaken it

Friday 29 March 2019, by [BHAT Mohsin Alam](#), [MANDER Suroor](#) (Date first published: 26 March 2019).

In a militarised state known to treat minor offenders as adults, move to lower the age of juvenility to 16 years in cases of 'heinous offences' is alarming.

In late summer of 2017, 16-year old Junaid* waited for his turn at Srinagar's Bemina district court. He was visibly disoriented and shuffled in his chair uncomfortably as he spoke of the criminal cases against him. He broke into inaudible whispers as he spoke, almost inviting the family elders with him to fill the silences.

The police had picked him up on what he claimed were false charges of "stone-pelting" in 2012. They had kept him in the police station without informing his parents, and eventually formalised the charges against him after not recording a formal arrest for days. Since then, he was required to visit the chief judicial magistrate almost every month, waiting for the police to proceed in the case. Like most cases against juveniles, the police investigation had not moved an inch.

"I just need permission to go to Punjab and continue my education in peace," he murmured. He could not, at least till the chief judicial magistrate permitted him or the police closed the case. Another few days and he would miss the academic session.

Over the last few years, as photographs of Kashmiri girls and boys participating in protests in the Valley started circulating widely, the bulk of the media's focus has been - and deservedly so - on the security forces inflicting violence, particularly by using pellet guns, especially against children. The grave limitations of the legal process, as in the case of children like Junaid, have received less attention.

As India hits another low in the politics of Kashmir, with an outpouring of hate against Kashmiris after the February 14 Pulwama suicide attack, and the likelihood of state reprisals on the streets in the upcoming summer, it is necessary to take another close look at how the criminal justice system treats the children of the Kashmir Valley.

During research for our 2018 report on juvenile justice in Jammu and Kashmir titled [Purgatory in Kashmir](#) we found that Junaid's story is ubiquitous across the state. Children, sometimes as young as 14 years, have been mistreated by security forces and faced unending criminal proceedings, which has often led to severe psychological and social consequences.

Violation of juvenile rights

With the scale of state violence to suppress popular protests having escalated in Kashmir since the killing of Hizbul Mujahideen commander Burhan Wani by security forces in 2016, the Jammu and Kashmir government has completely failed to enforce its own laws regarding juveniles.

Under the state's juvenile justice laws, children must not be arrested or placed under the control of

regular police officials, kept in custody with adults, or face criminal proceedings meant for adults. Rather, a separate system – constituting juvenile boards, observation homes and special police units – has to be created that is least coercive and is oriented towards the best interests of the child.

Apart from these infrastructural aspects, the state's laws – in line with India's national and international legal commitments – require sensitive institutional practices that aim to re-integrate and rehabilitate juveniles, and not lead to their criminalisation and incarceration.

The reason for this is obvious. We as a society must take full responsibility for children who are in conflict with the law. This responsibility is even more profound in cases where children face grave and potentially irretrievable circumstances.

The state, however, has most catastrophically failed at each of its responsibilities. While researching our report, we found that children were consistently being treated as adults, arrested by regular police and incarcerated with adults. There was only one juvenile home in the whole of Kashmir. The cases involving juveniles were being heard by the regular criminal court under regular proceedings, in complete violation of the law.

Flawed response

Since then, because of the involvement of the Jammu and Kashmir High Court and immense local pressure, the government has shown some signs of implementing the juvenile justice regime. But the sole focus of this has been on investing in physical infrastructure like juvenile homes and juvenile justice boards, without addressing the equally serious issue of institutional culture.

This attitude of the state government is obvious from the fact that it has not facilitated a single meaningful and sustained dialogue with members of civil society on the nature of security practices in the state.

To make matters worse, [reports suggest that the state is seriously considering bringing down the age of juvenility](#) to 16 years in cases of “heinous offences” by bringing an [amendment to the current law](#).

The tragedy of Kashmir is that right at the moment when the government has started taking its first small steps towards the implementation of juvenile justice after years of indifference, it appears to be adamant on weakening the legal framework at the expense of children.

The only explanation for this is that either the government has decided to be criminally negligent to the condition of juveniles in Jammu and Kashmir, or it is completely oblivious of the state's oppressive security practices.

Oppressive institutional culture

Perhaps the most pertinent example of the deeply entrenched and harmful institutional culture of policing in Kashmir is the manner in which the security forces exercise arbitrary power.

Numerous children like Junaid have been booked under anonymous and omnibus first information reports that are vaguely drafted – with phrases like “large mob” or “unidentified mob” and covering a vast geographical area – to allow the police to proceed practically against anyone. These “open FIRs”, as they are often called in local parlance, give the police arbitrary power to continuously book the same juvenile under different first information reports in case they manage to get bail from court. We encountered numerous stories where this allowed security officials to extort money from families.

On some occasions, the police have booked more than 50 children from completely different parts of Srinagar for the same incident under such FIRs. Since the children or their parents neither know each other nor have ever met, coordinating their defence together against the same FIR is practically impossible.

This has created a spiral of criminalisation of juveniles in the Valley. Once a juvenile enters the police records, he is likely to be continuously booked and made to report to police stations frequently. On many occasions children were forced to pick the court hearing over their exam dates under the fear of further harassment from the police and the legal system. The unending criminal trials – which are never concluded owing to police inaction – push the families towards despondency and economic ruin.

Through all this, ironically, the legal process has become a way to threaten children and parents. Lawyers in the Valley report that parents are often unable to legally proceed against police officials who illegally detain juveniles in the fear that they would formalise the charges – pushing their children into an unending spiral of criminalisation. On occasions where action was sought against the police, adult male family members were also picked up and illegally detained.

All this is made possible by the climate of fear the increasing militarisation in the Valley has created. The vast security apparatus present in Kashmir has been activated against children. In the course of our research, we heard reports of the police entering school premises and using video recordings of protests to monitor juveniles and maintain surveillance.

This context – where the security forces are known to exercise arbitrary power against juveniles – makes the attempt to lower the age of juvenility to 16 years of age in the cases of “heinous offences” particularly alarming. Most children in conflict with the law currently in the state’s observation home face charges of rioting and “stone-pelting”. Since the category of “heinous offences” is vague, it will not be surprising that these charges will be interpreted to be serious enough to be included within it. This will essentially bring almost every juvenile in conflict with the law under this exception, making the state’s juvenile law practically toothless.

The fact that arbitrary state power gets a free hand in Kashmir, which is also a heavily militarised region, makes it clear that any administrative measure, which claims to implement juvenile justice in the Valley but without addressing the deeply entrenched institutional culture of policing, is misdirected and futile.

**Name changed to protect his identity.*

Mohsin Alam Bhat is an assistant professor and Executive-Director of the Centre for Public Interest Law at the Jindal Global Law School. Suroor Mander is a human rights lawyer coordinating legal support to victims of lynching.

Mohsin Alam Bhat
Suroor Mander

[Click here](#) to subscribe to our weekly newsletters in English and or French. You will receive one email every Monday containing links to all articles published in the last 7 days.

P.S.

Scroll.in, March 26, 2019

<https://scroll.in/article/914985/kashmir-has-ignored-its-juvenile-justice-law-for-years-and-is-now-moving-to-weaken-it>