

A Guide to the Resolution of the Kashmir Issue and Frequently Asked Questions Since the August 2019 Siege of Kashmir

Kashmir Scholars
Consultative Action
Network (KSCAN)

December 1, 2020

About KSCAN

The Kashmir Scholars Consultative and Action Network is an interdisciplinary group of scholars of various nationalities engaged in research on the region of Kashmir. Our research on the Kashmir conflict addresses its history, its consequences for the region and beyond, and its possible resolution. It examines the implications for an internationally mediated political solution, and is of relevance to policy makers.

KSCAN Values

Kashmir Scholars Consultative Action Network (KSCAN) is a voluntary group of scholars and researchers nominated by peers, who are intellectually engaged with Kashmir. KSCAN is committed to the generation of research and scholarship in service of a just and peaceful resolution of the Kashmir conflict, a resolution centered on the experiences and aspirations of all the peoples of the historic state of Jammu and Kashmir.

KSCAN scholars use strongly-grounded evidence, historical and current analyses, critical methodologies, and rigorous scholarship towards enabling informed, reasoned and productive debates about contentious issues – issues that are contentious precisely because they entail historically inequitable power differentials and resultant struggles. We are committed to promoting inclusive narratives, perspectives, experiences, and aspirations of all the Indigenous peoples across different regions of the historic state of Jammu and Kashmir. We feature Kashmiri¹ experiences and voices in our work, as the perspectives and desires of Kashmiris are routinely overlooked in policy deliberations and popular debates by existing nation-states. KSCAN members include scholars and researchers from the humanities, social sciences, sciences, and other professional fields. Our collective expertise derives from our training in multiple disciplines, and we believe that such interdisciplinary thinking is necessary for understanding the complex and dynamic situations that routinely unfold in Kashmir.

KSCAN scholars adhere to the professional ideals of evidence, critical analysis, and academic rigor in scholarship and research, having published widely in peer-reviewed journals. KSCAN scholars uphold the highest standards of ethical conduct of research, which include, but are not limited to, protecting marginalized individuals and groups.

KSCAN members abide by their values and execute their work under the most difficult of circumstances, as on-the-ground research is not only difficult, but also routinely thwarted by state forces. Since our writing draws attention to the historic oppression of the Kashmiri people, our member-scholars' academic freedoms are routinely under threat from ethnonationalist and supremacist individuals and groups unsettled by our members' critical scholarship and research. We often face targeted online harassment. We nevertheless remain committed to generating knowledge that advances transformative and just political processes and outcomes for all Kashmiris.

¹Kashmiri refers to all the peoples previously known as the state subjects of the historic state of Jammu and Kashmir.

Overview

On August 5, 2019, Indian-administered Kashmir's (IAJK) semi-autonomous status was revoked and the internationally disputed territory was formally annexed. Since then, Kashmir has been under a siege. Misrepresenting the issue of Kashmir and creating false narratives of “progress” and “development” has been a deliberate goal of the current ethno-nationalist government of India's ruling Bharatiya Janata Party (BJP). While the Government of India claims that ending autonomy of IAJK will bring about “normalcy” and “development,” the reality is preponderance of abnormality in all aspects of Kashmiris' life. The annexation of Kashmir has sped up the process of settler colonialism and demographic change with direct impact on the health and wellbeing of the people of Kashmir. With lack of access to basic education, internet blackout, insufficient health care, destroyed economy, and extraction of land and resources, the landscape of Kashmir has dramatically been altered since August 2019.

This guide proposes a resolution to the Kashmir conflict and also helps answer some of the myths and falsehoods promoted to silence dissent within Kashmir, and scrutiny from outside. The oppression of ordinary Kashmiris continues as the world turns a blind eye to Indian atrocities in the world's most militarized zone, threatening peace and stability in the region.

A ‘[Genocide Alert](#)’ has been issued for Kashmir by Genocide Watch. This is a far advancing genocide that the international community has the responsibility to prevent. “Genocide Watch calls upon the United Nations and its members to warn India not to commit genocide in Kashmir.” Given the evidence of high scale atrocities against Kashmiris by Indian armed forces, the approximately one million Indian armed troops in Kashmir are a threat to the safety and security of Kashmiri people. Kashmir needs to be demilitarized immediately.

This document is the result of work of a diverse group of Kashmir scholars that includes political scientists, historians, economists, planners, sociologists, anthropologists, critical race theory experts, scholars of art and literature, media and legal experts.

For further reading and research a compilation of media articles published for more than year since August 5, 2019 is also included.

Kashmir Scholars Consultative Action Network

<http://www.kashmirscholarsnetwork.org>

Email: kashmirscholarsnetwork@protonmail.org

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1 Resolving Kashmir

A guide to the conflict and steps to a just and peaceful resolution in accordance with the Kashmiri right to self-determination

1.1 The Current Crisis

On August 5, 2019, India unilaterally revoked² Kashmir's special status under Article 370 of the Indian Constitution. The reorganized state of Jammu and Kashmir is now divided into two union territories ruled directly from New Delhi. This announcement by the Indian Government, led by the ruling Bharatiya Janata Party (BJP) and implementing the agenda of the right-wing Hindu majoritarian nationalist ideology³, opens up Kashmir to settlement by outsiders who were previously restricted from purchasing land in the region. This raises fears of a rush of Indian settlers into Kashmir and corporate buyouts of land, leading to intentional demographic changes⁴ in the region.

However, this unilateral Indian action does not change the status of Kashmir as a disputed territory, to be resolved in accordance with UN Security Council resolutions 47⁵ and 39⁶ on the basis of the principle of self-determination⁷.

The revocation of Article 370 was preceded by a massive buildup of troops⁸ in the region. As many as 40,000 additional Indian troops from military and paramilitary units have joined the approximately 750,000 troops already stationed in the region. Laws such as the Public Safety Act (PSA, 1978)⁹ and Armed Forces Special Powers Act (AFSPA) (1990)¹⁰ give Indian security forces permission to shoot, arrest, or raid the home of anyone who is seen as a potential security threat, without any judicial or civil oversight. AFSPA gives army personnel impunity¹¹; since 1989, only a miniscule number of army personnel have been prosecuted or convicted for crimes committed in Kashmir.

Indian actions and the military footprint in Kashmir have created a humanitarian and human rights crisis of catastrophic proportions, one that poses a grave threat to international

²<https://www.aljazeera.com/news/2019/08/kashmir-special-status-explained-articles-370-35a-190805054643431.html>

³<https://frontline.thehindu.com/cover-story/article29059214.ece>

⁴<https://www.bbc.com/news/world-asia-india-49234708>

⁵<http://unscr.com/en/resolutions/47>

⁶<http://unscr.com/en/resolutions/39>

⁷<https://unpo.org/article/4957>

⁸<https://www.newsclick.in/Jammu-kashmir-troop-build-up-preparing-delimitation-trifurcation-scraping-article-35A>

⁹<https://www.refworld.org/docid/3ae6b52014.html>

¹⁰<https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/08/Armed%20Forces.pdf>

¹¹<https://www.news18.com/news/india/11-years-108-probes-and-zero-prosecutions-in-kashmir-justice-remains-a-long-forgotten-prospect-2110665.html>

peace and security in the region. For months, all communications including internet and phone lines remained suspended, hospitals¹² and emergency services¹³ continued to struggle with lack of personnel and adequate supplies, thousands of people¹⁴, including minors¹⁵, continued to be detained without charges, and there continue to be reports of torture¹⁶ involving youth and children. Most Kashmiri politicians, including those who lead pro-India political parties, continue to be incarcerated. Children were denied schooling for months on end, colleges and universities were shut down, and all civic institutions were suspended. The stringent curfew severely restricted the free movement of the civilian population, including doctors¹⁷ and patients¹⁸ trying to reach hospitals. Today, while there has been some easing of the oppressive security regime, the COVID-19 epidemic has provided the government a new reason to impose restrictions on economic, social, and political activity.

On March 31, 2020, the Indian Ministry of Home Affairs¹⁹ changed the legal requirements for obtaining “State Subjects” status, a special citizenship designation, of the erstwhile state of Jammu and Kashmir. This status, administered by the civil authorities, was available only to those who were descended from other State Subjects. It was a status gained by descent, and was a requirement for owning land in the state. It also provided access to government jobs and educational institutions in the state. Now, any person who has worked in Jammu and Kashmir for 15 years (typically in a government position or in the armed forces), or has studied in the state for 7 years and passed their school-leaving examinations there, or is classified as a “migrant” from Pakistan, is eligible for “domicile” status. Thousands of non-Indian army personnel of Nepali ancestry²⁰ have already been granted domicile certificate in J&K. Not surprisingly, the people of Jammu and Kashmir see this move as an attempt to change the demography of the Union Territory of Jammu and Kashmir (and particularly that of Kashmir). The Indian government has also moved to let outsiders bid in auctions for

¹²<https://www.independent.co.uk/news/world/asia/kashmir-crisis-hospital-violence-doctor-treatment-india-a9080611.html>

¹³<https://thewire.in/rights/what-happens-when-your-house-catches-fire-and-you-cant-reach-emergency-services>

¹⁴https://www.theguardian.com/world/2019/aug/27/kashmir-families-torn-apart-mass-arrests-continue-india?CMP=share_btn_tw

¹⁵https://www.huffingtonpost.in/entry/kashmir-government-arresting-children-article-370_in_5d5388c3e4b05fa9df0696fd

¹⁶<https://www.independent.co.uk/news/world/asia/kashmir-crisis-latest-india-article-370-autonomy-torture-claims-planning-a9086611.html>

¹⁷<https://indianexpress.com/article/opinion/columns/kashmir-lockdown-article-370-35a-bjp-congress-amit-shah-medicine-shortage-5942564/>

¹⁸<https://www.bmj.com/content/366/bmj.l5204>

¹⁹<https://www.thehindu.com/news/national/other-states/domicile-rules-for-jk/article31660363.ece>

²⁰<https://timesofindia.indiatimes.com/india/many-retired-gorkha-soldiers-in-6-6k-to-get-jk-domicile/articleshow/76792089.cms>

mining²¹ and industrial projects, allowing wealthy Indian corporations to take over small-scale local projects and industries in J&K.

1.2 Historical Background

Kashmir has been a unique space, one with its own sense of identity and history. It was an independent kingdom until the early modern period. when it was forcibly annexed into the Mughal Empire.

The modern history of Kashmir can be divided into three periods: 1846-1947; 1947-1988; and 1988 to the present.

1846-1947: The princely state of Jammu and Kashmir, ruled by the Dogra dynasty, emerged as a result of the ‘Treaty of Amritsar’ between Maharaja Gulab Singh and the British Government. Under this infamous treaty etched in the minds of the people of Jammu and Kashmir the land and the people of Kashmir were sold to Gulab Singh for a meagre sum of equivalent of US \$150,000. The Maharaja expressed his subordination to the British Empire by presenting annually to the British government one horse, twelve shawl goats of approved breed (six male and six female), and three pairs of cashmere shawls in exchange for receiving British protection for his territories from external enemies. The Dogra regime disenfranchised the Muslim majority, barring them from official positions in administration, military, police, and education, reserving these positions - with a few exceptions - for the Hindu minority. The Dogra rulers violently suppressed the Kashmiri movement for political rights and justice during this time, including by imprisoning and torturing movement leaders and massacring 21 protesters on July 13, 1931²². Stories of the exploitation of, and the untold miseries inflicted upon, Kashmir’s population by the Hindu Maharaja ruling this Muslim-majority region are deeply implanted in Kashmiri memory. Scholars and legal experts have emphasized that the Kashmiri struggle for democratic rights and accountable government dates back to the 1920s and the beginnings of political opposition to the autocratic Dogra regime.

1947-1988: Prior to partition of the subcontinent in 1947, Kashmir existed as an “independent princely state” during British colonial rule in the Indian subcontinent. In 1947, one third of the British Empire in India was made up of more than 560 Princely States, one of which was Jammu and Kashmir. The relationship of the British monarch to the Princely States was known as “Paramountcy.” In June 1947, Lord Mountbatten, the last Viceroy of India, stated that “those who recognized British Paramountcy had to all intents and purposes been abandoned by their liege lord to the mercies of the successor regimes of India and

²¹<https://thewire.in/government/kashmir-jhelum-mineral-blocks-bidding-online>

²²<https://lostkashmirhistory.com/13-july-1931-whole-truth/>

Pakistan.” (Mattu, 2002, p.7). The British devised a plan for the Princely States to join either India or Pakistan on the basis of geographical contiguity and the religious majority of the state. As a Muslim-majority region with a Hindu ruler, Kashmir was an anomaly. Maharaja Hari Singh, the Dogra ruler at that time, equivocated for an extended period regarding which country to join, leaning strongly toward declaring independence from both. The Maharaja signed a standstill agreement with Pakistan in August 1947 and tried to do the same with India but did not receive a clear response (Lamb, 1993).

Within days, the Maharaja was faced with an indigenous armed revolt in Poonch, in the western part of Jammu, due to high taxes imposed after its annexation in 1936. (Snedden)²³. By September 1947, Jammu like many other parts of North India was engulfed in religious violence. It is estimated that two thirds of the Muslim population of Jammu was either killed or forced to flee to Pakistan. The genocide was conducted by the Rashtriya Swayamsevak Sangh (RSS), a right-wing Hindu nationalist paramilitary volunteer organization widely regarded as the parent organization of the current-ruling BJP party of India, in conjunction with the Maharaja’s forces (Bhasin 2013, Lamb 1993; Snedden 2013). It is noteworthy that there were no retaliatory attacks against Hindus of Kashmir, unlike what was happening in other parts of Pakistan or even India at the time. By August 1947, most of the Poonch region was freed from the Dogra princely state of Jammu and Kashmir and renamed as Azad Kashmir, i.e. “Free Kashmir.” In October of 1947, tribesmen from the Northwest Frontier Province of Pakistan moved towards Srinagar, the summer capital of Kashmir. Facing a revolt, the Maharaja fled to Jammu and sought help from the Indian government, which agreed to his request only after he signed an Instrument of Accession²⁴ in October 1947, which Pakistan contested and deemed fraudulent. Recent research (Lamb, *Birth of a Tragedy* (1994), p.100) also demonstrates that the Indian troops may have landed in Kashmir even prior to the signing of the Instrument of Accession. The Instrument of Accession was a conditional document to be ratified by the people of Jammu and Kashmir through a referendum, a pact that India in spite of promises by the leadership at that time has failed to honour to this day. Instead, it has used the Instrument of Accession as , “the most powerful public justification for the Indian decision to retain at all costs those parts of the Jammu and Kashmir which it now holds; Kashmir is an internal matter.” (Lamb, *Birth of a Tragedy* (1994), p.12).

The result was the first war between India and Pakistan, which ended with a UN negotiated ceasefire in 1948. The ceasefire line divided the territory between Indian controlled and Pakistani controlled areas. Under Indian control was Jammu, Ladakh and Kashmir Valley;

²³https://www.india-seminar.com/2013/643/643_christopher_snedden.htm

²⁴[https://en.wikipedia.org/wiki/Instrument_of_Accession_\(Jammu_and_Kashmir\)](https://en.wikipedia.org/wiki/Instrument_of_Accession_(Jammu_and_Kashmir))

under Pakistan, Azad Kashmir, Gilgit, and Baltistan. This unnatural division changed the geography of the State and the natural connections to the outside world that linked the Kashmir Valley to the plains and the long-established Silk Route in Central Asia.

The Indian held area today includes three regions - each of which is diverse in their culture, geography, and demographics. Jammu in the southwest has a slight Hindu majority, Ladakh to the northeast is evenly divided between Muslims and Buddhists, and the Valley of Kashmir, has a Muslim majority (95%) with small Hindu and Sikh minorities.

Under the Constitution of India adopted in 1950, Jammu and Kashmir was guaranteed an autonomous status. Kashmiri leaders ceded to India control over defense, foreign affairs, and communications, with all other governance remaining under the purview of the Kashmir legislative assembly. This governmental configuration changed with the recent abrogation of Article 370 of the Indian Constitution, that abrogation being deemed unconstitutional²⁵ and illegal²⁶ by a multitude of experts. Over the years, India has attempted in various ways to back out of the plebiscite agreed to in numerous UN Security Council resolutions and erode the autonomy of the region with the help of Kashmiri politicians loyal to the central Indian government. While India lays claim to Kashmir as an integral part of its nation-state, the United Nations recognizes Kashmir as an internationally disputed territory and maintains military observers on both sides of the Line of Control.

1988 to the present: Since 1947 India and Pakistan have fought three wars over Kashmir and held numerous rounds of talks to resolve this dispute. All these bi-lateral efforts have not moved the issue of Kashmir to any resolution.

Indian administrators' open rigging of state assembly elections in 1987, exacerbated Kashmiri dissent, the resulting resentment culminating in a mass insurrection in early 1989. The year 1987 was a watershed moment when many notable Kashmiri figures; wanting to raise the question of Kashmir as a political dispute and solve it under the UN mandate, they decided to stand for elections under the banner of the Muslim United Front (MUF). The MUF candidates would campaign wearing shrouds - hence called Kafan Posh (shroud wearers) - to indicate their do or die stance toward resolving the Kashmir dispute. Despite popular local support, MUF "lost" the election after massive, concerted rigging efforts by the ruling party that favoured India. People initiated protests and stone pelting, and the general mood in the Valley was one of despondency. Four people were killed during these protests, and the government began arresting the MUF cadre. The armed struggle began roughly two years after this, in 1989.

²⁵<https://www.thedailystar.net/in-focus/news/kashmir-why-article-370-and-why-its-abrogation-will-prove-be-costly-1786936>

²⁶<https://www.trtworld.com/opinion/the-bjp-has-marched-into-a-legal-bind-over-kashmir-s-accession-to-india-29197>

In 1990, India implemented an emergency law known as the Armed Forces Special Powers Act (AFSPA), which gives the military supreme control over the region (Amnesty 2011). AFSPA has enabled arbitrary arrests and detention, rapes, enforced disappearances, fake encounters, and extrajudicial executions, thus reinforcing the impunity of the Indian forces in Kashmir. Currently, in Indian-administered Kashmir (IAJK) there are nearly 1 million Indian troops over a Kashmiri population of approximately 5.5 million. That is, one soldier for every 6 Kashmiris making Kashmir one of the world’s most militarized regions. More than 70,000 people have been reported killed in counterinsurgency operations, 8,000-plus forcibly disappeared, and more than 60,000 subjected to custodial torture.

Since the year 2008, Kashmiri resistance began to notably change from an armed militancy to civilian resistance with street fighting at its center. Civilian uprisings in Kashmir against the Indian rule have broken out with a marked predictability. The most recent uprising began in the year 2016 after Burhan Wani, a popular 22-year-old militant from the armed group Hizbul Mujahidin, was killed by the Indian forces. The entire Kashmir valley plunged into protest and mourning. As the news of the killing broke, a massive crowd joined Wani’s funeral at Tral, his home district. Every city, town, and village in Kashmir came together to offer funeral prayers in-absentia for the militant commander. Masjid pulpits rang with Azadi (freedom) songs, and demonstrations and street fighting flared up. In the protests that followed Wani’s killing, more than 98 persons were killed and over 11,000 were wounded (OHCHR 2018) by the retaliatory actions of Indian troops.

The current siege of Kashmir began at 6am on August 5 2019. The government imposed a curfew on citizens and banned the assembly of more than four people. Soon after, internet and phone lines were also shut down. The BJP government then finally revealed what all the secretive preparations were for: Indian Home Minister Amit Shah told Parliament that the president had signed a decree abolishing Article 370 of the Constitution. “The entire Constitution will be applicable to Jammu and Kashmir state,” Shah said. For months after, Kashmiris were subject to curfew with minimal news coming from the region. Foreign journalists who managed to get into Kashmir wrote about deep unrest and protests. The bulk of Indian media peddled narratives of normalcy. The communication blackout has since softened, but the level of humanitarian crisis is unprecedented, and only made worse by the COVID-19 pandemic.

1.3 The Status of Kashmir in International Law

The August 5, 2019 decision of the Indian Parliament to dismantle Jammu and Kashmir’s “special status” under Article 370 and Article 35A of the Indian Constitution is an act of

aggression amounting to an illegal annexation of the UN-recognized internationally disputed territory. This act represents a unilateral attempt to change the legal, constitutional, and political status and rights of residents of the disputed territory. These rights arise from State Subject laws enacted by the erstwhile Princely State of Jammu and Kashmir, which extend to and are shared by all subjects of the territory presently divided between China, Pakistan, and India.

The unconstitutional changes²⁷ announced by the Indian government have been accompanied by legal maneuvers including the official dissolution of Jammu and Kashmir State, which demonstrates an intention to carry out far-reaching changes to demographic²⁸ and land-holding patterns²⁹, threatening³⁰ the future existence of the people of Jammu and Kashmir. These actions jeopardize the rights of all Kashmiris, especially a large number of refugees and displaced persons, including the minority Kashmiri Pandit (Hindu) population who either continue to live in the region or desire to return to their homes in the Kashmir Valley. Such a wide-ranging decision affecting the internationally recognized rights of parties in a multilateral dispute, cannot be glossed over as an “internal matter” for India.

Furthermore, the Indian government’s decision is in violation of United Nations Security Council resolutions. UNSC Resolution No. 91³¹ of March 3, 1951 specifically affirmed that the convening of a constituent assembly for the Indian-held territory was in violation of the terms of the UN resolutions to resolve the dispute in accordance with the will of the people of Jammu and Kashmir and in violation of the principle of self-determination. The abrogation of Article 370 erases the limited legal recognition and protection of self- governance, legal autonomy, and citizenship rights for Kashmiris within the territory under Indian control.

The unilateral abrogation of Article 370 and Article 35A is also a violation of the 1972 Shimla Agreement between India and Pakistan which resolved to use peaceful and bilateral means in keeping with principles of the UN Charter to settle differences. The language of the Indian President’s declaration through Constitutional Order (CO 273)³² issued on August 6, 2019 overrules the application of any “instrument, treaty or agreement as envisaged under Article 363 (of the Indian Constitution) or otherwise,” demonstrating a flagrant disregard for the binding nature of its international obligations and respect for international human rights and humanitarian laws.

²⁷<https://www.apnews.com/634ae86e22774b6981a062e1487f5b0f>

²⁸<https://timesofindia.indiatimes.com/india/abrogating-article-370-aimed-at-changing-demography-of-jk-cpm/articleshow/70790890.cms>

²⁹<https://foreignpolicy.com/2019/08/16/new-delhis-demographic-designs-in-kashmir/>

³⁰<https://www.newsclick.in/Jammu-Kashmir-Article-370-Revoked-Land-Grab-Political-Disempowerment-Modi-Government>

³¹<http://unscr.com/en/resolutions/91>

³²<http://egazette.nic.in/WriteReadData/2019/210243.pdf>

1.4 Human Rights Abuses in the Kashmir Conflict

While the attention of the world is focused on the current situation and the complete abrogation by India of all democratic and civil rights in Kashmir, the record of Indian human rights abuses dates back at least 30 years.³³ The central human rights challenges in Jammu and Kashmir involves impunity for human rights violations and lack of access to justice. Draconian laws, such as the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (AFSPA) and the Jammu and Kashmir Public Safety Act, 1978 (PSA) 27, have served to suspend and violate civil liberties and rights, and given military personnel impunity in relation to their actions.

Continuing human rights abuses have been extensively documented by the UN's own agencies and mandate holders as well as Kashmiri and international human rights organizations.

Arbitrary arrests of protesters, political dissidents, and other civil society actors, including minors, have been conducted on the basis of the PSA, which gives authorities the power to incarcerate an individual without charge or trial. International human rights bodies such as the United Nations Office of the High Commissioner for Human Rights (OHCHR) (2018³⁴ and 2019³⁵ and Amnesty International (2019)³⁶ have emphasized that the PSA violates international human rights law. In July 2018, the Government of Jammu and Kashmir amended Section 10 of the PSA, making it possible to detain permanent residents of Jammu and Kashmir outside the state.

Likewise, the AFSPA grants Indian armed forces extended powers that are routinely abused. For example, an officer of the armed forces can fire upon an individual who is deemed to act against the law or order and can without a warrant enter into someone's house or stop and search a suspect. Furthermore, it presents a central obstacle to accountability, as Section 7 of the AFSPA prohibits the prosecution of security forces personnel unless the Government of India grants a prior permission or "sanction" to prosecute. As a result, not a single prosecution of armed forces personnel has been granted by the central government since 1990.

The militarization of Kashmir and the implementation of PSA and AFSPA have resulted in a large number of killings and injuries, disappearances, torture, and sexual violence. According to JKCCS, 1,081 civilians have been killed by security forces in extrajudicial killings between 2008 and 2018 (OHCHR, 2018). In addition, militant armed groups have been

³³<http://jkccs.net/informative-missive/>

³⁴<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23198>

³⁵<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24799&LangID=E>

³⁶<https://www.usnews.com/news/world/articles/2019-06-12/india-abusing-lawless-detention-act-in-kashmir-rights-group>

responsible for attacks on civilians and political activists. According to the Jammu Kashmir Coalition of Civil Society (JKCCS), in 2018³⁷, 18 civilians, six political party activists, and one separatist leader were killed by armed group members and another 25 civilians by unknown gunmen.

Since 2016, the Indian military has used pellet-firing shotguns³⁸ in the Kashmir Valley in response to protests and demonstrations. These actions have caused many civilian deaths and injuries. It has been reported from the Shri Maharaja Hari Singh Hospital in Srinagar that 1,253 people have been blinded by the metal pellets used by security forces from mid-2016 to the end of 2018.

During the last 30 years, the Indian military has used “cordon and search operations” to crack down on the local population in urban and rural Kashmir. Cordon and search operations “enable a range of human rights violations, including physical intimidation and assault, invasion of privacy, arbitrary and unlawful detention, collective punishment and destruction of private property” (OHCHR, 2018).

Wide-spread use of torture has been reported by local civil society organizations and international organizations. While the majority of cases of torture goes unreported and no precise numbers can be confirmed, the most detailed report³⁹ produced by JKCCS in February 2019 investigated 432 cases of torture in Kashmir over the last 30 years. The report states that torture has been used by Indian armed forces and police without any distinction of political affiliation, gender, or age. The vast majority (301 out of 432 torture victims) were civilians, 119 were militants, 5 ex-militants (essentially civilians at the time of being tortured), and 2 from the Jammu & Kashmir Police. (Affiliations were unverified in 5 cases.) Importantly, 27 were minors when tortured. Professionals like doctors, paramedics, and journalists have also been regularly targeted and assaulted since the early 1990s.

Sexual violence against women has been frequent, although rarely reported. There are few systematic mappings of sexual violence. One report conducted in 1992⁴⁰, only three years after the start of the insurrection, listed 15 cases of rape (Asia Watch and Physicians for Human Rights 1993, p. 3). The report describes that rape and sexual abuse are carried out by the Indian army units, the Central Reserve Police Force and militants. Mass rapes have been carried out; one of the most infamous instances were the rapes in Kunan and Poshpora: during one night in January 1991, women of all ages from the two neighbouring villages in Kupwara District, were raped by Indian army men (Kazi 2009). The Indian

³⁷<https://jkccs.net/wp-content/uploads/2018/12/Annual-Report-2018.pdf>

³⁸<https://time.com/longform/pellet-gun-victims-kashmir/>

³⁹<http://jkccs.net/wp-content/uploads/2019/05/TORTURE-Indian-State%E2%80%99s-Instrument-of-Control-in-Indian-administered-Jammu-and-Kashmir.pdf>

⁴⁰<https://www.hrw.org/sites/default/files/reports/INDIA935.PDF>

state and military have both failed to properly investigate the incident and no one has been indicted.

Since 1989, a large number of people have been disappeared, rendering thousands of women as half-widows.⁴¹ Many disappeared individuals missing from decades ago still have not been located or returned home. It is estimated⁴² by JKCCS and the Association of Parents of Disappeared Persons that over 8,000 people have disappeared, while the state and central governments maintain that the figure is closer to 4,000. A number of reports on human rights violations produced by the Jammu Kashmir Coalition of Civil Society, a federation of human rights organizations, can be found here⁴³.

1.5 A Vision for the Future

Every ordinary citizen of the world, and world leaders who care for peace and stability, should actively work towards the resolution of the Kashmir conflict. The danger of a nuclear war⁴⁴, with consequences for the whole world, makes the Kashmir conflict an international issue, not a bi-lateral issue between India and Pakistan. Scientists predict⁴⁵ even a limited nuclear war between Indian and Pakistan can wreak havoc on Earth's climate and trigger a global famine. The stakes are high, as India's Defense Minister has indicated recently⁴⁶ that India may no longer adhere to a "no first use" nuclear doctrine.

It is the responsibility of the leaders of the world to work with the United Nations to seek a just and peaceful resolution for Kashmir by involving all three parties to the dispute - India, Pakistan, and above all, the Kashmiri people. Only when the people of Kashmir have a chance to express their political will without coercion or disruptions to its demography, geography, and natural resources, can there be a lasting solution to this conflict.

While the conflict is often framed as an intractable one, many ideas and plans for a solution have been made over the years. A solution must recognize and restore the Kashmiri right of self-determination and Kashmir's historical role as what scholar Nitasha Kaul calls a contact zone⁴⁷. The common elements of the numerous proposals are remarkably consistent and include:

⁴¹<https://jkccs.files.wordpress.com/2017/05/half-widow-half-wife-apdp-report.pdf>

⁴²<https://feministlawarchives.pldindia.org/wp-content/uploads/iptks-report-on-rape-and-murder-in-shopian-kashmir.pdf?>

⁴³<http://jkccs.net/reports/>

⁴⁴<https://worldview.stratfor.com/article/question-never-gets-asked-about-kashmir-plurality-citizens-india-pakistan-nuclear>

⁴⁵<https://www.businessinsider.com/india-pakistan-kashmir-nuclear-weapons-climate-cooling-2019-2>

⁴⁶<https://www.livemint.com/news/india/rajnath-singh-sparks-debate-on-no-first-use-nuclear-doctrine-1565978545173.html>

⁴⁷<https://www.opendemocracy.net/en/openindia/kashmir-from-contact-zone-to-conflict-zone/>

1. a ceasefire to be observed by all sides,
2. demilitarization overseen by international observers
3. immediate and unconditional release of all political prisoners
4. the removal of all repressive laws and barriers to freedom of expression, belief, and association
5. full freedom of movement of people across the Line of Control to enable political discussion and action
6. accountability and justice for all human rights abuses

Enacting all of these measures within a time-bound framework that culminates in the implementation of internationally overseen and guaranteed mechanisms that allow the people of Kashmir to determine their own future, such as a plebiscite, would bring a peaceable solution to the Kashmir conflict. Any such settlement would also have to take into account the different aspirations of the regions and sub-regions as well as their historical and contemporary economic and social connections. Noted Kashmiri political scientist Professor Noor Ahmed Baba offers a uniquely Kashmiri solution: “We need to work for conditions which make the discourse of violence completely irrelevant so that Kashmir as a zone of peace assumes the status of Asia’s Switzerland in a political sense as well.”

1.6 Steps to a Peaceful and Just Resolution

1. Immediate cessation of Indian violence against Kashmiri civilians and restoration of all civil and political rights, importantly including ending the communications blockade and restoring freedom of expression.
2. Ensuring the protection of land, forests, and all other natural resources, especially during the current siege.
3. Halting the process of any demographic change until a final settlement of the dispute according to the will of the people is complete. This step should be taken as part of a roll-back of all changes in Indian laws governing the state implemented on August 5, 2019 and after. The political and territorial contours of Jammu and Kashmir state as they existed until August 5, 2019, must be restored as a first step towards ascertaining the will of the people.
4. Demilitarize both sides of the Line of Control between India and Pakistan. Further, demilitarize all of Kashmir and immediately revoke Indian emergency laws such as the Armed Forces Special Powers Act.

5. Recognize the right of all Kashmiri people of to determine their own political future, and mediate a just settlement based on the right to self-determination. In this process, international monitors must ensure that there is no government reprisal or intimidation against the people of Kashmir as they discuss future arrangements and express their political aspirations.
6. Ensure protection of rights of all minorities in Jammu and Kashmir and establish a process of truth and reconciliation without fear and intimidation
7. Create mechanisms and procedures that will allow Kashmiris on both sides of the Line of Control to meet freely and discuss their political futures.
8. Create a Special Rapporteur with a mandate to investigate and report on crimes against humanity in Kashmir. This would be the first step in setting up credible mechanisms for documentation, accountability, and justice for human rights abuses in Kashmir over the past three decades, including extrajudicial executions, torture, gendered and sexualized violence, enforced disappearances, and unknown, unmarked, and mass graves.⁴⁸
9. Create a UN Commission of Inquiry with the mandate to investigate all instances of human rights violations to seeking accountability and justice for these crimes.

1.7 Further Reading and Resources

The Kashmir Syllabus⁴⁹: A list of sources for teaching and learning about Kashmir. It foregrounds voice, histories, and aspirations of people from within Kashmir, and moves beyond prior scholarship that often took Securities Studies approaches and thereby privileged the statist perspectives of India and Pakistan. This critical body of work on Kashmir allows for a lens into the broader study of the modern state, occupation, nationalism, sovereignty, militarization, social movements, resistance, human rights, international law, and self-determination.

Recent Human Rights reports.⁵⁰

Indian civil society fact finding reports on the current Kashmir siege.

Kashmir Caged: A fact finding report, Aug 14, 2019 Women's voice: Fact finding report on Kashmir, September, 24, 2019.⁵¹

⁴⁸Torture: <https://jkccs.net/wp-content/uploads/2019/05/TORTURE-Indian-State\OT1\textquoteright s-Instrument-of-Control-in-Indian-administered-Jammu-and-Kashmir.pdf>; Structures of violence: <https://jkccs.net/structures-of-violence-the-indian-state-in-jammu-and-kashmir/>; and unknown, unmarked, and mass graves: <http://www.kashmirprocess.org/reports/graves/01Front.html>

⁴⁹<https://kashmirscholars.files.wordpress.com/2019/08/thekashmirsyllabus.pdf>

⁵⁰<https://kashmirscholarsnetwork.org/resources/otherresources/>

⁵¹<https://maktoobmedia.com/2019/09/24/full-text-womens-voice-fact-finding-report-on-kashmir/>

Kashmir civil disobedience: A citizen's report, October 2019.⁵²
 Zulm, Zakhm, Azaadi: Voices of Kashmiri women, October 5, 2019.⁵³
 Nitya Ramakrishnan and Nandini Sundar report October 2019.⁵⁴
 Imprisoned resistance: Aug 5and its aftermath: A report, October 2019.⁵⁵
 Concerned citizens group of India human rights report 6 & 7, Nov, 2019.⁵⁶
 APDP and JKCCS annual human rights report, December 2019.⁵⁷
 A provisional biography of a journey towards justice for the enforced disappeared.⁵⁸
 JKCCS human midyear human rights report, July 2020.⁵⁹
 Jammu and Kashmir: Impact of lockdowns on human rights Aug 2019-July 2020.⁶⁰
 Disintegration at Gunpoint: Yearly report August 2019-Aug 2020.⁶¹

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⁵²<https://kashmirscholars.files.wordpress.com/2019/10/kashmir-civil-disobediance-a-citizens-report.pdf>

⁵³<https://wssnet.org/2019/10/05/zulm-zakhm-azaadi-the-voices-of-kashmiri-women/>

⁵⁴<https://kashmirscholars.files.wordpress.com/2019/10/nitya-nandini-report-on-kashmir-public.pdf>

⁵⁵<https://kashmirscholars.files.wordpress.com/2019/10/imprisoned-resistance-5th-august-and-its-aftermath-reprt-octr.-31-2019.pdf>

⁵⁶<https://kashmirscholars.files.wordpress.com/2019/12/sixth-and-seventh-reports-of-the-concerned-citizens.pdf>

⁵⁷<https://kashmirscholars.files.wordpress.com/2019/12/jkccs-2019-human-rights-report.pdf>

⁵⁸<https://apdpkashmir.com/a-provisional-biography-of-the-association-of-parents-of-disappeared-persons-kashmir/>

⁵⁹<https://kashmirscholars.wordpress.com/wp-admin/post.php?post=1048&action=edit>

⁶⁰<https://kashmirscholars.files.wordpress.com/2020/07/jammu-and-kashmir-impact-of-lockdown-on-human-rights-report-july-23-2020.pdf>

⁶¹<https://jklpp.org/kashmir-reading-room-report-aug-2019-aug-2020/>

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Myths and Facts about Kashmir

2 Chapter 1: Kashmir is not an internal security matter of India

India calls Kashmir an “internal matter.” Internal is meant to suggest India has undisputed sovereignty over Kashmir, and others must recognize that. But neither has the international community declared Kashmir as a settled matter nor do Kashmiris recognize Indian sovereignty over their homeland. Kashmir’s final status is yet to be determined. Per UN Security Council resolutions 47 and 91, the final status will be determined after demilitarization is carried out and a free and fair plebiscite is conducted under neutral international auspices. As such, Kashmir is not an internal matter of India.

Moreover, the disputed territory of Jammu and Kashmir has historically never been an “integral part” of India. Historical scholarship unanimously refers to Kashmir and the

regions that were later called “India” under the British rule as separate and distinct countries (Anderson, 2012)⁶². Also, until the annexation of Kashmir by the Mughal Emperor Akbar in 1586, there was little interaction with Kashmir and what is today called India.

In 1947, Kashmir was one of 565 Princely States in the British Raj. The relationship between Kashmir and India was developed through the signing of the Instrument of Accession in 1947 after the Dogra ruler of Kashmir, Maharaja Hari Singh, was facing internal revolt by Kashmiris throughout the disputed territory. As such, his hold on power was becoming increasingly precarious. It was his fear of losing the land and people he ruled that compelled him to sign the ‘Instrument of Accession’ (IOA) drawn up by the Government of India. As early as 1948, the question of the legal validity of the IOA was opined by the Legal Advisor to the British Foreign Office, Sir Gerald Fitzmaurice. He wrote in his legal opinion, that accession was not capable of finally settling the status of Kashmir because:

1. the Maharaja was not a free agent at the time of the accession to India (26 October 1947) as his actions were inconsistent with Kashmir’s obligations to Pakistan because Maharaja had signed the Standstill Agreement with Pakistan via telegrams dated 12 and 15 August 1947;
2. he was not in proper control of his State as there were uprisings against his rule and as such he could not, as he had undertaken to do, ensure that due effect was given to the accession in his State; and
3. acceptance of accession by Mountbatten was conditional to a decision of the people.

Clearly, the 72-year-old unresolved Kashmir question is accepted as an internationally recognized territorial dispute between India, Pakistan, and now China. When India raised the issue of the Kashmir dispute to the UN in 1948 and thereafter, the international community through various Security Council Resolutions - such as SCR 91 and 122 - clearly accepted that the future shape and affiliation of the whole or any part of Kashmir should be decided by exercise of the right to self-determination by the Kashmiri people. Clearly, the parties to the Kashmir dispute, under the rule of estoppel within international law, are barred from altering this legal position by any unilateral actions. UN Secretary-General Antonio Guterres has stated that India should not take any unilateral steps to nationalize this international issue. On August 16th 2019, concerned with the humanitarian crisis prevailing in Kashmir, the UN Security Council convened a close-door meeting on Kashmir and urged India not to take unilateral action.

India, after incorporating Kashmir within its union, had created the constitutional provisions of Article 370 as well as Article 35A to grant Kashmiris a special status within the

⁶²<https://www.lrb.co.uk/v34/n13/perry-anderson/gandhi-centre-stage>

Union of India. However, on August 5th 2019, while Kashmir was under complete lockdown, the Indian government led by the far-right Hindu nationalist party Bharatiya Janata Party (BJP), unilaterally, in a series of political maneuvers, scrapped the special status of Kashmir. India increased its offensive on Kashmir by recruiting additional tens of thousands of armed forces, taking the numbers to initially 750,000 armed soldiers in Kashmir. Kashmir was put under a complete communication blackout for more than 3 months and counting.

The scrapping of Kashmir's special status meant that pledges made under Article 370 and 35A of Indian Constitution no longer apply and that Kashmir comes under the direct rule of New Delhi. This change also made the state flag, 1957 the Constitution of Jammu and Kashmir, and hundreds of state laws invalid, and it brought Kashmir to political, administrative and judicial standstill.

Legal scholars suggest that India has walked into a legal bind⁶³ with the changes made to the status of Kashmir. By scrapping Article 370 and bifurcating the state (J&K with legislature and Ladakh without it), the BJP government in Kashmir has re-opened the question of the legal validity of the IOA. Indian unilateral actions will also affect its regional co-operation with its nuclear neighbors China and Pakistan. Clearly, India's unilateral actions are playing a destructive role for regional peace and security. Indian actions also ended the future of mainstream politics in Kashmir as its political loyalists have been imprisoned. Unfortunately, Kashmir has been pushed into a new era of unabated human rights violations as India will now openly control it with martial law and military might.

Finally, in addition to Kashmir's recognized disputed status and unique historical record, the region presents a strong case for international scrutiny from a moral and human-rights perspective as per the internationally recognized principles of Responsibility to Protect (R2P)⁶⁴. The current siege only escalates a three-decade-long record of India's human rights violations in Kashmir. More than 95,000 Kashmiris have been killed over the last 30 years and tens of thousands disappeared and illegally imprisoned. The repercussions of the conflict are particularly severe for women, children, and young people. The methodologically rigorous, credible, and impartial Office of the Human Rights Commissioner reports on Kashmir in 2018⁶⁵ and 2019⁶⁶ detail human rights violations in *both* Indian and Pakistan-administered Kashmir. However, the reports state that the abuses in Indian-administered Kashmir disproportionate and striking so much so that the internationally reputed *Genocide Watch* has

⁶³<https://www.trtworld.com/opinion/the-bjp-has-marched-into-a-legal-bind-over-kashmir-s-accession-to-india-29197>

⁶⁴<https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>

⁶⁵<https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>

⁶⁶<https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>

issued a genocide alert⁶⁷ for Indian-administered Kashmir.

R2P norms state that when a state or a government is unable or unwilling to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, the international community must take action. Furthermore, a nuclear war between India and Pakistan over Kashmir is a real possibility. It is an issue of international security and ecological destruction. Scientists predict that a local war in the subcontinent will cause global suffering⁶⁸.

Therefore, **Kashmir is not an internal security matter, nor an integral part of India**. It is a disputed territory marked by continuous human rights violations. It is a global human-rights concern necessitating international support for the reduction of ongoing tensions and the creation of conditions for the sovereignty of Kashmir and its people.

⁶⁷<https://www.genocidewatch.com/single-post/2019/08/15/Genocide-Alert-for-Kashmir-India>

⁶⁸<https://www.scientificamerican.com/article/local-nuclear-war/>

3 Chapter 2: Article 370, Self-determination and International Law

The actions taken by the Government of India (GoI) on August 5 and 6, 2019 include an amendment to India's Constitution to revoke the substantive provisions of Article 370 and the passage of a bill (with an effective date of October 31, 2019) pursuant to which the Indian State of Jammu and Kashmir (the State) will be dissolved into two separate territories directly governed by the Government of India (the J&K (Reorganisation) Bill). Pursuant to Article 370, India had hitherto defined its "special status" relationship with the constitutionally separate, autonomous State. On August 5 and 6, GoI fundamentally altered Article 370 without the agreement of the authorized representatives of the State as contemplated by Article 370. Instead, GoI acted unilaterally pursuant to executive orders to which only GoI's representatives assented. Accordingly, GoI used Article 370 to act in contravention of Article 370 to implement the inverse of what was intended by Article 370 namely turning a privileged, constitutionally separate, autonomous state with territorial integrity into a subservient region lacking meaningful local governance and territorial integrity. GoI's self-dealing and unilateral evisceration of Article 370 prompts a re-examination of longstanding

questions regarding the legalities of the State's relationship with India.

India's constitutional convention included Article 370 in its Constitution of November 1949. The text of Article 370 reflected a political compromise borne of a drawn-out negotiation between a non-representative, non-democratic government in the State propped up by the GoI, and the GoI. Article 370 is often understood as a "memorialization" of the Instrument of Accession (the IoA), the legal instrument that India claims as the basis of the accession of the State to India's dominion. The substance of Article 370 did reflect the concepts of broad State autonomy and limited GoI power in relation to the State as set forth in the IoA. However, Article 370 went beyond the terms of the IoA, including describing processes pursuant to which broader GoI powers could be extended to the State if the then-to-be-constituted constitutional convention of the State (the Constituent Assembly) approved. In negotiating and agreeing to Article 370, neither the Government of the State nor GoI intended to confer to any other body the extraordinary powers granted to the Constituent Assembly. The Constituent Assembly was convened on October 31, 1951 and formally dissolved in January 1957. Therefore, since the Constituent Assembly did not approve of GoI's August 2019 evisceration of Article 370, the GoI's abrogation of Article 370 violated the Constitution of India as it existed prior to August 5, 2019. It should also be noted that United Nations Security Council (UNSC) resolutions starting with Resolution 91 of March 3, 1951 affirmed that the convening of the Constituent Assembly and any action that the assembly might attempt to determine the future shape and affiliation of the erstwhile Princely State of Jammu and Kashmir (the Princely State)⁶⁹ or any party thereof would not constitute a disposition in accordance with the will of the people or existing UNSC resolutions.

Prior to the adoption of India's Constitution, UNSC had issued resolutions in the matter of GoI's dispute with the Government of Pakistan (GoP) over the accession of the Princely State⁷⁰. UNSC resolutions starting with Resolution 47 of April 12, 1948 stated that the political future of the Princely State should be decided through the democratic method of a free and impartial plebiscite. UNSC Resolution 47 memorialized that both GoI and GoP accepted and desired the same.

Although GoI remained publicly committed to a popular referendum on the political future of the State at the time of the adoption of its Constitution, there was international concern regarding the inclusion of the State in India's Constitution (including through Arti-

⁶⁹The Princely State was a "princely state" affiliated with British India prior to British India's transfer of power to the new dominions of India and Pakistan on August 15, 1947 when the Princely State became a fully sovereign, independent state.

⁷⁰Submitted by GoI to UNSC on December 31, 1947 under Article 35 (Pacific Settlement of Disputes) of the United Nations Charter.

cle 370). Accordingly, official communications from GoI's external affairs ministry just days before the adoption of its Constitution represented that the inclusion of the State-related provision in India's Constitution was only a matter of fairness under the circumstance (i.e., it was unfair to deny the State's government and people the opportunity to participate in a process that could impact their future) and explicitly stated that GoI's initiative "was not intended and does not, in fact, alter the Government of India's determination to abide, in the matter of accession, by the freely declared will of the people of the Jammu & Kashmir." GoI was clear that if that freely declared will of the people was not in India's favor, J&K's relationship with India (including its constitutional relationship) would "automatically cease."

The international legal validity of the State-related provision in India's Constitution, including Article 370, was questionable. GoI's evisceration of Article 370 is in direct contravention of longstanding UNSC resolutions regarding the Princely State and GoI's international commitments regarding the political future of the Princely State.

As noted above, the IoA is the legal instrument that India claims as the basis of the accession of the State to India's dominion. The former king of the Princely State (the Maharaja) signed the IoA on either October 26 or 27, 1947 (the date is disputed). The IoA provided for the broad sovereignty of the Maharaja (and his heirs and successors). It is conditional on the Maharaja (or his heirs or successors) retaining executive and administrative authority over the Princely State and granted the Indian Parliament only limited authority: to make laws applicable to the Princely State only in respect of the discrete, enumerated matters of defense, external affairs, and communications. By its terms, the IoA cannot be varied except by a supplementary instrument executed by the Maharaja (or his heir or successor). There are no amendments or supplements to the IoA. The IoA explicitly does not commit the Maharaja (or his heirs or successors) to accept any future constitution of India and reserves an unfettered right to negotiate the terms of a potential arrangement with GoI in respect of a future Indian constitution.

The Maharaja did not accept the Indian Constitution. It is furthermore not clear whether the Maharaja had a legal heir or successor who had the capacity or authority to accept the Indian Constitution. The Maharaja abdicated his throne in June 1949 in favor of his son who became the State's *Sardar-i-Riyasat* (or "Head of State"). The Constituent Assembly eliminated a hereditary head-of-state and in the Jammu and Kashmir Constitution made the *Sardar-i-Riyasat* an executive position elected by the Jammu and Kashmir Legislative Assembly. Claiming authority through Article 370 of the Indian Constitution, GoI eliminated the *Sardar-i-Riyasat* entirely in 1966, replacing that position with a GoI-appointed Governor⁷¹. Also, the Maharaja's claim to rulership in the IoA is in respect of the entire Princely

⁷¹In negotiating and agreeing Article 370, neither the Government of the State nor GoI intended to grant

State. There is no actual successor (or heir) to that position (no government has controlled the territory of the Princely State since August 1947). Accordingly, GoI's inclusion of State-related provisions in India's Constitution appears to contravene the IoA. Additionally, GoI's course of conduct regarding those provisions of its Constitution (popularly described as the "erosion of Article 370," a historical process not described here) exceeded the authority purportedly granted to it under, and directly contravened, the IoA. GoI's evisceration of Article 370 is in direct contravention of the IoA.

Arguments on whether GoI has been an occupying power in the State since October 1947 turn on the validity of the IoA. Substantive concerns regarding the Maharaja's legal authority to execute the IoA include:

- The Maharaja was not a representative authority of his subjects due to (1) his claim to power being derived from a then century-old sales deed entered into between two parties whose authority to enter into such instrument is unclear pursuant to which an entire state, its population and its property were sold for minimal consideration and (2) the Maharaja and the Dogra Princely State's long-standing suppression and state violence against its subject population culminating in crimes against humanity (including an "ethnic cleansing" campaign conducted in Jammu province in 1947)
- The Maharaja was not considered a legitimate ruler by a significant portion of his subjects, who expressed longstanding, widespread, and open demands for the Maharaj's ouster or abdication and the establishment of democratic self-governance in place of his monarchical government.
- The Maharaja faced and was losing against the an armed revolt of Princely State subjects. If he had not already abdicated his throne, he was fleeing a popular, indigenous uprising when he signed the IoA.
- Princely State subjects in revolt had established a new state that controlled a substantial, expanding portion of the territory of the Princely State at the time the IoA was executed. This new state would likely have retained control had the GoI not intervened on the Maharaja's behalf. Thus, the Maharaja did not actually possess or control the territory he claimed to possess or control at the execution of the IoA.

Substantive concerns regarding the validity and enforceability of the IoA as a legal instrument include:

- The Maharaja purportedly signed the IoA while fleeing an armed, popular uprising of
-
- the Indian Parliament the power to modify the State's Constitution.

Princely State subjects resisting exploitation and state violence and seeking democratic self-governance and his ouster (as an unpopular, brutal autocrat)

- The Maharaja only signed the IoA because GoI refused to provide military support to prop up the Maharaja's regime unless he first signed the IoA (which, by his own prior conduct, he did not want to do). GoI, unlike GoP, also refused to sign a standstill agreement with the Maharaja in August 1947. In addition, GoI had engaged in a campaign of intimidation prior to the execution of the IoA and there is evidence that the Maharaja was pressured by GoI representatives even at the time of the apparent execution.
- The Maharaja offered the IoA to GoI on the basis of false representations regarding the ground realities (e.g., that the armed, popular uprising was that of foreign agents rather than Princely State subjects)
- GoI's military intervention in the Princely State appears pre-meditated and was at the behest of an unpopular, deposed or fleeing autocrat and against the only clear expression of popular will among the subjects of the Princely State (who had established the Provisional Free (Azad) Government in a portion of the Princely State's former territory)
- The Maharaja and his government were permitting, aiding, and abetting or sponsoring and directing crimes against humanity in Jammu at the time of offering the IoA
- The Maharaja executed the IoA in violation of the Princely State's standstill agreement executed with GoP
- The Maharaja did not actually possess or control the territory he claimed to possess or control at the execution of the IoA
- GoI's acceptance of the IoA was conditioned on accession being settled by reference to the people of the Princely State (which has never occurred) and which GoI actively prevented from being held

According to the 1949 legal opinion of Sir Gerald Fitzmaurice, legal advisor to the British Foreign Office (whose opinion was concurred with by the United Kingdom's Attorney General, Sir Hartley Shawcross, and considered authoritative), the IoA is invalid or null and void (and not competent to settle the status of the Princely State) because: (1) at the time of the IoA's execution, the Maharaja did not have legal authority to execute the IoA as a result of the delegation of authority over external affairs to GoP pursuant to its standstill agreement (it is also noted that the standstill agreement and the IoA both purport to cover the same subject matter, including external affairs, but that the standstill agreement was prior and did not automatically terminate), (2) the Maharaja did not control the Princely State (due to the successful popular uprisings against his rule) and thus he could not (contrary to his

undertaking in the IoA) deliver the accession of the Princely State and (3) because a condition to its effectiveness (i.e., ratification by a democratic referendum) was never satisfied (and GoI was further estopped from asserting otherwise due to its practice and precedent in the case of the accession of the princely state of Junagadh).

If the IoA was not a duly executed and a valid legal instrument, then GoI has been an occupying power in the State since October 1947. If the IoA was duly executed and a valid legal instrument when executed, then GoI nonetheless appears to be an occupying power in the State due to the facts that:

- the Provisional Free (Azad) Government, many of the subjects of the former Princely State (and their descendants), GoP and the UNSC have always maintained that the Princely State is a disputed territory and do not recognize IoA as valid and enforceable
- As noted above, pursuant to the “erosion of Article 370,” GoI violated material terms of the IoA
- Pursuant to the J&K (Reorganisation) Bill, GoI has directly contravened the IoA by mandating the dissolution of the State and authorizing itself to exercise all executive and administrative authority over the State

The duties of occupying powers are enumerated in, among other things, the 1907 Hague Regulations (Arts. 42-56) and the Fourth Geneva Convention (Arts. 27-34 and 47-78), which are recognized as customary international law. Pursuant thereto, a territory is occupied when it is under the authority of an army not authorized to exercise that authority under international law (whether or not the territory in question belonged to a foreign state prior to the occupation). A territory may be occupied if the status of the territory is contested. Occupying powers are obligated to respect the existing laws and institutions of the occupied territory subject to that which is necessary to ensure their own security and to uphold their duties under occupation law. Occupying powers cannot annex or obtain sovereignty over occupied territories; their role is simply that of an administrator.

The main laws applicable in case of occupation provide⁷²:

- The occupying power does not acquire sovereignty over the occupied territory
- Occupation is temporary and the occupying power’s rights are limited to the period of occupation

⁷²International Committee of the Red Cross, Occupation and International Humanitarian Law: Questions and Answers, April 8, 200, <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>.

- The occupying power must respect the laws in force in the occupied territory unless they constitute a threat to its security or an obstacle to the application of the international law of occupation
- The occupying power must take measures to restore and ensure public order and safety
- The occupying power must ensure sufficient hygiene and public health standards, as well as the provision of food and medical care to the population under occupation
- The population in occupied territory cannot be forced to enlist in the occupier's armed forces
- Collective or individual forcible transfers of population from and within the occupied territory are prohibited
- Forcible or voluntary transfers of the civilian population of the occupying power into the occupied territory are prohibited
- Collective punishment is prohibited
- The taking of hostages is prohibited
- Reprisals against protected persons or their property are prohibited
- The confiscation of private property by the occupying power is prohibited
- The destruction or seizure of enemy property is prohibited, unless absolutely required by military necessity during the conduct of hostilities
- Cultural property must be respected
- People accused of criminal offences must be provided with proceedings respecting internationally recognized judicial guarantees (for example, they must be informed of the reason for their arrest, charged with a specific offence and given a fair trial as quickly as possible)
- Personnel of the International Red Cross/Red Crescent Movement must be allowed to carry out their humanitarian activities. The ICRC, in particular, must be given access to all protected persons, wherever they are, whether or not they are deprived of their liberty.
- Private property cannot be confiscated by the occupier
- Food and medical supplies may be requisitioned exclusively for the use of the occupation forces and administration personnel themselves (i.e., not for purposes of export outside of the occupied territory and not for the benefit of anyone beyond the occupying personnel, unless necessary for the benefit of the population under occupation itself) and only if the needs of the civilian population have been taken into account

- The occupying power may seize any movable property, belonging to the state, which may be used for military operations
- The occupying power does not acquire ownership of immovable public property in the occupied territory, since it is only a temporary administrator. Subject to restrictions regarding their exploitation and use, it can nevertheless make use of public property, including natural resources, but it must safeguard their capital value, in accordance with the law of usufruct

While a description of such violations is beyond the scope of the present work, GoI has violated many of the above in the State. GoI's evisceration of Article 370 and the J&K (Reorganisation) Bill are in direct contravention of the law of occupation and appear to constitute an illegal annexation.

Note also that GoI has other applicable treaty obligations, including pursuant to the 1972 Simla Agreement entered into with GoP. Among other things, GoI and GoP agreed that:

- The principles and purposes of the United Nations Charter will govern relations between India and Pakistan; and
- The two countries would settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them.

The political future of the Princely State remains a substantive and significant disagreement between GoI and GoP. GoI's deoperationalizing of Article 370 and the J&K (Reorganisation) Bill are in direct contravention of the GoI's obligations pursuant to the Simla Agreement.

4 Chapter 3: Who are Kashmiris?

Kashmiris (or *Kōshūr*) constitute a distinct ethnic group with a common language (*Kaeshūr* or Kashmiri), history, culture and homeland (Kashīr or the Valley of Kashmir). They are the predominant ethnic group native to the Valley of Kashmir and surrounding areas. There are an estimated eight million Kashmiris, mostly residing in the Kashmir Valley and surrounding areas (part of present-day Indian-Administered Jammu and Kashmir) and in the portion of present-day Pakistani-Administered Jammu and Kashmir known as Azad Kashmir.

Kashmiri is the predominant language in the Dardic sub-group of Indo-Aryan languages. *Kaeshūr* is considered most closely related to the Shina group of Dardic languages which includes Brokstat or Brokpa (spoken in Ladakh and Baltistan), Kundal Shahi (spoken in the Neelam Valley), Shina (spoken in Gilgit, Baltistan, Gurez and Dras), Ushoji (spoken in Kohistan and Swat in Khyber Pakhtunkhwa), Kalkoti (spoken in Kalkot, Khyber Pakhtunkhwa), Palula (spoken in Chitral) and Sawi (spoken in northeastern Afghanistan).⁷³

The surviving written history of Kashmiris dates from the 12th century CE and covers the period commencing with approximately 2500 BCE. Known archaeological ruins in Kashmir date from approximately 5,000 BCE. Kashmir has been recognized as a distinct place and

⁷³<https://www.britannica.com/topic/Dardic-languages#ref66083>

Kashmiris as a distinct ethnic group throughout known history.

There is not, and has not historically been, a common religion among Kashmiris. Buddhism, particularly Mahayana Buddhism, and various forms of what would today be referred to as Hinduism are known to have been popularly practised among Kashmiris at various times in the ancient past. Since the 14th century CE, the vast majority of Kashmiris have identified as Muslim. In addition to Kashmiri Muslims, small minorities of Kashmiris identify as Hindus (all of whom consider themselves Brahmans), Sikhs and Christians.

While India's far-right, ultra-nationalists seek to identify Kashmiris as a distinctly Hindu people and Kashmir as part of a distinct Hindu homeland, this has no basis in history or fact.

4.1 Kashmiris and Indigenous Rights

Kashmiris are the indigenous people of the Kashmir Valley and surrounding areas. Under international law, indigenous people have various recognized rights. These rights include the following under the United Nations Declaration on the Rights of Indigenous People:⁷⁴

- The right to self-determination, which is the right to freely determine political status and freely pursue economic, social and cultural development;
- The right to self-government;
- The right to free, prior, and informed consent, which is the right to decide development priorities and directly participate in decisions;
- The right to equality and non-discrimination;
- The right to maintain and strengthen distinct political, legal, economic, social and cultural institutions;
- The right to cultural integrity;
- The right to life, physical and mental integrity, liberty, and security of person;
- The right not to be subjected to forced assimilation or destruction of culture;
- The right to redress for dispossession of land or resources, forced population transfer and propaganda designed to promote or incite racial or ethnic discrimination; and
- Rights over lands, territories and natural resources.

⁷⁴For a summary of these rights, see, e.g., <https://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/InternationalStandards.aspx>. See the United Nations Declaration on the Rights of Indigenous People at: <https://undocs.org/A/RES/61/295>.

India voted in favor of the United Nations Declaration on the Rights of Indigenous People in connection with its adoption by the UN General Assembly in 2007.⁷⁵ India has systematically violated and is systemically violating all of the foregoing rights of Kashmiris in Indian-Administered Jammu and Kashmir. Since August 2019, India has advanced policies promoting forced population transfer, settler colonialism, dispossession of indigenous land and exploitative resource extraction, resulting in renewed, accelerated and massive violations of the indigenous rights of Kashmiris.⁷⁶

These policies are understood by many scholars as designed to practically obviate the exercise by Kashmiris of their right to self-determination, the right upon which all other human rights are based. Note that Kashmiris' entitlement to rights under international law as indigenous people does not obviate their applicable rights under other regimes of international law, including international human rights law and international humanitarian law.

4.2 Indigeneity and Land Rights

Settler-colonialism unfolding in Kashmir directly impedes and interrupts Indigenous Kashmiris' relational land rights leading to displacement, demographic change, and environmental decline. Additionally, land-based, pastoral, and semi-pastoral lifestyles pursued by Kashmiri tribal groups are increasingly under threat.⁷⁷ The Government of India has started a campaign to evict Muslim nomads from their traditional forest dwellings.⁷⁸

Ongoing exploitation of Indigenous Kashmiri lands without the consent of the Kashmiri people, such as for resource extraction,⁷⁹ clearing of forests for "development" projects,⁸⁰ the obtainment of land by the military⁸¹ such as for the construction of military installations,⁸²

⁷⁵<https://www.un.org/press/en/2007/ga10612.doc.htm>

⁷⁶See, e.g., <https://india.mongabay.com/2020/01/tribal-population-of-jammu-and-kashmir-cries-foul-about-the-non-implementation-of-the-forest-rights-act/>, <https://www.thethirdpole.net/ur/2020/02/17/mining-expands-on-kashmiri-rivers-despite-dire-warnings/>, <https://jklpp.org/ecological-vandalism-in-jk-the-after-effects-of-abrogating-the-special-status/>, <https://www.aljazeera.com/news/2020/07/india-eases-rules-security-forces-acquire-land-kashmir-200728100807478.html>, <https://theprint.in/india/jk-govt-changes-laws-to-aid-construction-of-armed-forces-facilities-outside-cantonments/463195/>, and <https://www.tribuneindia.com/news/archive/nation/maharashtra-cabinet-approves-setting-up-of-resorts-in-j-k-827260>.

⁷⁷<https://india.mongabay.com/2020/01/tribal-population-of-jammu-and-kashmir-cries-foul-about-the-non-implementation-of-the-forest-rights-act/>

⁷⁸<https://www.aljazeera.com/news/2020/11/20/tribal-community-face-eviction-from-forests-in-kashmir>

⁷⁹<https://www.thethirdpole.net/ur/2020/02/17/mining-expands-on-kashmiri-rivers-despite-dire-warnings/>

⁸⁰<https://jklpp.org/ecological-vandalism-in-jk-the-after-effects-of-abrogating-the-special-status/>

⁸¹<https://www.aljazeera.com/news/2020/07/india-eases-rules-security-forces-acquire-land-kashmir-200728100807478.html>

⁸²<https://theprint.in/india/jk-govt-changes-laws-to-aid-construction-of-armed-forces-facilities-outside->

or the allocation of land to non-Indigenous Kashmiris⁸³ and making sweeping changes to land laws⁸⁴ is a direct violation of UNDRIP and the principles of FPIC.

cantonments/463195/

⁸³<https://www.tribuneindia.com/news/archive/nation/maharashtra-cabinet-approves-setting-up-of-resorts-in-j-k-827260>

⁸⁴<https://thewire.in/rights/jammu-kashmir-new-land-laws-sweeping-changes-government>

5 Chapter 4: Hindutva and Kashmir

5.1 The Role of Hindutva in the Kasmir Annexation

The annexation of Kashmir has long been a Hindutva priority; the abrogation of Article 370 (and the even more problematic abrogation of the related Article 35A) was a key plank of the Bharatiya Janata Party’s election platform as early as 1989.⁸⁵ In June 2019, the meeting agenda of the apex decision-making body of the Vishwa Hindu Parishad (VHP) included the abrogation of Article 370.⁸⁶ On August 5, when the Hindu nationalist BJP-led government announced the nullification of Article 370, top Rashtriya Swayamsevak Sangh (RSS) and VHP leaders welcomed the decision quickly.⁸⁷ The annexation has complex political and symbolic ramifications in Hindutva’s discursive landscape, which claims that a Hindu nation called “Akhand Bharat” extends from Afghanistan to Myanmar. Significantly, even the

⁸⁵India Abroad. “India Goes to the Polls: BJP would Divide Larger States.” *India Abroad*, December 1, 1989. ProQuest document 371423407.

⁸⁶Hindustan Times. 2019. “Ram temple, Article 370 on VHP meet agenda.” *Hindustan Times*, June 18. <https://www.hindustantimes.com/india-news/ram-temple-article-370-on-vhp-meet-agenda/story-ErLO93XTv2gDaFrmG0VU3J.html>

⁸⁷ANI. 2019. “RSS, VHP laud scrapping of Article 370.” *Asian Age*, August 5. <https://www.asianage.com/india/politics/050819/rss-vhp-laud-scrapping-of-article-370.html>

allegedly secular Indian National Congress took a stance that reveals the spread of Hindutva ideology throughout the body politic of India; former Prime Minister of India and Congress party member Manmohan Singh declared, “We were not opposed to the enactment of Article 370’s abrogation. . . What we opposed was. . . the manner in which it was implemented.”⁸⁸

5.2 Territory

India, Pakistan, and China all control some regions of the erstwhile Princely State of Jammu and Kashmir, with India controlling the largest part. On August 5, 2019, India unilaterally stripped the status of statehood from the part of Jammu & Kashmir under its control and demoted it into two distinct Union Territories: Ladakh and Jammu & Kashmir. That these two Union Territories are to be administered *separately, but directly* by the central Indian Government in New Delhi is an assertion of the regional dominance of a “Hindu superpower”⁸⁹ against those who resist such colonial domination both inside Jammu & Kashmir and outside. In addition, the Indian government deployed up to fifty thousand additional soldiers to the region to prevent public protests, reinforcing what is already the most militarized region of the world.⁹⁰

5.3 Energizing the Hindu base

In a time of increasing visibility of anti-caste and feminist struggles as well as the worsening of precarious economic and ecological conditions in India, Hindutva ideologies steer rising public frustrations and discontent against a manufactured Muslim enemy rather than scrutiny of Brahminical dominance or government corruption. Commentators have argued that the “organization of [an Indian] national identity requires the creation of internal and external enemies”⁹¹ and that “Hindu majoritarian discourse has. . . asserted India as good. . . in relation to the Muslim ‘Other,’ in relation, therefore, to Pakistan.”⁹² In Hindutva’s narrative, Kashmiri Muslims are conflated with Pakistanis, and the forcible annexation of Kashmir and the history of militarized brutalization of Kashmiris are justified as necessary violence against “anti-national” Muslims who are indoctrinated by Pakistan. Further, the sexualized

⁸⁸Ashar, Sandeep and Manoj CG. “Manmohan Singh Signals a Congress Shift on Article 370 and Savarkar.” *Indian Express*, October 18, 2019. <https://indianexpress.com/article/india/manmohan-singh-signals-a-congress-shift-on-article-370-and-veer-savarkar-6075133/>

⁸⁹Chatterji, Angana. 2009. *Violent Gods: Hindu Nationalism in India’s Present* \Narratives from Orissa. Gurgaon: Three Essays Collective, p. 363.

⁹⁰Friedrich, Pieter J. “Jammu and Kashmir Loses ‘Special Status.’” *Antiwar.com*, Aug 8, 2019. <https://original.antiwar.com/pieter-j-friedrich/2019/08/07/jammu-and-kashmir-loses-special-status/>

⁹¹Chatterji, Angana. 2009. *Violent Gods: Hindu Nationalism in India’s Present* \Narratives from Orissa

⁹²Chatterji, Angana. 2009. *Violent Gods: Hindu Nationalism in India’s Present* \Narratives from Orissa. Gurgaon: Three Essays Collective, p. 72 fn290.

violence perpetrated on Kashmiri Muslims becomes part of a narrative of Hindu dominance and conquest that energizes certain segments of the Hindu population.

5.4 Dividing Kashmiri Hindus from Kashmiri Muslims

As Nitasha Kaul has noted, ever since most Kashmiri Hindus (Pandits) fled the valley in the 1990s, they have become a “Pawn in the Games of Hindutva Forces.”⁹³ The Hindutva notion of a “Hindu genocide,” used to justify violence against Muslims, is often brought up in relation to the suffering of Kashmiri Pandits⁹⁴ whose lives were impacted by the militancy.⁹⁵ “Genocide,” according to the UN, involves mass killing targeting one specific demographic group and other “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”⁹⁶ There has been no documented proof of any such genocide of Pandits. Estimates state that between 209 and 765 Kashmiri Pandits were killed in the early years of the Kashmir conflict; a far larger number of Muslims were killed in the same period.⁹⁷ In opposition to such biased reportage, the Jammu Kashmir Coalition of Civil Society, a Kashmiri civil society group that documents human rights abuses by government forces, has repeatedly called attention to the fact that the “killings of Kashmiri Hindus and other minorities in Jammu & Kashmir have never been fairly and credibly investigated.”⁹⁸

⁹³Kaul, Nitasha. 2016. “Kashmiri Pandits Are a Pawn in the Games of Hindutva Forces.” *The Wire*, January 7. <https://thewire.in/communalism/kashmiri-pandits-are-a-pawn-in-the-games-of-hindutva-forces>

⁹⁴Indo-Asian News Service. 2019. “Kashmiri Pandits hail action against Malik, JKLF .” *Business Standard*, March 28. https://www.business-standard.com/article/news-ians/kashmiri-pandits-hail-action-against-malik-jklf-119032801030_1.html

⁹⁵Chatterji, Angana, Shashi Buluswar, and Mallika Kaur (eds). 2015. *Conflicted Democracies and Gendered Violence: The Right to Heal*. Berkeley: Armed Conflict Resolution and People’s Rights Project. p. 124.

⁹⁶United Nations Office on Genocide Prevention and the Responsibility to Protect. 1951. “Convention on the Prevention and Punishment of the Crime of Genocide.” <https://www.un.org/en/genocideprevention/genocide.shtml>

⁹⁷Chatterji, Angana, Shashi Buluswar, and Mallika Kaur (eds). 2015. *Conflicted Democracies and Gendered Violence: The Right to Heal*. Berkeley: Armed Conflict Resolution and People’s Rights Project. p. 124.

⁹⁸International Federation for Human Rights, Association for Parents of Disappeared Persons and Jammu Kashmir Coalition of Civil Society. 2019. “Key human rights issues of concern in Indian-Administered Jammu & Kashmir.” https://www.fidh.org/IMG/pdf/20190315_kashmir_briefing_note_-_final.pdf. p. 15.

5.5 Responses to historical claims made to justify a Hindutva agenda and anti-Muslim violence in Jammu and Kashmir

The italicized excerpts included below are verbatim quotations from a document titled “The Kashmir Issue: Did You Know”⁹⁹ (see Appendix) distributed by the Indo American Community Federation (IACF), the US India Political Action Committee (USINPAC), the Kashmiri Overseas Association (KOA), and the Foundation for India and Indian Diaspora Studies (FIIDS-USA) at a briefing held on Capitol Hill in Washington, DC, on October 16, 2019, to support and promote the removal of Article 370 and “A way forward for India.”¹⁰⁰ The inaccurate historical claims made in this document are widespread amongst Hindutva advocates and are reproduced regularly in government briefings and even anti-Muslim publications related to Kashmir.¹⁰¹ Thus, the responses provided here are not merely rebuttals to one misguided handout but address regularly circulated misrepresentations of Kashmiri history that warrant direct yet nuanced refutation.

(1) Kashmir is considered one of the cradles of Hindu culture and civilization, with the earliest recorded settlements dating back 4600 years. Kashmiri Shaivism is one of the oldest Hindu philosophical schools.

Kashmir has indeed been a location of tremendous Hindu religious and philosophical production. It is a matter of debate when “Hinduism” emerged or coalesced into the practices and institutions that define it today, since while the earliest Vedic texts have been dated as far back as 1500 BCE (3500 years ago), other scriptures typically considered essential and canonical to Hinduism as we know it today were produced significantly later: the Ramayana dated to 700 BCE at the earliest, the Mahabharata 400 BCE at the earliest, and the Puranas between 300-1000 CE. What is significant here is that none of these texts (including the earliest Vedas) are more than 3500 years old – meaning that it is difficult to claim that settlements in Kashmir 4600 years ago were “Hindu” in any meaningful sense.

“Kashmir Shaivism” is an obviously English term that may have been coined as recently as 1914 with Jagadish Chandra Chatterji’s book *Kashmir Shaivism*. Typically when the term “Kashmir Shaivism” is used, it refers to Trika Shaivism – a religious sect created by

⁹⁹ “THE KASHMIR ISSUE: DID YOU KNOW.” 2019. Handout provided at the *Kashmir: The Way Forward* briefing held on Capitol Hill, Washington, DC, on October 16, 2019.

¹⁰⁰ “Capitol Hill Kashmir Briefing: Article 370 – A way forward for India.” 2019. Handout provided at the *Kashmir: The Way Forward, US India Political Action Committee. 2019. “Press Release.”* <https://www.usinpac.com/press-release/usinpac-jointly-holds-capitol-hill-briefing-on-kashmir/>. briefing held on Capitol Hill, Washington, DC, on October 16, 2019.

¹⁰¹ Tikoo, Tej K. 2012. *Kashmir: Its Aborigines and Their Exodus*. New Delhi: Lancer International Incorporated

either the amazing polymath Abhinavagupta or his teacher's teacher Somananda in the 9th or 10th century. Trika Shaivism is a brilliant synthesis of earlier Shaiva traditions found in the Shiva Sutras, Spandakarikas, Pratyabhijna, and Trayambaka — which are usually dated to the 9th century at the earliest – and these earlier Shaiva traditions in turn drew upon even earlier Shaiva traditions found across other parts of South Asia: Shaiva Siddhanta, Kaula, and Kula. The origins of those even earlier specific traditions are typically dated back to the 5th century CE at the earliest. Given that there is evidence that certain philosophical schools associated with Hinduism today (e.g., Mimamsa) date back to the 4th or 5th centuries BCE, it is unlikely that “Kashmiri Shaivism” can be considered one of the oldest Hindu philosophical schools. In fact, if by Kashmir Shaivism one means Trika Shaivism, then it dates back to centuries after the time of the Islamic prophet Muhammad and the founding of Islam in the 7th century CE. Such a comparison is mentioned to provide a broader historical context of religious traditions current in this time period as well as to make clear that Kashmir Shaivism is no more ancient than Islam, which is undoubtedly the target of such claims.

(2) *Kashmiri Buddhist monk Kumarajiva is considered the father of Chinese Buddhism.*

It is certainly true that Kumarajiva was a Kashmiri Buddhist monk and his arrival and Buddhist teachings in China had a tremendous influence on later Chinese Buddhism – marking him as a major figure for Chinese Buddhism. However, there were also many other Buddhist monks from Central Asia and South Asia who had major impacts on Chinese Buddhism as it came to be formed in the mid-first millennium. It seems more accurate to describe Kumarajiva as “one of the fathers” or “a father” of Chinese Buddhism.

(3) *Kashmiri Hindus provided safe-haven to Persian Zoroastrians, Hindus of Afghanistan, Punjab and Sindh and Buddhists from Central Asia who fled waves of Islamic invasions/forced conversions between 7th and 12th century (500+ years).*

Yes, Kashmir was a refuge for many people fleeing violent political upheaval in Central and South Asia for much of the past. Those provided refuge included those fleeing the conquests of Buddhist and Hindu kings/empires in the region throughout the first millennia. In other words, it was not only Muslim kings and empires that resulted in mass migrations of people fleeing violence in the late medieval period. Furthermore, many Muslims took refuge in Kashmir during violent political upheaval and imperial expansions in Central and South Asia at the hands of the Mongols, Chaghatai Turks, Timurids, and other empires. To call such military, imperial, or state violence “Islamic invasions” fails to address the fact that 1) many of these kings, soldiers, and empires were diverse and fought each other (Afghans vs Turks vs Uzbeks vs Persians, etc.), and thus do not fit the implied image of a unified “Islamic” aggressor, and 2) that Buddhist and Hindu kingdoms were similarly battling and slaughtering each other and each others’ peoples (leading to forced mass migrations) across

South and Southeast Asia during this same time period.

The question of if, when, and towards what ends forced conversion to Islam occurred in South Asia has been addressed extensively by many scholars, e.g., Richard Eaton.¹⁰² It is noteworthy that many Muslim communities also first came to Kashmir during this time, first taking refuge and then serving under Kashmir's Hindu rajas of the time. Thus, the implicature that Muslims and Hindus are inherently antagonistic is shown to be historically false.

(4) Kashmir was eventually conquered by Islamists in 1323 CE and large segments of its population was forced into Islam by the end of the 16th century.

“Islamism” refers to modern political movements that first emerged in response to European imperialism in the late 19th and early 20th centuries that seek to establish through mechanisms of the modern nation-state Islamic governance and the enforcement of Islamic law on the basis of a modern political interpretation of what is considered by Islamists to be “foundational Islam.”¹⁰³ It is therefore inaccurate and anachronistic to refer to anyone as an “Islamist” prior to the 19th century.

As for the event in question, in the early 14th century, Kashmir was in the midst of massive political upheaval with many rival Hindu nobles fighting against each other to claim the throne. Under these conditions, the Chaghatai Turkish general Zulju (Dulchu) was able to successfully enter Kashmir in 1320 via the Zojila Pass and ransacked Kashmir. When he attempted to leave Kashmir later that year with spoils of war, he and his soldiers died trying to cross the same Zojila Pass out of the valley. Several rival nobles sought to take advantage of the increased political chaos that resulted from this external attack during already-existing upheaval. One such noble was the young Ladakhi Buddhist prince Rinchana, who was able to successfully take the Kashmiri throne for himself. Kashmiri court advisors and ministers cast suspicion on Rinchana's right to rule due to his genealogy and caste being not entirely known (since he was born into a Buddhist family and lost record of his caste identity long ago). To avoid a coup, Rinchana decided to marry the Hindu princess Kota Rani and convert to Islam, inaugurating the “Kashmiri Sultanate.” However, Shah Mir, who served as a general in the previous Lohara Hindu rajas' military, overthrew Rinchana's son and took the Kashmiri throne for himself in 1323.

In short, Kashmir was not conquered by “Islamists” in 1323. The first Muslim rulers of Kashmir were either a local Ladakhi Buddhist convert to Islam in 1320 or a local general in the Kashmiri military who served the Hindu Rajas since he came to the Valley from what is

¹⁰²Eaton, Richard. 1985. “Approaches to the Study of Conversion to Islam in India,” in *Approaches to Islam in Religious Studies*, edited by Richard C. Martin. Tucson: University of Arizona Press, pp. 106-126.

¹⁰³Robinson, Cabeiri deBergh. 2013. *Body of Victim, Body of Warrior: Refugee Families and the Making of Kashmiri Jihadists*. Berkeley: University of California Press, p. 10.

now Western Pakistan or Eastern Afghanistan during the rule of the Hindu Raja Suhadeva (r. 1301-1320).

Large segments of the Kashmiri population did convert or otherwise come to participate in Islamic traditions in Kashmir during the Kashmiri Sultanate (1320-1586). However, most of these conversions appear to have been voluntary or opportunistic (e.g., to seek employment in the court or avoid taxes). Yes, violent, fanatical actions against Kashmiri Hindus by Muslims did occur during this time, especially under Sultan Sikandar (r. 1389-1413) and his Brahmin prime minister Suha Bhatt who converted to Islam, took the name Saif al-Din, and advocated that the Sultan oppress and sometimes slaughter his prior Hindu community. However, many Hindus continued to be part of the Kashmiri Sultanate court – loyal nobles and soldiers, ministers, and scribes. Three of the four *Rajataranginis* were written during the Kashmiri Sultanate with patronage from the sultans. Furthermore, many Hindu religious groups were heavily patronized by the sultans and previously destroyed or abandoned temples were rebuilt and maintained through the sultans' patronage. This was also the period during which both Lalla (aka Lal Ded) and Nund Rishi (aka Sahazanand or Sheikh Noor-ud-Din Noorani) lived, both of whom railed against corrupt religious authorities of both Hindu and Muslim persuasion. In short, the period of the Kashmiri Sultanate cannot and should not be portrayed as a time typified by Hindu oppression at the hands of zealous Islamic rulers.

During Mughal rule, Kashmir was a beloved summer retreat of Mughal royalty, resulting in favored status for Kashmiri subjects, the building of multiple public gardens, the development of Kashmiri industries, and a prime valuing of Kashmiri poets, musicians, and religious experts – both in Kashmir itself and at the Mughal royal court. All of these benefits included Kashmiri Hindus alongside Muslims. In fact, it is during Mughal rule that prominent Kashmir Shaiva theologians and philosophers thrived, e.g., Sahib Kaul (aka Anandanatha) and Bhaskar Razdan (aka Rajanaka Bhaskara) who revived Hindu interest in Lalla (aka Lal Ded).

During Afghan Durrani rule over Kashmir (1758-1819), Hindus were indeed persecuted, although many Kashmiri Muslims were persecuted as well. It is noteworthy, however, that the Afghan governor over Kashmir, when rebelling against central Afghan rule from 1808-1810, struck coins in the name of Nund Rishi who considered himself the spiritual successor to Lalla (Lal Ded).

During Sikh rule over Kashmir (1820-1846), the oppression of Afghan rule was inverted, with Kashmiri Hindus favored over Kashmiri Muslims. The Muslim call to prayer was banned and if a Sikh were to kill a Kashmiri Muslim, the punishment was to simply pay a nominal fine.

In the Dogra Princely State of Jammu and Kashmir (1846-1947), Muslims were barred

from holding ranking positions in government offices and the education of Muslims was largely curtailed. In contrast, Hindus were granted nearly every ranking government position. Their prominence at court, as landlords, and as educated elites, served to justify and consolidate Dogra rule and Hindu dominance over Kashmir. The oppression of, and denial of opportunities to, Muslims led to public protests and then riots in Kashmir in the early 1930s, and then to the 1947 Jammu massacre and displacement of Kashmiri Muslims.

In short, it is demonstrably inaccurate to characterize the complex history of interreligious relations in Kashmir from the 14th century to the present as an unrelenting onslaught of Muslims against Hindus.

5.6 Appendix

THE KASHMIR ISSUE: DID YOU KNOW

History

- Kashmir is considered one of the cradles of Hindu culture and civilization, with the earliest recorded settlements dating back 4600 years. Kashmiri Shaivism is one of the oldest Hindu philosophical schools.
- Kashmiri Buddhist monk Kumarajiva is considered the father of Chinese Buddhism.
- Kashmiri Hindus provided safe-haven to Persian Zoroastrians, Hindus of Afghanistan, Punjab and Sindh and Buddhists from Central Asia, who fled waves of Islamic invasions/ forced conversions, between 7th and 12th century (500+ years).
- Kashmir was eventually conquered by Islamists in 1323 CE and large segments of its population was forced into Islam by the end of 16th century.
- The present-day nation of Pakistan sees itself as the beholders of the historical Islamic military objective, called "**Ghazwa-e-Hind**".
- Since its creation in 1947, Pakistan has invaded Jammu and Kashmir on 3 occasions. They control 1/3rd of the state. The ruler of Jammu and Kashmir legally acceded to India after the first Pakistani invasion in 1947.
- **The 1948 UN resolution on Kashmir, that Pakistan regularly refers to, first calls for full withdrawal of Pakistan from the 1/3rd of Kashmir that it occupies.**
- Since 1989, the entire indigenous Hindu population of the Kashmir Valley has been living as refugees in other parts of India, after Islamists, in their version of 'Kristallnacht' killed and raped thousands of Hindus in a span of few weeks.
- While it threatens nuclear war with India over Jammu and Kashmir, Pakistan continues to be home to 130 UN designated terrorists and 25 terrorist entities listed by the UN. This is despite the so called "cooperation" that Pakistan has purportedly given to the global community after Osama bin Laden was killed, one mile from Pakistan's premier military academy.

VISIT <http://www.iheartkashmir.org> To get regular updates on the history and current events in Jammu and Kashmir, follow twitter.com/kashmirArchives

Capitol Hill Kashmir Briefing
Article 370 – A way forward for India

A Presentation by Indo-American Community Federation (IACF)

Hosted by Kashmiri Overseas Association (KOA)

Supported by United States India Political Action Committee (USINPAC)

and

Foundation for India and Indian Diaspora Studies (FIIDS-USA)

Master of Ceremonies: Ms. Nisha Quasba

5:05 - 5:10	Welcome, Introductions and Opening Remarks	Mr. Jeevan Zutshi
5:10 - 5:16	Human Rights of Minorities under Article 370	Shakun Malik, M.D.
5:16 - 5:24	How US views Kashmir dispute	Mr. Jeff M Smith
5:24 - 5:34	Geopolitics of Kashmir	Mr. Bharath Gopaldaswamy
5:34 - 5:40	Understanding Hindutva: True Meaning & Misconceptions	C. Shaykher, M.D.
5:40 - 5:46	Kashmir through the lens of Indigenous Kashmiri	Surinder Kaul, M.D.
5:46 - 5:49	Reflections on treatment met by Sikhs	Mr. Kanwaljit S. Soni
5:49 - 5:54	Article 370: A Way Forward for India	Mr. Jeevan Zutshi
5:54 – 6:09	Personal Accounts from Victims	1. Swapna Raina 2. Archana Kokroo, M.D. 3. Sachin Kaul
6:09 - 6:17	Video presentation about current life in Kashmir	
6:17- 6:32	Congressional Presentations and Q&A	Mr. Sanjay Puri
6:32– 6:36	Vote of Thanks	Shakun Malik, M.D.

6 Chapter 5: Women’s Rights and Article 35A

By abrogating Article 35A of the Indian Constitution, the Indian government makes false claims of restoring property rights to the women of J&K.¹⁰⁴

In 2015, a case was filed in the India Supreme Court by a Kashmiri-Hindu woman Charu Wali Khanna, claiming Article 35A disenfranchises women, especially if they marry a non-resident man. The petitioner Khanna was a lawyer and former member of the National Commission for Women, who reports described as a “Kashmiri Pandit woman by ancestry” who “desires to build a home in Jammu and Kashmir...in order to rediscover her roots” complained that she was not able to purchase property due to the “peculiar discriminatory laws” (Article 370) which rendered her non-permanent resident. Khanna’s petition refers to a 2002 judgment by the Jammu and Kashmir High Court, which noted that the state legislature had not enacted any law defining permanent residents. Her petition argues “under the guise of Article 370 and Article 35A, the men and women state subjects are subjected

¹⁰⁴<https://politicalandlegalanthro.org/2020/09/01/the-specter-of-gender-discrimination-in-the-removal-of-kashmirs-autonomy/>; <https://theasiadialogue.com/2019/09/27/the-long-read-straw-man-arguments-and-the-removal-of-article-370/>; <https://scroll.in/article/848147/anecdotal-evidence-three-cases-make-a-bouquet-of-arguments-against-article-35a-in-kashmir>; Faizan Mustafa Indian jurist on women’s rights and Article 370 (watch 24 minutes onwards): <https://www.youtube.com/watch?v=YiKuTsnR4VM>

to different treatments.” Her petition does not mention that 2002 Kashmir High Court judgment that ruled women who married outside the state would not lose their status as permanent residents under any condition.

In the old monarchial law or the new state subject law of 1929, there has never been any gender discrimination. But these facts were sidelined in a politically motivated case for the removal of article 35A. However, in the 1960s, Kashmir’s Revenue Ministry began issuing residency certificates to women that were valid only until marriage. The ministry refused to renew the residency status of Kashmiri women who had married non-residents.¹⁰⁵ But legal experts say this unjust proclamation had no basis in the Constitution and should not have been upheld. As mentioned above the 2002 High court verdict made Kashmiri women’s residency rights clear.¹⁰⁶ The only lacunae in the High Court judgment was concerning the rights of children born to Kashmiri women who are married to non-resident men and these rights were being adjudicated case by case basis. Nonetheless, a committee had already been appointed by the subsequent administration to devise a lasting solution for this lacuna. The new policy had not yet been finalized due to the interminable slowness of bureaucratic red tape.

The Jammu and Kashmir High Court struck down this provision in *State and others versus Dr. Susheela Sawhney and others*. Kashmiri women married to non-Kashmiri men retained full equality under the law since this decision. Subsequent attempts to reinstate this provision in J&K’s legislative assembly were summarily defeated. The only challenge remains whether this property could be passed on to the children of such unions; again, this issue could have been adjudicated through the JK court system. The state did not have to place the entire region under a communication clampdown and torture children as young as 11, for this to take place. Furthermore, if there was no occupation, and once Kashmiris are given their right to self-determination, they can, on their own accord, and not under the auspices of a colonial state, put forth progressive legislation.

In the removal of Article 370, the gender discrimination angle became a sort of rallying cry against Kashmir’s special status. It went unchallenged amongst the Indian masses even when Kashmiris of all shades - legal experts, local politicians, activists, journalists, and scholars deemed the argument to be dubious and strawman at best. Yet the narrative of gender discrimination was received uncritically and in the long run garnered an unquestioning support from the Indian masses. After the removal of 370 the legal ramifications around property rights of Kashmiri women and descendants of women who married non-Kashmiris;

¹⁰⁵<https://www.aljazeera.com/opinions/2017/8/14/erasing-kashmir-autonomous-status/?gb=true>;
<https://thekashmirwalla.com/2020/08/women-rights-and-article-370-facts-and-fiction/>

¹⁰⁶<https://www.firstpost.com/india/jammu-and-kashmir-women-marrying-non-natives-dont-lose-residency-rights-says-ex-state-advocate-general-ishaq-qadri-5943421.html>

those whose concerns were made pivotal in removal of autonomy are not yet clear. Since the erasure of autonomy does not automatically grant any retrospective redress, the petitioners are still awaiting further rulings and clarity.

Following the removal of autonomy, many Indian politicians and citizens publicly celebrated the military conquest of Kashmir. Social media was flooded with misogynistic songs where Kashmiri women were objectified as the spoils of war to be sexually harassed, kidnapped, or forcibly married. There was little to none protest on behalf of Kashmiri women for whom the article 370 was supposed to be removed and the state dismantled.¹⁰⁷

In 2012, the Jammu and Kashmir High Court in the case of *Mohammed Naseem Bhat vs. Bilquees Akhter* ruled that a husband does not have “absolute and unqualified power to pronounce divorce” on his wife. While there has been some question as to whether the High Court’s decision in 2014 of *Masrat Begum vs. Abdul Rashid Khan* may have reinstated that right, there is no indication that instant divorce even occurs in Kashmir, or that if it does that it is even mildly prevalent. Additionally, revoking Article 370 to address marital issues in the state stands in direct contrast to the will of Kashmiri women. No Kashmiri women were consulted prior to this action, and Kashmiri women, alongside men, have repeatedly been protesting in favor of the rights of Kashmiris to have self-determination, and an end to the Indian army’s abuses in Kashmir.

The socioeconomic roles of men and women in Kashmir were predetermined by the working-class. Within the trader and artisan classes, a complementary economic relationship between men and women existed while plying their family trade. It can be safely said that in the last 70 years of the modern era Kashmir’s patriarchal structures became flexible enough to allow women’s education and their entry into mainstream professions. However, in the environment of increasing militarization, Kashmiri masculinity itself has become coerced and repressed. Women in public protests or acting as chaperones of men become telling of the onslaught that Kashmiri patriarchy has faced under the militaristic governance of the Indian state. As far as statistics are concerned, according to a 2011 census, the literacy in J&K was 68.74 per cent; literacy among women was 58.01 per cent. Drop out rates amongst women are also high.

¹⁰⁷<https://www.americanbazaaronline.com/2020/02/24/womens-bodies-weaponization-of-rape-in-kashmir-440299/>; <https://www.youtube.com/watch?v=w0Wj0mM-jtw>

6.1 Kashmiri Womens’s Reality

Kashmiri women have suffered the most in the last thirty plus years of conflict and that suffering has intensified since the Siege of August 2019.¹⁰⁸ Gender violence by the Indian military occupation is a grave offence that has been committed as a norm across the region of Kashmir.¹⁰⁹ A report by Médecins Sans Frontières states that the rate of sexual violence against Kashmiri women in Kashmir is one of highest amongst war torn regions. A Human Rights Watch report concludes that “there are no reliable statistics on the number of rapes committed by security forces in Kashmir. Human rights groups have documented many cases since 1990, but because many of the incidents have occurred in remote villages, it is impossible to confirm any precise number. There can be no doubt that the use of rape is common and routinely goes unpunished.”¹¹⁰ Some infamous cases of rapes by the Indian forces like Kunan-Poshpora have become key examples of the Indian forces making rape a weapon of war.¹¹¹ Cases of sexual exploitation and trafficking of young Kashmiri girls at the hands of the Indian government forces are a reality.¹¹² Despite the efforts of the government to hush these cases they do surface from time to time.

6.2 Further Reading

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Zia A. 2019. *Resisting Disappearance: Women’s Activism and Military Occupation in Kashmir*. Seattle: Washington University Press

Can you hear Kashmiri women speak? Nitasha Kaul and Ather Zia (Women Unlimited 2020). https://www.womenunlimited.net/Catalogue/academic_75.htm

¹⁰⁸<https://www.aljazeera.com/features/2019/8/21/kashmir-women-are-the-biggest-victims-of-this-inhumane-siege>

¹⁰⁹<http://herald.dawn.com/news/1398554/how-indian-forces-turned-a-womans-wedding-into-carnage>; <https://www.womensmediacenter.com/women-under-siege/kashmir-is-under-siege-and-women-are-in-the-crossfire>; <https://womensmediacenter.com/women-under-siege/security-forces-target-women-with-impunity-during-kashmir-crackdown>; <https://www.globalvillagespace.com/ex-indian-army-officer-calls-for-rape-of-kashmiri-women/>

¹¹⁰<https://www.hrw.org/sites/default/files/reports/INDIA935.PDF>

¹¹¹<https://www.bbc.com/news/world-asia-41268906>

¹¹²<https://thewire.in/security/major-gogois-hotel-escapade-exposes-vulnerabilities-of-women-in-kashmir>; <https://scroll.in/latest/830858/army-officer-booked-for-molesting-blackmailing-girl-in-jammu-and-kashmirs-ramban>; <https://thekashmirimages.com/2020/09/13/soldier-held-with-two-minor-girls-at-srinagar-airport/>

7 Chapter 6: Dalits in Jammu and Kashmir

Righteously silent about its own dismal anti-minority report card the Indian government claims that Kashmir's autonomy has been discriminatory to its minorities. It exemplifies the Valmikis who are Hindus belonging to the repressed Dalit caste. In the 1950s when the municipality workers had gone on a strike, the Kashmiri government had imported 200 Valmiki families from Punjab to work as safai karamcharis (sweepers). After relaxing the rules the Valmikis were employed by the government and given residential land. Twenty percent of all the people from Jammu and Kashmir who received land in 1950s in the land to tillers program included Dalits from Jammu. While retaining their rights as Indian citizens, they did get the status of permanent residents of Kashmir. As a result the younger generation of Valmikis who are educated lack access to local political or professional opportunities. Kashmir had passed the manual scavenging prohibition act in 2010 but its implementation has been slow. Other laws safeguarding the scheduled castes and scheduled tribes have been passed but the historical contentions around demography have put the hapless Valmikis at a disadvantage. Another minority that the BJP exemplifies as being suppressed in Kashmir is the 4,000 families, which migrated from West Pakistan in 1947. They established communities in the frontiers of Jammu province and received Indian citizenship and franchise

for the Parliamentary elections. Even though the successive Kashmiri governments tried to ameliorate their situation in various ways, but they are not considered permanent residents of Kashmir.

By appropriating it as an assault upon minority rights generated solely by the policies of Kashmir's autonomous constitution, the BJP has weaponized the genuinely dire situation of the Valmiki and West Pakistan refugees. On the other hand, the BJP government did not think twice about repealing a minority act that enabled the transfer of ownership rights of state land to its occupants against a set remuneration. These occupants were often from the indigenous community of Gujjars and Bakerwal a pastoral nomadic people who are dominantly Muslim and live between the provinces of Kashmir and Jammu seeking warmer climes. The last one-decade had seen increasing strife between the Muslim Gujjar and Bakerwals and the local Hindus in Jammu. This came to a head when in 2018 an 8-year-old Gujjar and Bakerwal girl was gang-raped and murdered. All those accused are from the Hindu community and who came out in favor of the perpetrators with the BJP openly supporting them. The brutal murder-gang rape of a young child brought the war of demography into open adding to the fears of Muslims in the region bringing back memories of the massacre of Muslims of Jammu in 1947. The Hindu right-wing extremists did not even allow the dead child's body to be buried in the village. The pastoralist community now fears to return to the grazing grounds.

7.1 References

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8 Chapter 7: LGBTQ Rights and abrogation of Article 370

Although India has barely just decriminalized homosexuality and has a very long way to go towards full equality for LGBTQ Indians, many Indians cheer the removal of Article 370 on behalf of Kashmiri LGBTQ people, falsely arguing that the scrapping of Article 377 (criminalizing homosexuality) did not extend to Kashmir until Article 370 was removed. Presenting the government of India’s revocation of Article 370 as a progressive action for LGBTQ rights has been called “pinkwashing”¹¹³ by queer activists. Pinkwashing is one of the many strategies that settler-colonial regimes use to paint themselves as more “progressive” than the colonized. This strategy is especially handy when the colonized are Muslim, as it taps into Islamophobic stereotypes¹¹⁴ of Muslims as a culturally regressive group. The Indian Government has made unsubstantiated claims of Kashmir’s “religious and cultural orthodoxy” and “Islamist militancy”. Such terms have become increasingly interwoven into the language used by India to describe Kashmir since it gives India ostensible ‘superiority’

¹¹³<https://thewire.in/lgbtqia/all-you-need-to-know-about-the-false-link-between-article-370-and-queer-rights>

¹¹⁴<https://www.trtworld.com/opinion/pinkwashing-kashmir-30804>

to inflict war not just on the aberrant Kashmiri subject but also on the presumed moral directives of Islam.

It is important to understand both how such arguments have a flimsy legal basis, and how they presume that the well-being of Kashmiri LGBTQ people is completely separable from the well-being of Kashmiri people as a whole. Homosexuality was decriminalized in Kashmir immediately after section 377 of Indian Penal Code was decriminalized, since Ranbir Penal Code section 377 is in *pari materia* with IPC 377. After decriminalization under IPC Sec 377 RPC Sec 377 would be interpreted to also decriminalize homosexuality, these two provisions contained the same import and purpose. As countless legal scholars¹¹⁵ have explained, the Court's decision in 2018 to legalize homosexuality extends to all state High Courts, including the High Court of Jammu and Kashmir. There is no special law under Jammu and Kashmir's Constitution which otherwise criminalizes homosexuality. As a result, Article 370's revocation does absolutely nothing legally to benefit LGBTQ+ Kashmiris.

Until August 5, 2019, before reading down Article 370, laws made by Parliament of India did not directly apply to J & K. However, even before this amendment was passed, an order of the Supreme Court of India would be binding on courts in J & K. Article 141 of the Constitution of India envisages that the law declared by the Supreme Court of India shall be binding on all courts within the territory of India, including J & K. Legal experts have already opined that the Supreme Court Judgment applies to J & K also. Former chief justice of J & K High Court Bashir Ahmad Khan is on record stating that the Supreme Court judgment on section 377 will have been deemed applicable in Jammu and Kashmir. Former J & K high court judge Justice Hasnain Masoodi is also on record stating that the Supreme Court judgment on section 377 is implementable in J & K. Even Advocate Saurav Kirpal, who was part of the legal team that fought for legal rights of the LGBT community in the Supreme Court of India accepted this position and referred to the 1995 J&K High Court judgment in the case of *Jankar Singh vs. State And Ors.*¹¹⁶ In this case, the question before Justice Rizvi was whether Section 303 of Ranbir Penal Code was unconstitutional, since Section 303 of the Indian Penal Code had already been held violative of Articles 14 and 21 of the Constitution of India by the Supreme Court of India. Section 303 of India Penal Code was in *pari-materia* with Section 303 of the Ranbir Penal Code. Commenting on the

¹¹⁵<https://www.dnaindia.com/india/report-top-court-order-on-section-377-applicable-in-jk-too-state-2660965>

¹¹⁶https://indiankanoon.org/doc/578524/?_cf_chl_jschl.tk__=3bcfc91d78645810b7d5035bf73a67e1b41e6a80-1601988336-0-AaZCE0q0YJIUwdPEuhDNHt_dfy8-LGSxT4LJM6QjIJpXvkYjd8pMuvfVjAdIMB5gPOA_6QmKBawHVXRMQ5g99AXqKmm2VrnZ-F4LQb_BhIkYT5Nub4iDo_4x-Xg0Xlpq1228OjiCVyh6SDY3bWTs\NefifzdidrdwwqFmInwcqo7yH7RxtBYsuEyB6wFHQCO6ajoFKtfrkRkLlJdJJB1UBCVxtksN_g4W_rdnxaQpg7QrCQBg80iPg2WgcqR2GM5yCaVV5FC5qOnGPz3kDsNOhgZSvAs477LstPHq43m0z3ciVCGoeOQ\XK_1irv2amX05IeKcm1X_SrLpRoD_A-Eb-qdSQ-bfOfSu5n-HqXGthH1

retrospective effect of the judgement of the Supreme Court, the Justice Rizvi observed that - “When the highest court in the land gives an exposition of law, it has to be taken as if that was always the position of law. All pending matters whether at trial stage or in appeals have to be disposed of accordingly.” Similarly, section 377 Ranbir Penal Code is also in *pari materia* with section 377 Indian Penal Code. The Supreme Court of India has already struck down 377 IPC, naturally this law is now binding on all courts.

As with all Kashmiris, LGBTQ community also wants an end to the military occupation of Kashmir. On the other hand, members of the LGBTQ community have complained about how the siege has impacted¹¹⁷ their inter-communal ties¹¹⁸ (they are not able to get in touch with or support each other) and their livelihood. There is also the obvious reality that Kashmiri’s LGBTQ community is not spared from the effects of occupation that has resulted in documented human rights violations including extrajudicial killings, enforced disappearances, and prolonged detention. The occupation only makes worse their social marginalization and isolation. Falsehoods claiming to liberate the LGBTQ+ community are nothing more than new mechanisms deployed for the settler colonial project.

¹¹⁷<https://timesofindia.indiatimes.com/home/sunday-times/all-that-matters/377-anniversary-this-week-but-for-queers-in-kashmir-there-is-no-gay-liberation/articleshow/70927730.cms>

¹¹⁸<https://www.scmp.com/week-asia/article/3030655/india-kashmirs-transgender-community-struggles-survive-under-shadow>

9 Chapter 8: Terrorism and Kashmir

The Indian government uses the singular lens of terrorism – expansively defined as everything from armed conflict to stone pelting to civil disobedience – to conceal the reality of Indian occupation, erase more than 100 years of struggle for sovereignty led by the people of Kashmir, and delegitimize and depoliticize demands for political self-determination. Thus, Kashmiris resisting the Indian state’s occupation through an Islamic framework of physical and moral struggle have had their resistance labelled and collapsed under the global construction of “terrorism.”¹¹⁹ This is a tactic that is strategically deployed by the global “War on Terror” beneficiaries to disenfranchise Islamic anticolonial movements. Within such globally skewed dynamics, the resistance of the oppressed always appears as violent, while state violence¹²⁰ appears as lawful and legitimate. However, terrorism, as a discursive, analytical and policy lens, must be contextualized within broader conversations on the Global War on “Terror,” Islamophobia, settler-colonialism, racism and majoritarian nationalism sweeping India and the world.

“Terrorism” is a term that has acquired a life of its own in today’s geopolitics as well as

¹¹⁹<https://www.milestonesjournal.net/articles/kashmir-free-war-it-will-be-cnnfj>

¹²⁰<https://jkccs.files.wordpress.com/2017/05/structures-of-violence-e28093-main-report.pdf>

in everyday public discourse. Terrorism, as commonly represented by various nation states, and their ideological state apparatuses such as media, is always associated with the Muslim Other. Construed within the global rhetoric of the anti-Islam “War on Terror,” any resistance to colonial hegemony is easily repressed by deploying anti-terror laws and rhetoric. This anti-terror/anti-Islam alliance is directly connected to the Indian state’s repressive paranoia in Kashmir which is part of a growing anti-Islam alliance between Israel, the United States, and India.¹²¹ The issue of terrorism is closely linked with the representation of the Kashmir issue as a “Muslim threat” that fits in with the Islamophobic pattern of emphasizing a divide between the purportedly civilized and the uncivilized.

In contradistinction to the Indian state’s narrative, Kashmiri indigenous struggle for self-determination predates 1947. In 1846 the British signed into force the ‘Treaty of Amritsar’ - an entirely unlawful agreement, with the non-Kashmiri Dogra family. In lieu of services rendered to the British Crown, the Dogras were gifted Kashmir – the land, people and livestock for a paltry sum and annual tribute. Since then, the indigenous struggle for Kashmiri self-determination emerges. As a response to the Kashmiri civil disobedience, the Dogra rulers enacted a two-pronged vicious strategy: 1). Mischaracterize resistance to them as fundamentalist; 2). Erase Kashmiri Muslim identity through falsification of Kashmiri history, culture and monuments; 3) Violently suppress dissent.

The Indian government’s spurious excuse of “fighting terrorism” and ushering an era of gender equity in property rights, provides cover for the ongoing human rights violations¹²⁵ which include illegal detentions, torture, sexual violence, expropriation of land, murder, collective punishment, censorship, closure of educational institutions, and preventing access to essential services. Moreover, apart from Kashmir, in India alone, home to one hundred eighty million Muslims, the rise of the Bharatiya Janta Party (BJP) has been linked to the violent toll of Hindu nationalism.¹²⁶ Violence against the minorities in India is being

¹²¹ https://www.independent.co.uk/voices/israel-india-pakistan-conflict-balakot-arms-trade-jaish-e-mohammed-a8800076.html?utm_medium=Social&utm_source=Facebook&fbclid=IwAR2SZn3B8h7sqGGDG911etH5eZpYkUONKAXhwea-CXX1RFs6dUMBRXeWQEs#Echobox=1551345139

¹²² <https://www.reuters.com/article/us-india-israel/israels-netanyahu-eyes-trade-defense-ties-on-india-trip-idUSKBN1F11SD>;

¹²³ <https://www.dawn.com/news/1194228>;

¹²⁴ <https://timesofindia.indiatimes.com/india/mother-of-all-defence-deals-set-for-govt-nod-amid-rafale-spat/articleshow/65649945.cms>

¹²⁵ <https://indianculturalforum.in/2019/08/14/kashmir-caged-a-fact-finding-report/>

¹²⁶ <https://www.newyorker.com/news/on-religion/the-violent-toll-of-hindu-nationalism-in-india>. Also in-depth scholarly research from the Berkeley Islamophobia Studies Center on the status of Islamophobia in India, as well as general media studies, expose and deconstruct the work of stereotypical representations of Indian Muslims: <http://www.cerisnet.org/resource/islamophobia-in-india-stoking-bigotry>; <https://www.mdpi.com/2077-1444/9/9/283>

normalized and any voice of dissent¹²⁷ against the policies of the ruling elite is silenced, and labelled seditious.

While framing Kashmir as a national security threat, the Indian government has succeeded in deflecting the scrutiny of its internal and external policies, and mobilize public opinion in favour of policies which under normal circumstances would seem very undemocratic, or plain repressive. While India used “terrorism” as a cover for the current siege, based on its own claims,¹²⁸ there were estimated 200 militants in Kashmir days before the current siege. In spite of this fact, further deployment of troops continues in the world’s highest militarized zone, ensured through the status of Muslims as the “other”, and Islam as the enemy. These are tired, misleading tropes intended to obfuscate from the reality of military occupation.

¹²⁷https://www.theguardian.com/commentisfree/2019/oct/08/narendra-modi-bjp-india?CMP=share_btn_tw

¹²⁸<https://economictimes.indiatimes.com/news/defence/200-militants-active-in-kashmir-1/3-are-foreigners-crpf/articleshow/50141107.cms?from=mdr>

10 Chapter 9: Economic Development and Kashmir

10.1 Abrogation of Article 370 and 35A Threatens Economy and Ecology of Kashmir

The abrogation of Article 370 and 35A and the introduction of recent domicile law opens the pathway for non-indigenous Kashmiris to own land in Kashmir. Under the new laws pushed by the Government of India, which now apply to the erstwhile state (which has not only been stripped off of its special status with the scrapping of Article 370,¹²⁹ but has also been bifurcated into two¹³⁰ federally administered divisions or union territories – Ladakh and Jammu & Kashmir), the land literally now belongs to the government of India.

Within days of announcing the abrogation, the federal government announced that it had prepared a ‘development plan’ that would facilitate private investment and industry that would be possible due to industries’ ability to buy land in Kashmir.¹³¹ Note that the development plan was announced with *zero* participation of indigenous Kashmiris – to be

¹²⁹<https://www.bbc.com/news/world-asia-india-49231619>

¹³⁰<https://pib.gov.in/PressReleasePage.aspx?PRID=1590112>

¹³¹<https://www.indiatoday.in/india/story/article-370-gone-investor-summit-planned-j-k-boost-industry-healthcare-1578042-2019-08-07>

clear, indigenous Kashmiris were under a lockdown with the government restricting free movement within Kashmir, and no communication with the outside world.¹³² More than a year after abrogating the special status of Kashmir, internet shutdown is still partly in place as high-speed mobile internet, which majority of the population depends upon, has only been restored in two of the 22 districts in the region very recently.

One of the immediate consequences of removal of Kashmir's status is the acceleration in conversion of indigenous and ecological fragile lands to other land uses, with detriment to the local ecology and local economy. Major real estate companies from India initially speculated about buying/owning land in the fragile region while others started talking about possibilities of land grabs, as reported by Forbes.¹³³

Weeks after the abrogation of Article 370, the administration of Jammu and Kashmir, in a massive land-hunt exercise¹³⁴ identified 120,000 kanals (15,000 acres) of land from 203,020 acres of state-owned land for industrial infrastructure development. On the anniversary of removal of Kashmir's special status on August 5, 2020, it was reported¹³⁵ that 6,000 acres of land were acquired, and 168 MoUs comprising INR 13,600 crore (USD two billion) of investment had been signed with the investors as part of a "development strategy."

The Himalayan region of Jammu and Kashmir is a land-scarce region where average land-holding size is 0.59 hectares as compared to India's national average of 1.08 hectares, according to India's agriculture census¹³⁶ 2015-16 released in 2018. In case of Kashmir valley, it is merely 0.45 hectares, though the agriculture department in Kashmir¹³⁷ describes average land holding capacity in Kashmir as "small and fragmented;" the region has a food deficit of 22 percent.

Following the abrogation of Article 370, analysis of official records reveal that over 1780 acres of designated forest land were diverted for infrastructural development – Indian military and paramilitary troops were allotted 600 acres of these 1780 acres. *Down to Earth*, a prominent environmental magazine in India, reports that since August 05 to October-end 2019, Forest Advisory Committee of the erstwhile state, responding to federal dictates, had given the green signal for moving forward with 125 development projects that involve pristine forest lands in Kashmir. Projects include laying of transmission lines, roads and security

¹³²<https://www.nytimes.com/2019/08/08/opinion/modis-majoritarian-march-to-kashmir.html>

¹³³<http://www.forbesindia.com/article/special/what-opportunities-do-jammu-kashmirs-property-markets-hold/54741/1>

¹³⁴<https://kashmirage.net/2020/06/27/kcci-expresses-resentment-over-giving-digging-tenders-to-non-locals-and-rendering-regional-jobless/>

¹³⁵<https://theprint.in/india/year-after-article-370-most-jk-projects-lie-stalled-but-administration-blames-covid/474903/>

¹³⁶http://agcensus.nic.in/document/agcen1516/T1_ac.2015_16.pdf

¹³⁷<http://www.diragrikmr.nic.in/>

infrastructure. Note that the sheer number of project approvals within these three months is higher than the 97 projects approved in the entire 2018 calendar year. In other words, the federal government of India is moving fast and stealthily in wreaking the ecology and environment *as* global powers watch.

Over the years, the Indian troops had already taken control of 21,400 hectares (53,866 acres) of land for their use including unauthorized occupation of 2,555 hectares, as evidenced in a written reply¹³⁸ by a former chief minister to the erstwhile state legislative assembly in 2018. The current administration in Kashmir, headed by a Lt. Governor who is appointed by New Delhi (India), eased rules for security forces to undertake construction in strategic zones.¹³⁹ This means security forces can occupy lands wherever they wish, regardless of any environmental or social concerns. The government later issued a statement¹⁴⁰ that the notification to this effect was being “misread,” but it failed to allay the apprehensions of local people who have watched the developments since August 5, 2019 with a sense of foreboding.

After the introduction of new domicile rules,¹⁴¹ the people of Kashmir, who had exclusive rights to buy and own property under Article 35A¹⁴² in the disputed region, are no longer the only people who can own property in Kashmir, apply exclusively for jobs or do business on the region’s natural resources, exclusively. Now, any Indian citizen can own property, apply for the jobs in Jammu and Kashmir or do business on region’s resources and live in Jammu and Kashmir on a permanent basis. Kashmir is a contemporary example of displacement of indigenous peoples through militarization.

The immediate fallout of these policies are manifesting rapidly: non-Kashmiri contractors are earning mineral mining contracts¹⁴³ worth millions of dollars for the first time in Kashmir’s history. Over 90 percent of the contracts¹⁴⁴ for sand mining and mining of other minerals in Kashmir’s river-beds went to non-locals as local contractors could not compete with them in the bidding/auctioning process and were also facing the disadvantage of applying online when mobile internet was totally shutdown in Kashmir. All local Kashmiri mining contractors were excluded from the tendering (bidding) process though some man-

¹³⁸<https://indianexpress.com/article/india/21400-hectares-under-illegal-possession-of-army-in-j-k-says-cm-mehbooba-mufti-5019019/>

¹³⁹<https://economictimes.indiatimes.com/news/defence/criticism-of-strategic-zones-to-facilitate-construction-by-armed-forces-in-jk-unfounded/articleshow/77052996.cms>

¹⁴⁰<https://www.greaterkashmir.com/news/latest-news/strategic-areas-for-armed-forces-jk-govt-issues-clarification-says-politicians-misleading->

¹⁴¹<https://sarkariyojana.com/jk-domicile-certificate-online-application-form/>

¹⁴²<https://indianexpress.com/article/explained/understanding-articles-370-35a-jammu-kashmir-indian-constitution-5610996/>

¹⁴³<https://www.greaterkashmir.com/news/business/non-local-firms-bag-majority-of-mineral-extraction-contracts-in-kashmir/>

¹⁴⁴<https://www.greaterkashmir.com/news/business/non-local-firms-bag-majority-of-mineral-extraction-contracts-in-kashmir/>

aged to apply after traveling out of Kashmir or at the overcrowded internet kiosks set up by the government.¹⁴⁵ The unfair tendering process not only has a negative impact on thousands of families who rely on the sector for livelihood, but also the construction industry as prices for raw materials such as sand inflate for local buyers.¹⁴⁶

Environmental experts, too, are concerned about the process by which mineral blocks have been identified in Kashmir's rivers and streams, but have failed to slow the misguided policy decisions. Jammu & Kashmir Environmental Appraisal Committee (JKEAC), an officially recognized entity, had advised the government during a meeting in December 2019 that no mining should be allowed in River Jhelum or other rivers without an evidence-based plan, which would demarcate basins suitable for mining and those that ought to be protected as river sanctuaries. "It should not be done in a hotchpotch manner," the committee had advised. In a meeting in July this year, it had again underlined its demand that mineral blocks should be only identified after compiling "authentic replenishment data." The Flood Control Department of Kashmir has also expressed concerns with an unscientific approach to mineral mining in Kashmir's rivers and streams, but is unable to slow the process "because of pressure from higher-ups." Engineers report that intensive mineral mining is bound to prove disastrous for flood management in the highly flood prone Kashmir valley.

The events on and after August 5, 2019 have generated skepticism among indigenous Kashmiris. Indigenous people are apprehensive that in a matter of few years, Kashmir will witness massive demographic changes given that people from anywhere in India can now obtain a domicile certificate to resettle in Kashmir. The administration appointed by government of India in Jammu and Kashmir is affirming people's fears as new rules to facilitate resettlement of non-Kashmiris in the region were introduced and published at an accelerated pace (in April 2020). The government is also penalizing any officers who do not execute such orders. For example, an officer was suspended¹⁴⁷ for his "poor performance" in issuing the domicile certificates quickly within a specified period (which was 15 days and has now been reduced to five days).¹⁴⁸ Close to two million domicile certificates have been issued since April 2020, a staggering number, though officials offer reassurances that a large majority of them were former residents of Jammu and Kashmir.¹⁴⁹ People in Kashmir are wary of 'assurances' as the new rules for getting citizenship of Jammu and Kashmir, in their view, reflect sinister designs of the government of India. Government of India's newly

¹⁴⁵ <https://www.newindianexpress.com/nation/2020/jun/29/mining-bids-not-going-to-kashmiris->

¹⁴⁶ <https://kashmirage.net/2020/06/27/kcci-expresses-resentment-over-giving-digging-tenders-to-non-locals-and-rendering-regional-jobless/>

¹⁴⁷ <https://kashmirobsrver.net/2020/08/30/kas-officer-suspended-for-delay-in-issuing-domicile-certificates/>

¹⁴⁸ <https://www.telegraphindia.com/india/kashmir-valley-domicile-certificates-in-5-days/cid/1790080>

¹⁴⁹ <https://www.sundayguardianlive.com/news/controversy-rages-jk-domicile-certificates>

constructed rules for obtaining a domicile in Kashmir requires that the applicant should have resided “for a period of fifteen years in the UT of J&K or has studied for a period of seven years and appeared in class 10th/12th examination in an educational institution located in the UT of J&K.” Indigenous people fear that this ruling makes security personnel and non-local central (Indian) government employees eligible for resettlement in Kashmir. [Under Article 35A,¹⁵⁰ only the erstwhile state assembly (government) had the power to define its citizens, who alone were eligible to apply for jobs or own immovable property.]

Indigenous Kashmiris are apprehensive that the government of India intends to develop subdivisions (called ‘housing colonies’ locally) under the guise of providing housing facilities for employees/workers who are expected to come to Kashmir as part of the program whereas India (actually) wants to change the demographic composition of the region. Already, as noted earlier, land suitable land for housing and recreation across the Kashmir region is under the occupation of Indian army and paramilitary forces. Security camps are built next to (or within) residential areas in Kashmir, and have occupied large swaths of land in major cities and towns with limited open land (like Srinagar, Baramulla and Anantnag). This militaristic-driven displacement is going to worsen given that India is now in full control of the land in Kashmir and indigenous Kashmiris having no means of dissenting. Farmers in the city of Srinagar are reporting concerns about displacement from farmland from land speculation fueled by the changes in domicile laws. For farmers agriculture is the only means of economic sustenance in the region.

According to the Kashmir Chamber of Commerce and Industry (KCCI),¹⁵¹ Kashmir’s economy suffered losses of one billion USD from August to November 2019. The impact on small-scale businesses, especially whose livelihood is linked to Kashmir’s environment – such agriculture, food systems, and tourism – are especially hard hit. In the immediate aftermath of the lockdown, farmers and orchardists were unable to transport their harvest to major markets. Smallholder farmers report concern about the impending displacement from their lands wrought by the conjoined forces of militarization (occupation of lands) and development pressures (land speculation) fueled by issuance of domicile certificates to non-indigenous people. In an online report released on August 24, 2020, the Kashmir Trade Alliance estimated the total annual loss since Aug 5 at Rs 45,000 crore, over six billion US dollars.¹⁵²

In summary, the moves by federal government mask the extractive policies in the name

¹⁵⁰<https://indianexpress.com/article/explained/understanding-articles-370-35a-jammu-kashmir-indian-constitution-5610996/>

¹⁵¹<https://kashmirscholars.files.wordpress.com/2020/01/kashmir-chamber-of-commerce-report-january-2020.pdf>

¹⁵²<http://risingkashmir.in/news/rs-45000-cr-loss-in-business-since-lockdown-kta-365504.html>

of ‘development’ and ‘civilization.’ If allowed to continue unchecked, not only is the life and livelihood of 12 million Kashmiris under threat, but the world will also lose an ecologically biodiverse region.

10.2 Additional Readings

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11 Chapter 10: Colonialism & Settler-colonialism in Kashmir – A Note on Terminology

State-centred narratives frame the Kashmir issue in terms of a bilateral India-Pakistan conflict. However, Kashmir scholarship is oriented toward a people-centred history. This history demands that we pay attention to the terms we use to understand historical agents and events, and thus to make clear the political and moral legitimacy of the Kashmiri demand for self-determination.

The terms “Indian-administered” and “Pakistan-administered Jammu and Kashmir” are used to remind readers of the continuing claim of Kashmiris to self-determination in the international arena, a claim that was ratified in resolutions passed by the United Nations Security Council between 1948 and 1957. The term ‘administered’ emphasizes the temporary nature of Indian and Pakistani control, and the as yet unrealised desire for Kashmiri self-determination. Kashmir scholars also use the following terms, particularly for Indian-administered Kashmir, given the trail of historical events after 1947: colonialism, occupation, and settler-colonialism. Kashmir scholars have argued that postcolonial states can be diagnosed as colonial precisely at the moment they gained independence from European colonial

powers since they forcibly established their sovereignty over peoples who did not willingly cede their own sovereignty to these newly formed nation-states.

11.1 Colonialism

Valentin Mudimbe has argued that European colonialism involved ‘the domination of physical space, the reformation of natives’ minds, and the integration of local economic histories into the Western perspective’ (1988, 15). The forcible re-arrangement of these three elements - territory, knowledge, and political economy – can be said to be hallmarks of colonialism. A combination and rearrangement of these elements that also inform terms like settler-colonialism, imperialism or occupation can be found in India’s relationship with Kashmir. Since 1947, India’s relationship with Kashmir displays these classic forms of rearrangement in the service of Indian, and not of Kashmiri, ends.

Historians have discussed at length the story of the Maharajah of Jammu and Kashmir’s accession to India. Whilst he may have wanted an independent state, the hurried decision to accede to India was motivated by Kashmiri armed rebellion against his rule (following the massacre of over 200,000 Muslims in Jammu) and the declaration of an independent Kashmir (Azad Kashmir) in 1947. The accession was signed with the proviso that the people of Kashmir would be able to determine their political future through a plebiscite or a referendum to join either India or Pakistan. The 1948 United Security Council Resolution 47 was the first to recommend a series of measures to the Governments of India and Pakistan to cease the war and ‘to create proper conditions for a free and impartial plebiscite’ for the people of the ‘State of Jammu and Kashmir’ to accede to either state (Duschinski et al. 2018, 20). Subsequent United Nations Security Council resolutions reiterated this condition. While the first India-Pakistan war ended on the 5th of January 1949 resulting in the division of the princely state of Jammu and Kashmir into Azad Kashmir (which Indians refer to as Pakistan Occupied Kashmir) and Indian- administered or occupied Kashmir, Duschinski and Ghosh (2017) argue that the United Nations resolutions form the legal foundation of Kashmir’s right to self-determination, which requires ascertaining the collective will of all peoples in the erstwhile princely state of Jammu and Kashmir. Fozia Lone (2018) argues that erstwhile princely state of Jammu and Kashmir itself constitutes the basis for Kashmiri claim to self-determination. Since the plebiscite was never held, the history of Jammu and Kashmir since 1947 has been that of a denied sovereignty, the inauguration of Indian occupation and colonialism in Jammu, Kashmir, and Ladakh (Osuri 2017), and the consolidation of Gilgit-Baltistan and Azad Kashmir as de facto provinces of Pakistan.

11.2 Colonialism & Military Occupation

By 1954, India expanded its sovereignty over Indian-administered Jammu and Kashmir through the institution and adoption of Article 370 in the Indian Constitution. As Bhan, Duschinski and Zia state, Article 370 gave ‘the people of the state the right to form their own constituent assembly, draft their own constitution, and choose their own flag’ (2018, 16). The Article also established the category of state subjects and prohibited ‘any non-resident from purchasing land in the state’ (Bhan, Duschinski & Zia 2018, 16). Defence, Foreign Affairs and Communications were to be administered by the Indian government. Over time, however, the principle of autonomy was hollowed out by a number of legal mechanisms and presidential orders which ensured that the Indian government effectively controlled the sovereignty of the state of Jammu and Kashmir] (Noorani 2011, 303 – 30). Duschinski and Ghosh (2017) name these processes ‘occupational constitutionalism’ or occupation by constitution. The enactment of the Preventative Detention Act in 1954 and its subsequent amendments, Sumantra Bose argued, turned ‘Indian-controlled Kashmir into a draconian police state in which civil rights and political liberties were virtually non-existent’ (2007, 171). Such forms of control obey the logic of military occupation; as Lisa Hajjar (2005) has argued, military occupation combines colonialism and a state of emergency.

Edward Said has defined imperialism as ‘the practice, the theory, and the attitudes of a dominating metropolitan centre ruling a distant territory’ (1994, 8). Said differentiates colonialism from imperialism by arguing that colonialism is often a ‘consequence of imperialism’ through the ‘implanting of settlements’ (1994, 8). Given the hollowing out of Article 370 and the institution of a continual state of emergency in Kashmir, India’s relationship to Kashmir can be argued as colonial rule, through the combination of the tactics of imperialism and military occupation (Kaul 2011; Anand 2012).

Subsequently, the imperial practices of manipulating elections resulted in the armed rebellion of 1989. While the official Indian narrative emphasises Pakistani ‘cross-border terrorism’ as the cause of Kashmiri rebellion, for Kashmiris this was an indigenous armed struggle against India, in which fighters sought support from Pakistan. Bhan, Duschinski and Zia note that ‘India sought to crush the rebellion through a massive counterinsurgency assault against insurgent and civilian populations, deploying more than 700,000 military and paramilitary forces in the region’ (2018, 2). The deployment of military force was accompanied by the declaration of the state of emergency as well as through laws that provided effective impunity to the armed forces, i.e, the Armed Forces Special Powers Act, Jammu & Kashmir (1990) and the Disturbed Areas Act (1990) (Duschinski and Ghosh 2017). Three decades later, ‘this counterinsurgency regime’ of military occupation and impunity has become a part of the every-day life of Kashmiris living in a ‘perpetual state of siege’

with ‘everyday conditions of surveillance, punishment, and control’ (Bhan, Duschinski & Zia 2018, 2). The human rights violations that emerged from this military occupation have been extensively documented by the Jammu and Kashmir Coalition of Civil Society and the Association of Parents of Disappeared Persons, who gather information in extremely difficult conditions.¹⁵³ Even a brief glimpse of these reports demonstrate the widespread and systematic ways in which the Indian state has engaged in brutal torture, extrajudicial killings, mass rapes, and enforced disappearances over decades through its techniques of military occupation. Seema Kazi (2009), Batool et al. (2016) Kaul and Zia (2018) Malik (2019) have discussed the sexual and gendered violence that have marked the occupation.

11.3 Settler-colonialism

Article 370’s nullification, also meant the dissolution of Article 35A of the Jammu and Kashmir constitution, an article which gave exclusive property rights to all state subjects of the erstwhile princely state as ‘permanent residents’ of the state. Accompanying this dissolution, the erstwhile state of Indian-administered Jammu and Kashmir has now been bifurcated into two Union Territories directly controlled by the central government. The nullification of Articles 370, 35A, and the more recent changes in domicile laws that allow non-state residents to gain permanent residency rights and buy property in Kashmir are part of India’s long term settler colonial interventions in the region.

The process of India’s settler-colonialism began with the massacre of thousands of Muslims in the Jammu region and the forced displacement¹⁵⁴ of half a million others into Pakistan in 1947. Under Indian Prime Minister Narendra Modi’s Bharatiya Janata Party rule, the dispossession and displacement of local populations has been legitimized through legal and constitutional changes. As Mushtaq and Amin (2020) note, recent legal changes demonstrate the ‘deepening and expansion of a matrix of control’ that is ‘duly aided through laws, to ensure the eventual elimination of the native.’¹⁵⁵ Mushtaq & Amin (2020) draw on Patrick Wolfe’s (2006) thesis of settler-colonialism as the logic of ‘the elimination of the native.’ The introduction of new domicile laws in Kashmir in March 2020 will once again transform the only Muslim majority region under Indian control into a settler colony by facilitating the large-scale transfer of land and territory that belongs to Indigenous communities in Jammu

¹⁵³See the Jammu and Kashmir Coalition of Civil Society webpages for major human rights reports as well as an annual review of human rights in Jammu and Kashmir: <http://jkccs.net>. See also the Association of Parents of Disappeared Persons, Kashmir, webpages for their reports: <https://apdpkashmir.com>

¹⁵⁴<https://www.aljazeera.com/news/2017/11/forgotten-massacre-ignited-kashmir-dispute-171106144526930.html>

¹⁵⁵<https://thepolisproject.com/indias-settler-colonialism-in-kashmir-is-not-starting-now-eliminating-the-natives-is-a-process-long-underway/#.Xyk9qC2ZPsE>

and Kashmir and Ladakh to outsiders from India. Kashmir scholars are now increasingly analyzing India's occupation as a settler colonial regime that seeks to spatially ghettoize, exclude, and ultimately eliminate Jammu and Kashmir's Indigenous populations while converting Indigenous land into settler property (Bhan and Duschinski 2020). Domicile¹⁵⁶ is currently available to anyone "who has resided for a period of 15 years in the UT of J&K or has studied for a period of seven years and appeared in Class 10th/12th examination in an educational institution located in the UT of J&K or who is registered as a migrant by the Relief and Rehabilitation Commissioner (Migrants).⁷ In a context where the military already occupies nearly 430,000 kanals, or 54,000 acres, of land within the territory of the erstwhile state of Jammu and Kashmir, the military has been given a free rein to purchase and acquire land. A large number of central government officials and military personnel (many of them potential war criminals) will now seek permanent residency in the erstwhile state of Jammu and Kashmir. The changes through the August 2019 annexation of Kashmir, and the changes that the new domicile law usher demonstrate a formal inauguration of settler-colonialism. This document bears witness to the rapid implementation of a settler-colonial reality in the different provinces of the erstwhile state of Jammu and Kashmir.

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12 Chapter 11: Demographic change and the new Domicile Law in Jammu and Kashmir

Forced population transfers and moved populations are illegal under international law, prohibited by Article 49 of the Fourth Geneva Convention and condemned by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities.¹⁵⁷

The already dire humanitarian and human rights situation in IAJK has substantially deteriorated since August 5, 2019¹⁵⁸ when GoI stripped the people of IAJK of critical rights, intensified its militarized occupation and embarked on a campaign of collective punishment and mass incarceration.¹⁵⁹ GoI has now implemented policies¹⁶⁰ that will result in the forcible transfer of indigenous Muslims out of IAJK and the transfer of non-local Hindus from

¹⁵⁷<https://undocs.org/pdf?symbol=en/E/CN.4/Sub.2/1993/17>

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¹⁵⁹<https://www.amnesty.org/download/Documents/136000/asa200102000en.pdf>

¹⁶⁰<https://indianexpress.com/article/india/centre-defines-domicile-rule-for-jk-6341175/>

India,¹⁶¹ and non Indians¹⁶² into IAJK. This is a worst-case eventuality¹⁶³ that observers had feared for some time; it is now an actuality. In context, these policies materially increase the already high risk of genocide.¹⁶⁴ At the same time, GoI is manufacturing a de facto reality that obviates all practical possibility of a peaceful resolution of the longstanding international territorial dispute¹⁶⁵ over J&K and the exercise by the people of &K of their fundamental human rights, including their right to self-determination,¹⁶⁶ which has been recognized by numerous UNSC resolutions (including Resolution 47 (21 April 1948),¹⁶⁷ Resolution 51 (3 June 1948),¹⁶⁸ Resolution 91 (30 March 1951),¹⁶⁹ Resolution 96 (10 November 1951),¹⁷⁰ Resolution 98 (23 December 1952),¹⁷¹ Resolution 122 (24 January 1957),¹⁷² and Resolution 126 (2 December 1957)).¹⁷³

Kashmiris have been under an intensive, militarized, near-total lockdown since August 4, 2019. While Mr. Guterres recently called for a global ceasefire of all hostilities¹⁷⁴ and urged world leaders to focus on the pandemic, GoI has instead used the current pandemic to escalate hostilities¹⁷⁵ in the armed conflict with Pakistan endangering¹⁷⁶ Kashmiri civilian lives, and to rapidly advance its ongoing assault against human rights in Kashmir¹⁷⁷ and the already precarious existence of Kashmiris. In addition to a further tightening of the post-August 2019 lockdown of Kashmir and the militarized, and violent enforcement¹⁷⁸ of nominal public health measures, GoI has assaulted¹⁷⁹ people trying to provide aid to others,

¹⁶¹<https://indianexpress.com/article/india/jammu-kashmir-domicile-certificate-online-application-6533352/>

¹⁶²<https://timesofindia.indiatimes.com/india/many-retired-gorkha-soldiers-in-6-6k-to-get-jk-domicile/articleshow/76792089.cms>

¹⁶³<https://www.nytimes.com/2019/08/06/world/asia/jammu-kashmir-india.html?module=inline>

¹⁶⁴<https://www.genocidewatch.com/single-post/2019/08/15/Genocide-Alert-for-Kashmir-India>

¹⁶⁵<http://unscr.com/en/resolutions/38>

¹⁶⁶<https://brill.com/view/title/33127?language=en>

¹⁶⁷<http://unscr.com/en/resolutions/47>

¹⁶⁸<http://unscr.com/en/resolutions/51>

¹⁶⁹<http://unscr.com/en/resolutions/91>

¹⁷⁰<http://unscr.com/en/resolutions/96>

¹⁷¹<http://unscr.com/en/resolutions/98>

¹⁷²<http://unscr.com/en/resolutions/122>

¹⁷³<http://unscr.com/en/resolutions/126>

¹⁷⁴<https://news.un.org/en/story/2020/03/1059972>

¹⁷⁵<https://www.tribuneindia.com/news/nation/pak-summons-indian-diplomat-for-third-time-this-week-over-ceasefire-violations-87966>

¹⁷⁶<https://www.middleeasteye.net/news/india-accused-kashmir-human-shields-border-war-pakistan>

¹⁷⁷<https://amnesty.org.in/wp-content/uploads/2019/10/Amnesty-International-India-Kashmir-Situation-Update-Final.pdf>

¹⁷⁸<https://caravanmagazine.in/health/jammu-and-kashmir-police-use-batons-and-firs-to-enforce-covid-19-lockdown-hospitals-struggle>

¹⁷⁹<https://indianexpress.com/article/india/jk-fir-against-ngo-for-distributing-ration-to-people-in-remote-areas-amid-lockdown-6368392/>

intensified its arrest, intimidation and persecution¹⁸⁰ of Kashmiri journalists, stepped up its campaign of assassinating¹⁸¹ armed resistance fighters accompanied by destruction of civilian homes¹⁸² and attacks on property, killed numerous civilians,¹⁸³ denied Kashmiris the right to mourn their dead,¹⁸⁴ further restricted basic communications,¹⁸⁵ and accelerated its implementation of policies¹⁸⁶ promoting forced demographic change in IAJK.

12.1 Key context

J&K is a territory that remains colonized, the subject of a longstanding international territorial dispute and under intensive military occupation. It is a theatre for armed conflict, both international and internal. It is also the situs of one of the longest-running pro-democracy movements in the world which began in the early 20th century (pre-dating the creation of the States of India and Pakistan) and remains ongoing. That popular movement has sought to redress discrimination (primarily against the Muslims of J&K) and secure economic, social, cultural and civil and political rights, including the right to self-determination. In IAJK, GoI has, as the occupying power and over the course of decades, repeatedly and systematically violated the human rights of the people of IAJK. GoI created an institutionalized apparatus of intense militarization,¹⁸⁷ state suppression of information (and promotion of disinformation),¹⁸⁸ legalized impunity¹⁸⁹ by its armed forces and a denial of basic rights (including to speak¹⁹⁰ and to assemble) while maintaining the nominal pretense of constitutional democracy and the rule of law.

GoI and its instrumentalities have committed gross violations of their international obligations in relation to IAJK and its residents, including, *inter alia*, obligations pursuant to commitments made by GoI at the UNSC, dozens of applicable UNSC and United Nations

¹⁸⁰<https://amnesty.org.in/news-update/stop-intimidation-of-journalists-in-jk/?eType=EmailBlastContent&eId=f9a3cbbe-e6b1-4639-9ce7-6b1a8555a9b9>

¹⁸¹<https://www.thequint.com/news/india/trenches-roadblocks-hizbul-mujahideen-chief-riyaz-naikoo-cornered-eliminated>

¹⁸²<https://thewire.in/rights/kashmir-srinagar-encounter>

¹⁸³<https://www.thequint.com/news/india/forces-killed-my-14-year-old-son-father-of-civilian-killed-in-handwara-jammu-and-kashmir-encounter-militants>

¹⁸⁴<https://scroll.in/article/960369/kashmir-amid-lockdown-militants-bodies-are-buried-discreetly-not-handed-to-families>

¹⁸⁵<https://www.reuters.com/article/us-health-coronavirus-india-tech-trfn/kashmir-internet-blackouts-hinder-health-services-contact-tracing-idUSKBN22W052?eType=EmailBlastContent&eId=65b220eb-2c3b-4530-8e10-ac00d88ff2a>

¹⁸⁶<https://kashmirscholarsnetwork.org/2020/04/06/kashmir-scholars-seek-immediate-intervention-of-the-united-nations-security-council-on-the-introduction-of-new-domicile-law-in-jammu-and-kashmir/>

¹⁸⁷https://www.cia.gov/library/publications/the-world-factbook/geos/print_in.html

¹⁸⁸<https://www.bbc.com/news/world-asia-india-50749764>

¹⁸⁹<https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

¹⁹⁰<https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

Commission for India and Pakistan resolutions, international human rights obligations (including pursuant to the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment, the Convention for the Protection of All Persons from Enforced Disappearances and the International Convention on the Elimination of All Forms of Racial Discrimination), the Geneva Conventions and various treaty obligations, including those pursuant to the Instrument of Accession (IoA), the contested treaty that GoI cites as the basis for its territorial claim to J&K. GoI is also responsible for massive, well-documented (including by the UN Office of the High Commissioner of Human Rights)¹⁹¹ rights violations and repeated acts constituting war crimes and crimes against humanity committed against the Muslims of IAJK. The cumulative effect of those violations and crimes has been, over decades and generations, brutal and devastating.

On August 5, 2019, GoI took unprecedented, extraordinary steps¹⁹² relating to IAJK, in further violation of GoI's international obligations to IAJK and its residents as well as GoI's Indian Constitutional obligations to IAJK and its residents (although these obligations were implemented in contravention of GoI's international commitments regarding J&K). The substantive effect of those steps include:

- The unilateral and illegal disintegration¹⁹³ of the Indian State of J&K (pursuant to the Jammu and Kashmir Reorganisation Act, 2019), eliminating India's only Muslim-majority state, and cancellation of the Indian State of J&K's separate constitution, flag and head of state;
- The political disempowerment of IAJK's Muslims by "reorganizing" the territory and subdividing and gerrymandering¹⁹⁴ boundaries to dilute the influence of its Muslim populations;
- The imposition of direct GoI control over IAJK and the elimination of even the pretense of local control over public administration;
- The complete disenfranchisement¹⁹⁵ of the Muslims of Ladakh and Kargil;
- The legalization of the denial of the right of return¹⁹⁶ for Muslim refugees and political exiles from IAJK;

¹⁹¹<https://thewire.in/diplomacy/india-dismisses-second-critical-unhrc-report-kashmir>

¹⁹²<http://www.raiot.in/dismantling-370-in-kashmir-part-1/>

¹⁹³<http://egazette.nic.in/WriteReadData/2019/210407.pdf>

¹⁹⁴<https://www.thehindu.com/news/national/other-states/jammu-and-kashmir-to-get-delimitation-commission/article30846668.ece>

¹⁹⁵<https://www.ndtv.com/india-news/jammu-and-kashmir-ladakh-to-become-union-territories-from-october-31-what-it-means-2124744>

¹⁹⁶<https://thewire.in/government/centre-jk-residents-emigrate-pakistan-return>

- The elimination of historic protections¹⁹⁷ of the local population’s ownership of immovable property, access to government employment and access to educational opportunities; and
- The dismantling¹⁹⁸ of IAJK’s land ownership system and, consequently, the foundations of its historic economy.

Experts on the reality of IAJK understood that, effectively, GoI had achieved an unprecedented degree of total domination over the already subjugated Muslims of IAJK and had set in motion a long-planned plan to forcibly change the demographics of IAJK in favor of Hindus, a “final solution”¹⁹⁹ for IAJK.

These August 5, 2019 steps against IAJK were a long-sought victory for the *Hindutva* (or Hindu supremacist) movement in India. The *Hindutva* movement is a militant, virulently anti-Muslim, ultranationalist movement which has achieved dominance in and over India. Since Partition, the autonomy of the Indian State of J&K and the rights of the Muslims of J&K have been an obsession and special target of the *Hindutva* movement. *Hindutva* parties in the post-Partition period insisted that J&K was an integral part of India, that J&K’s autonomy (pursuant to IoA and also later “guaranteed” by India’s Constitution) was a clear violation of India’s sovereignty and called for the “complete integration” of J&K with India and an end to two constitutions, two flags and two heads of state.²⁰⁰ In India’s early years, this was contrary to then-mainstream Indian politicians from across the political spectrum who respected (at least nominally) India’s international commitments in relation to J&K. However, in recent decades, GoI’s policy towards IAJK (both under *Hindutva* and secular nationalist-led governments) and mainstream Indian thought regarding J&K has been *Hindutva* in its orientation, insisting that J&K was “an integral part of India,” demonizing IAJK Muslims for insisting on their legal and legitimate rights, justifying all manner of violations in IAJK through specious, ultranationalist arguments regarding “terror,”²⁰¹ and declaring any other position in respect of J&K seditious.²⁰² With the “revocation” of Article 370 and Article 35A of the Indian Constitution and the passage of the J&K Reorganisation Act in August of 2019, the current *Hindutva* GoI legalized India’s annexation²⁰³ and full

¹⁹⁷<http://www.raiot.in/dismantling-370-in-kashmir-part-1/>

¹⁹⁸<http://www.raiot.in/dismantling-370-in-kashmir-part-1/>

¹⁹⁹<https://economictimes.indiatimes.com/news/politics-and-nation/congress-asks-home-minister-to-explain-final-solution-for-jammu-and-kashmir/articleshow/58902110.cms>

²⁰⁰https://www.business-standard.com/article/current-affairs/how-modi-fulfilled-rss-dream-of-kashmir-s-integration-119080501139_1.html

²⁰¹<https://www.voanews.com/south-central-asia/2g-internet-stifling-education-work-indian-kashmir?eType=EmailBlastContent&eId=6bf0059e-bf42-4a7b-8f3a-8fffbe3c7494>

²⁰²<https://indianexpress.com/article/opinion/editorials/unfreedom-of-press-6373053/?eType=EmailBlastContent&eId=b7058336-e26d-484f-8478-9a0da0280ab0>

²⁰³<https://www.financialexpress.com/elections/bjp-election-manifesto-2019-high-on-kashmir-content-talks-tough-on-article-35a-and-article-370/1541708/>

integration of IAJK in violation of international law.

Since August 2019, Kashmir has suffered the longest communications shutdown in a nominally democratic state,²⁰⁴ which lasted 213 days (after which time, only 2G internet access has been intermittently allowed for certain sites subject to total surveillance, detention for accessing disallowed sites and discontinuance by government authorities at any time). Thousands have been detained, many of whom remain under detention,²⁰⁵ including children,²⁰⁶ the elderly and the disabled, often held in overcrowded jails hundreds of kilometers away from IAJK. Torture is rampant and killings continue with total impunity. The losses, as on July 2020, are estimated at 5 billion USD.²⁰⁷ As a direct result of the policies of the Indian government in the past one year, Kashmir's export has declined by 62% and tourism in Kashmir has declined by 86%. The local economy has been devastated²⁰⁸ and the local population is facing existential economic stress and a severe mental health crisis.²⁰⁹ Media organizations are not allowed to operate freely and journalists are being jailed²¹⁰ and charged with terrorist offences for reporting news.²¹¹ The Indian Government has used an anti-terror legislation that carries a 7 year jail term, the Unlawful Activities Prevention Act, against journalists in Kashmir (Masrat Zehra, Peerzada Aashiq, Gowhar Geelani) to send a message that no other narrative apart from the government's own narrative can be tolerated. The Muslims of IAJK are not allowed to assemble or speak, including through social media (to which they have been denied access).²¹² They are denied access to healthcare,²¹³ access to education,²¹⁴ due process,²¹⁵ the opportunity to make a living, the freedom to move freely and the freedom to practice their religion (links to various reports providing details can be found on our website).²¹⁶ There are just ninety-seven ventilators for 7 million people, and a handful of functioning hospitals that are ill-equipped, a ratio rightly remarked to be "even

²⁰⁴<https://time.com/5832256/kashmir-lockdown-coronavirus/?eType=EmailBlastContent&eId=7944180d-e742-4467-97d8-3eeb03ceaf88>

²⁰⁵<https://www.amnesty.org/download/Documents/136000/asa200102000en.pdf>

²⁰⁶<https://www.hrw.org/news/2020/01/17/india-failing-kashmiri-human-rights>

²⁰⁷<https://jklpp.org/unilateral-integration-global-pandemic-declining-economy-2/>

²⁰⁸<https://www.deccanherald.com/national/north-and-central/jammu-and-kashmir-economy-suffers-rs-270-crore-loss-per-day-due-to-covid-19-lockdown-828015.html>

²⁰⁹<https://www.nytimes.com/2020/04/26/world/asia/kashmir-india-mental-health-coronavirus.html>

²¹⁰<https://theprint.in/india/jailed-kashmiri-journalist-who-won-us-media-award-was-arrested-after-burhan-wani-profile/281597/>

²¹¹<https://thewire.in/media/use-of-uapa-against-journalists-is-last-nail-in-coffin-for-press-freedom-in-kashmir>

²¹²<https://scroll.in/article/953581/flawed-kashmir-fir-against-social-media-users-has-one-main-objective-to-intimidate-residents>

²¹³<https://www.hhrjournal.org/2020/04/covid-19-restricted-internet-impacts-on-health-in-kashmir/>

²¹⁴<https://www.deccanherald.com/national/north-and-central/jammu-and-kashmir-students-unable-to-attend-online-classes-due-to-slow-internet-speed-819947.html>

²¹⁵<https://apdpkashmir.com/120-days-5th-august-to-5th-december-a-report-by-apdp/>

²¹⁶<https://kashmirscholarsnetwork.org/resources/otherresources/>

lower than besieged Gaza”. 1 doctor for every 3900 patients but 1 soldier for every 10 Kashmiris. GoI has stepped up its persecution and killing of anyone who dares to resist GoI’s occupation of IAJK, collectively punishing civilians with impunity and denying the Muslims of IAJK even the opportunity to perform last rites over their dead.²¹⁷ GoI has also enforced the economic strangulation of IAJK, begun to allocate public lands to preferred, non-local parties²¹⁸ and replaced local place names with those of *Hindutva* icons.²¹⁹ In India (outside of IAJK), IAJK Muslims have continued to be targeted,²²⁰ discriminated against, wrongfully imprisoned, tortured, assaulted, abused and killed.

GoI has institutionalized in IAJK a regime of total unfreedom characterized by intense, unchecked, discrimination against, and the total domination of, the Muslims of IAJK. Hindu nationalists have achieved a major, long-fought victory in the “total integration” of IAJK into India. They have now been emboldened to continue their project and operationalize the forced demographic change of IAJK in favor of Hindus, conduct which constitutes a crime against humanity and a grave breach of the Fourth Geneva Convention. A social, cultural and demographic transformation of IAJK is underway. To that end, GoI has, among other things, implemented a new Domicile Law.²²¹

12.2 Key Developments

In April 2019, the Government of India introduced a new Domicile Law.²²² On May 18, 2020, GoI notified²²³ the Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules, 2020, which diminished the people of IAJK’s rights to access public employment opportunities, which are economically vital and symbolically significant. This move, deemed illegal, has been opposed by various sections of society,²²⁴ including pro-India political parties in IAJK.²²⁵ On May 20, 2020,²²⁶ GoI made the domicile certificate a condition for access to

²¹⁷<https://www.trtworld.com/magazine/amid-covid-19-india-secretly-buries-kashmiri-rebels-35509>

²¹⁸<https://nation.com.pk/06-Mar-2020/india-starts-selling-kashmir>

²¹⁹<https://www.deccanherald.com/national/north-and-central/names-of-important-institutions-in-jk-ut-to-be-changed-775063.html>

²²⁰<https://www.hrw.org/news/2019/11/14/jammu-and-kashmir-context>

²²¹<https://www.aljazeera.com/news/2020/04/flooding-india-introduces-kashmir-domicile-law-200401100651450.html>

²²²<https://www.humanrightspulse.com/mastercontentblog/new-domicile-law-in-jammu-and-kashmir-threatens-autonomous-status>

²²³<https://www.thehindu.com/news/national/jk-notifies-amended-domicile-certificate-rules/article31617453.ece>

²²⁴<https://www.deccanherald.com/national/north-and-central/npp-torches-effigy-of-bjp-led-govt-to-protest-new-domicile-rules-in-jk-839801.html>

²²⁵<https://www.thehindu.com/news/national/nc-pdp-reject-jk-domicile-law/article31622785.ece>

²²⁶<https://www.ndtv.com/education/jk-domicile-admission?eType=EmailBlastContent&eId=65b220eb-2c3b-4530-8e10-ac00d88fff2a>

education in IAJK. Again, these changes are in direct violation of international humanitarian law as well as the IoA and the now-abrogated J&K Constitution and Indian Constitutional provisions relating to J&K.

The new rules are a major departure from an established body of historical precedent, law and jurisprudence. This position was guaranteed to Kashmiris under the Delhi Agreement of 1952,²²⁷ the Presidential Order of 1954,²²⁸ Article 35A of the Constitution of India and Part III Section 6 of Constitution of Jammu & Kashmir.²²⁹ These instruments and articles recognised the right of Jammu & Kashmir to define its citizens, known as “permanent residents” or popularly called “state-subjects” based on a 1927 notification²³⁰ by the erstwhile king of Jammu & Kashmir. Through the new rules, with retrospective effect, a “permanent resident” has now been replaced with “domicile” even though no instrument has ever granted such power to the Indian government.

The immediate effects of the new rules include:

- Indigenous people of IAJK no longer automatically qualify for public employment or education opportunities in IAJK. Traditionally, “state subject” (i.e., of the historic state of J&K) or “permanent resident” status (a previous GoI modification of “state subject” status), both of which are now replaced with the new “domicile” rules, entitled indigenous residents of IAJK rights to public employment, education, ownership of immovable property and other important rights. It is anticipated that the implications of the new status will be similarly broad and less accessible to the indigenous residents of IAJK.
- Indigenous people of IAJK, or holders of the previous “state subject” or “permanent resident” status, are not automatically grandfathered under the new domicile rules. They must apply for status like any non-local resident of India. Their applications are subject to rejection. It is believed that many indigenous people of IAJK do not possess the certificate required to obtain the new domicile status (which may never have been issued, may have been lost, may have been destroyed in natural disasters like the 2014 floods that ravaged IAJK²³¹ or may have been destroyed in acts of state violence or collective punishment like the recent destruction of at least 12 houses in downtown Srinagar). Historically, such certificates have been extremely difficult to obtain and may now be practically impossible to obtain.
- The new domicile status is available to any Indian (subject to certain qualifying criteria)

²²⁷https://www.satp.org/satporgtp/countries/india/states/jandk/documents/papers/delhi_agreement_1952.htm

²²⁸http://jklaw.nic.in/constitution_jk.pdf

²²⁹http://jklaw.nic.in/the_constitution_of_jammu_and_kashmir_1956.pdf

²³⁰https://www.satp.org/satporgtp/countries/india/states/jandk/documents/actsandordinances/State_Subject_Rules.htm

²³¹<https://jkccs.files.wordpress.com/2017/05/occupation-hazard-jkccs.pdf>

and their children (in some cases, even if they never reside in J&K). There is a special qualification category for the children²³² of GoI officials and military personnel who have served in IAJK for ten years, i.e., the families of those officials most directly responsible for the human rights violations and acts constituting war crimes and crimes against humanity committed in IAJK.

- The documentary requirements for non-locals to obtain domicile status are minimal and easily obtained.²³³
- The new domicile status is not available to any “state subjects” or “permanent residents” or their progeny who are not Indian citizens. All refugees or exiles from IAJK including those in Pakistan-Administered J&K, who are predominantly if not entirely IAJK Muslims, are rendered ineligible. This is in stark contrast to Hindu refugees from “West Pakistan”²³⁴ who are granted domicile rights. All diaspora Kashmiris and their children who are not Indian citizens are rendered ineligible.
- Local authorities have strong incentives to not resist a mandate from GoI officials regarding the greenlighting of Indian citizens for the new status. Specifically, the rules provide for a Rs.50,000 fine²³⁵ (per instance; this amount represents a substantial portion of the monthly earnings of most local authorities) for local authorities who do not comply within 7 business days with an appellate authority’s (who are GoI bureaucrats) decision to grant a domicile certificate.
- The procedures fast-track decisions and stipulate that they are to be made within 15 business days (with only a 15-business day appeal period). The procedures are designed to rush decisions and prevent deliberation and scrutiny.²³⁶
- There are no meaningful procedural safeguards. Primary decision making authority resides with low-level local authorities who are notoriously subject to influence and were previously considered unqualified to make grave decisions of this type. Appeals are heard by GoI bureaucrats, functionaries for the GoI executive. While it is widely known that the Indian judiciary has failed to safeguard the rights of Kashmiris,²³⁷ there is not even the semblance

²³²<https://theprint.in/theprint-essential/what-new-jk-domicile-rule-is-and-how-it-impacts-residents-of-the-union-territory/394038/>

²³³<https://thewire.in/law/kashmir-domicile-certificate-rules>

²³⁴<https://www.ndtv.com/india-news/cabinet-gives-retrospective-nod-to-law-for-domicile-criterion-for-jobs-in-jammu-and-kashmir-2232384?eType=EmailBlastContent&eId=65b220eb-2c3b-4530-8e10-ac00d88ff2a>

²³⁵<https://thewire.in/law/kashmir-domicile-certificate-rules>

²³⁶<https://www.cpiml.net/liberation/2020/07/kashmir-domicile-law-incremental-dispossession-statelessness-and-displacement>

²³⁷<https://www.economist.com/asia/2019/10/05/indias-judges-are-ignoring-the-governments-abuses-in-kashmir>

of due process afforded the people of IAJK with respect to important legacy rights that are fundamental to their continued welfare and existence.

- The rules are being interpreted retrospectively,²³⁸ immediately qualifying an untold number of Indians according to the criteria for the new domicile status.
- Prior to the “Jammu & Kashmir Reorganization Order 2020” a total of 480,000 government jobs were available only for domiciles but the new arrangement opens the field for anyone that meets the criteria without taking the consent of the people of Kashmir. The 2016 Economic Survey Report had pegged 25% of Jammu & Kashmir’s population between 18 and 29 as unemployed. The new changes are set to increase the levels of unemployment.
- Further, only 30% of land in Kashmir is habitable and fit for cultivation. Already as admitted by the previous state government – 50,000 acres, or 20,000 hectares of land are under occupation of the Indian army. There is very little habitable land to go around for the new domiciles without deforestation in Kashmir. The unplanned influx of Indians can cause an irreparable impact on the ecology and livelihood of the people of Kashmir.

These new developments have a profound and grave significance:

- There is recent GoI precedent for the conduct of an exercise comparable to that which is now being implemented in IAJK – the conduct of the National Register of Citizens (NRC) in Assam. The conduct of the NRC was done in an arbitrary, capricious and discriminatory manner in which the near-impossible burden of evidencing in an existentially significant situation (the risk of statelessness²³⁹ and denial of the rights of citizenship) was shifted²⁴⁰ to those least able to meet that burden and people were denied fundamental rights on practically meaningless or faulty technicalities. In the Assam case, there was at least a long-lead time, a more robust process and some judicial oversight. All of that is lacking in IAJK in a much more highly politicized environment whose likely victims, the Muslims of IAJK, are the most demonized group in India and where there is a well-known desire of the ascendant *Hindutva* movement to repopulate the state.
- These rules further incentivize (through access to employment and education) demographic flooding as well as service of GoI in the repression of the people of IAJK. *Hindutva* politicians

²³⁸<https://www.ndtv.com/india-news/cabinet-gives-retrospective-nod-to-law-for-domicile-criterion-for-jobs-in-jammu-and-kashmir-2232384?eType=EmailBlastContent&eId=65b220eb-2c3b-4530-8e10-ac00d88ff2a>

²³⁹<https://caravanmagazine.in/politics/rise-and-rise-of-hindu-nation>

²⁴⁰<https://indianexpress.com/article/opinion/columns/national-register-of-citizens-assam-supreme-court-amit-shah-nationwide-nrc-6135243/>

in India have already been encouraging Indian men to go to Kashmir²⁴¹ to take Kashmiri land and marry or abduct “fair Kashmiri women.”²⁴²

- The state is the most prevalent employer in IAJK and the primary employer of people who have obtained higher education. Sociologically, state employment is essential for economic stability, particularly for urban and more educated people in IAJK. The new rules will increase the levels of unemployment²⁴³ in IAJK and diminish future employment prospects and increase unemployment. There were reportedly over 250,000²⁴⁴ highly educated and unemployed youth in IAJK prior to the successive months of lockdowns; unemployment has rapidly risen²⁴⁵ in the past months. As a result, many indigenous residents of IAJK may become economic migrants and further accelerate demographic change in IAJK.
- The new domicile rules’ impairment of the opportunity to obtain state employment is a further attack in the ongoing, broad assault by GoI on the economic welfare of the people of IAJK. This assault includes the ongoing lockdown and denial of access to internet connectivity, which has resulted in massive economic losses²⁴⁶ with no opportunity for businesspeople to shift to online business models, pivot to other markets or otherwise seek to survive. It also includes the longstanding non-operation of major sectors of the IAJK economy,²⁴⁷ including the tourism, fruit export and handicrafts industries.
- The new domicile rules’ impairment of the opportunity to obtain education is a further attack on the broad assault on IAJK residents’ access to education²⁴⁸ due to, among things, long-term closure of schools, denial of access to internet connectivity and restrictions on movement or travel. In addition, Muslim IAJK students who have sought educational opportunities in India have, like other IAJK Muslims, been discriminated against, harassed, evicted, arrested,²⁴⁹ intimidated and assaulted.
- The popular pro-democracy movement in J&K began in the early 20th century and continues to this day. The major demands of that rights struggle were: equal access to education, an end to economically exploitative practices, equal access to state employment and the right to self-determination. GoI is making the exercise of the right to self-determination, a

²⁴¹<https://www.indiatvnews.com/news/india-bjp-mla-vikram-saini-fair-skinned-kashmiri-girl-540875>

²⁴²<https://foreignpolicy.com/2019/08/13/kashmir-is-under-the-heel-of-indias-colonialism/>

²⁴³<https://www.moneycontrol.com/news/kashmir/politics-will-new-delhi-revisit-its-decision-of-domicile-change-in-jk-5120591.html>

²⁴⁴<https://moderndiplomacy.eu/2020/04/13/from-frying-pan-to-fire-kashmir-new-domicile-law-unemployed-youth-and-beyond/?eType=EmailBlastContent&eId=0e1baf4c-2717-4ffd-baf7-28c1388e488e>

²⁴⁵<https://www.voanews.com/extremism-watch/kashmir-internet-shutdown-takes-toll-economy>

²⁴⁶<https://kashmirobservers.net/2020/05/18/mounting-economic-loss/?eType=EmailBlastContent&eId=2f1815cc-fc0e-4520-af8d-de73d3cacac4>

²⁴⁷<https://www.voanews.com/extremism-watch/kashmir-internet-shutdown-takes-toll-economy>

²⁴⁸<https://indianculturalforum.in/2020/03/02/interrogating-the-normal-in-kashmir/>

²⁴⁹<https://www.bbc.com/news/world-asia-india-52608589>

goal that was never achieved, a de facto impossibility through changes to the demography of IAJK. GoI has reversed or is reversing all of the accomplishments won by that movement (including re-distribution of land to landless farmers, improved access to education and improved access to state employment) through multigenerational civil struggle in the face of intense repression and extravagant state violence.

- While it is understood that the Muslims of IAJK are intended to be the primary victims of these developments, IAJK is a multi-ethnic, multi-religious place. These developments facially impact most historic residents of IAJK and are expected to have grave, detrimental impacts on various vulnerable populations in IAJK, including ethnic and religious minorities, refugees, stateless people and families divided across international borders. Domicile law changes have also been opposed by sections of people in Ladakh²⁵⁰ and Jammu.²⁵¹

As a result of these developments, analysts anticipate “demographic flooding”²⁵² of IAJK by Indian Hindus. It is reasonable to expect severe dislocation and further disenfranchisement, discrimination and persecution of the indigenous people of IAJK and, in particular, the Muslims of IAJK. This will be exacerbated by GoI’s long-planned and still-anticipated Hindu settler colonial project²⁵³ for IAJK. Consistent with the general suppression of speech and criminalization of dissent of any kind in IAJK, the Inspector General of Police has threatened to arrest people “instigating”²⁵⁴ against the new Domicile Law, including by posting about the law on social media. Through state violence, impunity, an intensive military occupation, the widespread denial of human rights and now an active and credible threat of forced demographic change by an ideologically driven superior power, the survival of the Muslims of IAJK is threatened today.

12.3 Need for Urgent Intervention

GoI, through its policies, has effectively cut off the Muslims of IAJK from international assistance, oversight and support. The international community, including the UN and the UNSC, are nonetheless aware of what GoI has perpetrated against and is perpetrating against the people, and particularly the Muslims, of IAJK. Various UN bodies, including the UNSC, the United Nations Monitoring Group for India and Pakistan and the UN OHCHR,

²⁵⁰<https://www.news18.com/news/india/dragon-and-a-din-of-demands-ladakh-groups-may-shun-hill-council-polls-amid-6th-schedule-domicile-row-2902481.html>

²⁵¹<https://www.deccanherald.com/specials/insight/job-land-rights-concerns-in-jammu-kashmir-and-ladakh-868563.html>

²⁵²<https://sabrangindia.in/article/changing-domicile-jammu-and-kashmir>

²⁵³<https://zeenews.india.com/jammu-and-kashmir/bjp-will-revive-plan-for-hindu-settlements-in-kashmir-ram-madhav-2219012.html>

²⁵⁴<https://sabrangindia.in/article/changing-domicile-jammu-and-kashmir>

and various UN special rapporteurs and experts have been directly involved in the situation in IAJK over the course of years. Despite massive rights violations and the commission of atrocity crimes, there has been no effective intervention or accounting.

The “state security” / “anti-terror” rationale of GoI has been and is a canard. The fundamental reality in IAJK has been and remains one of state violence to deny and suppress people’s legitimate rights. With the ascendance of *Hindutva* forces, that regime of repression has been systematically transformed into a regime of total domination of IAJK Muslims and is actively advancing toward an intentional destruction of that people. At this critical juncture, the international community’s continued silence and failure to act goes beyond institutional failure, the abdication of responsibility and the politicized hollowing out of supposed commitments – it goes to complicity and the facilitation of that which GoI has perpetrated and is today perpetrating in IAJK.

The targeting, demonization, domination and violence against the Muslims of IAJK threatens their existence. The longstanding international territorial conflict, which is both active²⁵⁵ and nuclear, coupled with political and economic stress in neighboring states and the intensifying competition for vital, dwindling critical resources²⁵⁶ create a desperate and explosive situation that continues to threaten global peace. The situation in IAJK today is akin to both that in Srebrenica in 1995 and that in the Sudetenland in 1939. It is an exigent, desperate situation that demands an extraordinary response.

In the interests of the credibility of international human rights and humanitarian law, the credibility of the United Nations Organizations, international peace and stability and the survival of the people of IAJK the rei need for urgent intervention to:

1. Ensure GoI complies with its international obligations to IAJK and the people of IAJK, including pursuant to dozens of applicable UNSC and United Nations Commission for India and Pakistan resolutions, human rights laws (including pursuant to the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment, the Convention for the Protection of All Persons from Enforced Disappearances and the International Convention on the Elimination of All Forms of Racial Discrimination), the Geneva Conventions and various treaties, including IoA;
2. Prevent GoI from implementing its new Domicile Law and related rules;

²⁵⁵<https://www.express.co.uk/news/world/1284411/India-pakistan-war-Kashmir-clashes-world-war-3-army-shots-latest-Poonch?eType=EmailBlastContent&eId=1f6b8d6d-5844-4d1c-b807-41fdd166bc3a>

²⁵⁶https://www.bbc.com/news/science-environment-50707138?intlink_from_url=https://www.bbc.com/news/world/asia/india&link_location=live-reporting-story

3. Ensure GoI does not allow any further changes to landholding in, or the demography of, IAJK;
4. Ensure GoI respects and protects the rights of the people of IAJK, including to free expression, free movement and free assembly;
5. Ensure GoI restores, and ceases its restrictions on, communications in IAJK;
6. Ensure GoI provides adequate access to healthcare and education in IAJK;
7. Ensure GoI compensates and rehabilitates individuals, businesses and industries that have suffered economic consequences due to GoI's policies in IAJK;
8. Ensure GoI allows international aid, humanitarian, relief, human rights and media organizations and UN observers to freely operate in IAJK and allow humanitarian aid to flow to IAJK without restriction from abroad;
9. Ensure GoI immediately and unconditionally release all political prisoners, prisoners of conscience and detainees from IAJK;
10. Ensure GoI to immediately ceases to enforce and begins the process of repealing all applicable laws that do not conform for widely regarded norms of fairness and due process, including the Public Safety Act²⁵⁷ and Armed Forces Special Powers Act²⁵⁸;
11. Ensure GoI withdraws its military and other instrumentalities from populated areas in IAJK with a view to commencing a UN-supervised demilitarization;
12. Immediately commence the process of implementing a free and impartial plebiscite in J&K in accordance with applicable UNSC resolutions; and
13. Empower a special rapporteur to investigate human rights violations, war crimes and crimes against humanity committed in IAJK.

²⁵⁷<https://www.amnesty.org/download/Documents/20000/asa200352012en.pdf>

²⁵⁸<http://jkccs.net/structures-of-violence-the-indian-state-in-jammu-and-kashmir/>

13 Chapter 12: Abrogation of Article 370 and its impact on the economic, social and cultural rights of Kashmiris

This chapter outlines main concerns about the Government of India's elimination of the region's limited autonomy through the abrogation of key articles of the Constitution of India and the bifurcation of the state into two federally-administered Union Territories on August 5, 2019, as well as the recent introduction of the new domicile law redefining the Hereditary State Subject laws affecting the regions of Jammu, Kashmir, Ladakh, and Leh.

India's unilateral and anti-democratic abrogation of these key articles does not change Kashmir's status as a disputed territory under international law, to be resolved in accordance with UN Security Council resolutions on the basis of the principle of self determination. Such a wide-ranging decision that affects the internationally recognized rights of parties of a multilateral dispute cannot be glossed as an internal matter for India.²⁵⁹ It is a violation of the UN Security Council resolutions and an act of aggression amounting to an illegal annexation of UN-recognized disputed territory and an illegal attempt to unilaterally alter

²⁵⁹<http://www.raiot.in/dismantling-370-in-kashmir-part-2/>

the rights of Kashmiri people, who are residents of the disputed territory. In light of India's long history of political repression and atrocities in Jammu & Kashmir (J&K), these actions that have been carried out without the consent of the governed raise important questions of collective punishment in the context of an ongoing armed conflict, where the framework of international humanitarian laws applies.

The abrogation of Article 370 and 35A of the constitution removed important legal protections²⁶⁰ that restricted non-Kashmiris from purchasing land, establishing residency rights, and settling in the region. The removal of these rights enables demographic changes²⁶¹ that could make Kashmiris minorities in their own homeland and render inoperable the UN Security Council-mandated plebiscite that gives Kashmiris the right to determine their political future. The elimination of autonomy also severely impacts people's ability to earn a livelihood and access land and natural resources, as these assets are being removed from the ownership of J&K state government and local and private individuals and corporations, and assigned to the ownership of the Indian central government and newly-allocated domiciles from India. India's unilateral annexation of J&K also has significant geopolitical consequences. China is now claiming sovereignty over part of the disputed territory, resulting in the recent India-China standoff (*FIDH Press Release*, June 23, 2020).²⁶² India's unilateral actions risk further militarization and destabilization of the contested region.

There are many ways in which the abrogation and subsequent related legislations and policies have produced patterns of land transfer, land appropriation, natural resource extraction, and denial of access to employment and sources of livelihood for Kashmiris are in violation of the International Covenant on Economic, Social and Cultural Rights.²⁶³ Ongoing internet restrictions in Kashmir operate as a technique of political repression and collective punishment, presenting severe impediments to the enjoyment of internationally and constitutionally guaranteed civil, political, and socio-economic rights. A recent report by Jammu & Kashmir Coalition of Civil Society (JKCCS), *Kashmir's Internet Siege*²⁶⁴ (August 2020), provides a detailed analysis of the harms, costs and consequences of the digital siege in Jammu & Kashmir from August 2019 to August 2020. This report examines the shutdown and network disruptions associated with the August 5 annexation as well as the Covid-19 pandemic in the light of fundamental human rights to livelihood, health, education, access to justice, freedom of press, free speech and expression, and social and cultural participation.

²⁶⁰<http://www.raiot.in/dismantling-370-in-kashmir-part-1/>

²⁶¹<https://foreignpolicy.com/2019/08/16/new-delhis-demographic-designs-in-kashmir/>

²⁶²<https://www.fidh.org/en/region/asia/india/china-india-pakistan-de-escalate-tensions-along-border-lines-and-seek>

²⁶³<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

²⁶⁴https://jkccs.net/report-kashmirs-internet-siege/?fbclid=IwAR33R_upZIyKomJW37F0UUQ6z0smImKc7qr7Kkft1VbYBHVQCBBEDW0

13.1 The New Domicile Law

At the height of India's public health lockdown, India's Ministry of Home Affairs announced a new set of laws, called *Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order, 2020*,²⁶⁵ including domicile rights for Indian citizens on April 1 and issued a notification of the new J&K domicile procedure rules, called *Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules 2020*,²⁶⁶ on May 18. According to this new domicile law, domicile status is available to any Indian national who has stayed in the region for 15 years; the children of any central government officer (Army, paramilitary forces, Indian Administrative Service, Indian Police Service) or employee of public sector undertakings such as banks and central universities who has served in the region for 10 years, even if these children have never set foot in the state; and any high school student who has studied in the region for 7 years. Domicile certificate holders are eligible to receive residency benefits regarding education, employment, and land ownership in the J&K Union Territory.

The new legislation sharply digresses from earlier domicile laws in the state, which granted the local population exclusive rights to buy property, own land, and work. The new legislation enables the fast-tracking of domicile certification as well as the revocation of residency of J&K's original inhabitants. It is important to note that Israel has used residency revocation as a key strategy of its systematic policy to transfer the protected Palestinian population from Jerusalem, as consistently tracked in reports of the UN Secretary General and the High Commissioner for Human Rights (see A/71/364,²⁶⁷ A/70/421,²⁶⁸ A/HRC/31/40²⁶⁹ and Add.1, A/HRC/31/41,²⁷⁰ and A/HRC/31/44)²⁷¹.²⁷² In Kashmir, the new discriminatory laws and policies enable demographic change, militarized settlements, disenfranchisement, and alienation of land. For further analysis of the new domicile law, see Kashmir Scholars Consultative and Advocacy Network (KSCAN)²⁷³ (April 6, 2020; see also *The Wire*, May 30²⁷⁴).

On September 1, the J&K administration announced that 12,43,996 people across all 20 districts of J&K Union Territory had been granted domicile certificates from the time that the process began in late June through August 31 (*Indian Express*, September 2, 2020).²⁷⁵ This

²⁶⁵<http://egazette.nic.in/WriteReadData/2020/218978.pdf>

²⁶⁶http://jkrevenue.nic.in/pdf/Circulars/circular_domicile.pdf

²⁶⁷<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/273/59/PDF/N1627359.pdf?OpenElement>

²⁶⁸<https://undocs.org/A/70/421>

²⁶⁹<https://undocs.org/A/HRC/31/40>

²⁷⁰<https://undocs.org/A/HRC/31/41>

²⁷¹<https://undocs.org/A/HRC/31/44>

²⁷²<https://documents.un.org/prod/ods.nsf/home.xsp>

²⁷³<https://kashmirscholars.files.wordpress.com/2020/04/unsc-letter-on-the-new-domicile-law-in-jammu-and-kashmir-1.pdf>

²⁷⁴<https://thewire.in/rights/kashmir-domicile-law>

²⁷⁵<https://indianexpress.com/article/india/12-5-lakh-domicile-certificates-issued>

includes 1,095,000 individuals who previously held permanent resident certificates (856,000 in Jammu and 239,000 in Kashmir) and 144,000 individuals who had come from West Pakistan and had been living in the region for the past 15 years. In just two months, 149,000 domicile certificates have been granted to Indian nationals: 77,000 to other residents and their children; 67,000 to students; and 13,373 to Kashmiri migrants and their children.

13.2 Specific Patterns of Violation: Economic, Social & Cultural Rights

13.2.1 Economic Losses since August 5th, 2019

Indian officials have sought to justify these legal changes by claiming to domestic and international audiences that Article 370 was an impediment to economic prosperity and that the abrogation would increase economic development, investment opportunities, and employment. In reality, India's annexation is devastating J&K's economy. In its Preliminary Economic Loss Assessment Report,²⁷⁶ the Kashmir Chambers of Commerce (KCCI) estimates that, in the five months following the annexation and shutdown, Kashmir businesses lost an estimated Rs 178.78 billion (USD 2.4 billion) in income, and nearly 500,000 people lost their jobs (*Indian Express*, January 14, 2020).²⁷⁷ Key sectors that have been affected include tourism, handicrafts, and agriculture, horticulture, and livestock rearing. The reported values are likely to be underestimated, as they only account for the formal economy, and they only include Kashmir region and not Jammu region of the J&K Union Territory.

13.2.2 Indian and Global Investments and Transfer of Land Banks

The changes to property laws in Kashmir allow for the state government to transfer J&K state property to non-Kashmiri corporations and Indian investors. Following the abrogation, and under conditions of a blanket communication lockdown for Kashmiris, India announced a Global Investors Summit²⁷⁸ to be held in Srinagar and Jammu to attract national and international investors to the region. Initially scheduled for October 2019, the Summit was postponed due to security concerns and then rescheduled for the third week of April 2020, but postponed again for public health concerns (*The Print*, February 6, 2020).²⁷⁹ The state

²⁷⁶<https://kashmirscholars.files.wordpress.com/2020/01/kashmir-chamber-of-commerce-report-january-2020.pdf>

²⁷⁷<https://indianexpress.com/article/business/jk-industry-body-says-states-economy-lost-rs-17878-core-in-5-months-6215291/>

²⁷⁸<https://www.jkinvestorsummit.com/>

²⁷⁹<https://theprint.in/india/outside-firms-enter-mining-race-in-jk-lease-earnings-touch-crores-from-lakhs/360175/>

identified six key sectors, including healthcare, tourism, information technology, food processing, education, and skill development and industries to attract investments (*The Hindu*, March 2, 2020).²⁸⁰ In February and March, the state carried out an investors roadshow in major cities across India, signing non-binding MoUs with investors in Mumbai (Rs. 2,100 crore), Kolkata (Rs. 2000 crore), and Bengaluru (Rs. 850 crore), among others (*Business Standard*, February 22, 2020).²⁸¹

In anticipation of the Global Investors Summit, the J&K administration identified 6,000 acres of land held by the state government for potential investors in February 2020 (*Reuters*, February 13, 2020).²⁸² This “land bank” includes 4500 acres in Jammu (primarily Kathua and Samba districts) and 1500 acres in Kashmir (primarily Anantnag district) to be provided to investors with tax breaks and insurance cover for setting up multiplexes, processing units, food parks, film production centres, schools, Information Technology parks and medical complexes (*The Hindu*, February 19, 2020).²⁸³

The process of securing global investments is coordinated by the UT government’s J&K Trade Promotion Organisation (JKTPO) in collaboration with “national partner” the Confederation of Indian Industry (CII),²⁸⁴ “media partner” Ernst and Young (EY),²⁸⁵ “knowledge partner” Pricewaterhouse Coopers (PwC),²⁸⁶ and “event partner” Expro (*Outlook*, January 20, 2020²⁸⁷; *Kashmir Monitor*, December 20, 2019).²⁸⁸

13.2.3 Army Land Acquisitions

On July 28, the Indian administration of J&K lifted a requirement, established through a 1971 directive, that Indian state armed forces could only acquire land in the region after obtaining clearance through a “no objection certificate” (NOC) from the Home Department (*Indian Express*, July 28, 2020).²⁸⁹ Having withdrawn the 49-year-old directive, the Central law (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

²⁸⁰<https://www.thehindu.com/news/cities/Hyderabad/jk-gears-up-to-host-global-investors-summit/article30966007.ece>

²⁸¹https://www.business-standard.com/article/pti-stories/j-k-signs-over-rs-2-100-cr-mous-during-investment-summit-roadshow-in-mumbai-120022101021_1.html

²⁸²<https://www.reuters.com/article/us-india-kashmir-business/india-to-woo-businesses-to-kashmir-in-planned-investment-summit-idUSKBN20712Y>

²⁸³<https://www.thehindu.com/news/national/jk-woos-investors-with-6000-acre-land-bank/article30854607.ece>

²⁸⁴<https://www.cii.in/>

²⁸⁵https://www.ey.com/en_in

²⁸⁶<https://www.pwc.in/>

²⁸⁷<https://www.outlookindia.com/newscroll/jk-woos-businesses-with-first-of-its-kind-investors-meet/1712911>

²⁸⁸<https://www.thekashmirmonitor.net/global-investors-summit-to-change-economic-future-of-jk-cs/>

²⁸⁹<https://indianexpress.com/article/india/jk-army-crpf-bsf-will-no-longer-require-noc-for-land-acquisition-6526708/>

Resettlement Act, 2013)²⁹⁰ has been extended to the Union Territory of J&K. This Act provides for the acquisition of land for “strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people.”

The Indian Army has begun to seek opportunities to purchase land in Kashmir. In May, the Indian Army’s 19 Infantry Division Ordnance Unit submitted an official requisition letter to the J&K Animal and Sheep Husbandry Department in Baramulla District of Kashmir to inquire whether the department wished to sell 16 acres of land in Tapperewari village of Pattan, citing “some of its troopers are temporarily stationed there for some time now” (*Kashmir Monitor*, May 29, 2020²⁹¹; *Kashmir Walla*, May 29, 2020).²⁹² The Department of Sheep Husbandry declined the Army’s offer (*Kashmir Observer*, May 30, 2020).²⁹³ Prior to the abrogation, the defence estates officer would write directly to the J&K state government to procure the lease of land required by the Army (*Kashmir Reader*, May 21, 2020).²⁹⁴

It must be noted that Kashmir is one of the most intensively militarized areas in the world. According to figures released by the Central Government last year, over 56,000 acres of land in J&K is with different defence departments, wings, and organizations, including approximately 18,935 acres in Jammu, 3738 acres in Srinagar, 2326 acres in Budgam, 2153 acres in Anantnag, 3963 acres in Udhampur, and 3530 acres in Kargil districts (*The Hindu*, July 17, 2019).²⁹⁵

13.2.4 Transfer of Mining Rights to Non-State Bidders

The abrogation of Articles 370 and 35A and the bifurcation of J&K State into two Union Territories has opened the Jhelum river area to exploitation by non-state businessmen and outsiders. Mining businesses from different parts of India have expanded into J&K for the first time, as companies from Punjab, Uttar Pradesh and Rajasthan have participated in public auctions and won leases to mine the union territory’s reserves of coal, marble and limestone, among other things. The blocks primarily contain sand deposits but also host an abundant supply of minerals such as limestone, gypsum, bauxite and borax, besides fossil fuel coal, and granite and marble. The local administration has also identified gemstones

²⁹⁰<http://legislative.gov.in/sites/default/files/A2013-30.pdf>

²⁹¹<https://www.thekashmirmonitor.net/post-abrogation-of-article-370-army-makes-first-move-to-purchase-land-in-kashmir/>

²⁹²<https://thekashmirwalla.com/2020/05/army-requisitions-sheep-husbandry-dept-to-buy-129-kanals-of-land-in-north-kashmir/>

²⁹³<https://kashmirobsrver.net/2020/05/30/offer-declined-govt-not-to-sell-pattan-land-to-army/>

²⁹⁴<https://kashmirreader.com/2020/05/31/army-seeks-to-purchase-129-kanals-in-pattan/>

²⁹⁵<https://www.thehindu.com/news/national/over-56000-acres-of-land-in-jammu-and-kashmir-with-defence-departments-wings-organisations-govt/article28515695.ece>

such as sapphire, garnet and tourmaline (*The Print*, February 6, 2020).²⁹⁶

During the initial auction period of 150-160 mineral blocks in late January and early February, mineral blocks in the Jhelum river and its tributaries in all the 10 districts of Kashmir Valley were opened to non-resident bidders for the first time. Bidders from outside Kashmir earned 100% of the sand (and other minerals) mining rights in Srinagar and Budgam districts, over 60% in Pulwama and 67% in Baramulla (*Kashmir Observer*, February 10, 2020).²⁹⁷ Bidding prices skyrocketed, and local contractors could not compete with companies outside Kashmir (*NewsClick*, February 5, 2020).²⁹⁸ The applications for competing for the mining rights were invited electronically, and aspirants had to fill out and submit forms online at a time when internet connectivity was unavailable or very weak in Kashmir due to government shut-downs in December and early January (*The Print*, February 6, 2020).²⁹⁹ Local bidders were disadvantaged through government denial of digital access to the application portal. A detailed list of successful bidders was published in media outlets when the auctions were all completed in mid-June (*The Wire*, June 25, 2020).³⁰⁰ The KCCI publicly criticized allocation of contracts to non-locals and described the policy regarding allotment of mining and extraction contracts as alarming and against public interest (*The Hindu*, June 27, 2020).³⁰¹

These acquisitions by outside contractors raise apprehensions that large-scale mining for sand and other minerals will lead to severe environmental consequences, especially if heavy machinery is used (*Kashmir Walla*, February 25, 2020).³⁰² The auctioning of river blocks for sand and other minerals contradicts the findings and recommendations of a 2018 technical study conducted by the Central Water and Power Research Station (CWPRS) warning against large-scale mining operation in the Jhelum river, and the advice of an environmental committee against haphazard mining in water bodies. The technical study was reinforced by a 2018 consultancy report issued by the Jhelum and Tawi Flood Recovery Project³⁰³ and supported by the World Bank. Large scale mining can have a severe impact on flood management in the region. In recent years, Kashmir has faced many floods, notably the

²⁹⁶<https://theprint.in/india/outside-firms-enter-mining-race-in-jk-lease-earnings-touch-crores-from-lakhs/360175/>

²⁹⁷<https://kashmirobsrver.net/2020/02/10/in-a-first-outside-companies-earn-100-percent-mining-rights-in-kashmir/>

²⁹⁸<https://www.newsclick.in/Article-370-Gone-Locals-Lose-Majority-Sand-Extraction-Kashmir>

²⁹⁹<https://theprint.in/india/outside-firms-enter-mining-race-in-jk-lease-earnings-touch-crores-from-lakhs/360175/>

³⁰⁰<https://thewire.in/government/kashmir-jhelum-mineral-blocks-bidding-online>

³⁰¹<https://www.thehindu.com/news/national/other-states/jk-parties-traders-body-cry-foul-over-mining-contracts-process/article31935980.ece>

³⁰²<https://thekashmirwalla.com/2020/02/environmental-hazards-of-sand-mining-wars/>

³⁰³http://jtfrp.in/wp-content/uploads/2019/03/Task1_Report_Final.pdf

devastating floods in 2014 that killed hundreds of people in parts of Kashmir controlled by India and Pakistan and caused losses worth billions of rupees (*Third Pole*, February 17, 2020).³⁰⁴

On June 30, 2020, media reports indicated that contractors including non-locals firms started operating the mineral blocks without environmental clearance. In order to operate the mineral blocks, operators have to require a letter of intent (LOI) from the local District Magistrate, in addition to environmental clearance (EC) and a mining plan from the Department of Geology and Mining and a Consent to Operate (CTO) from the Pollution Control Board. Specifically, illegal mining is being conducted at Nallah Rambiarra in Lassipora in South Kashmir (*NewsClick*, June 30, 2020).³⁰⁵

13.2.5 Deforestation, Degradation of Wildlife Habitats, and Extinction of Biodiversity

Deforestation projects have been rapidly enabled without oversight of India's own environmental review process. Prior to its dissolution with the implementation of the *Jammu and Kashmir Reorganization Act 2019* on October 31, the Forest Advisory Commission (FAC) of the J&K State gave official clearances to 125 projects involving diversion of forest land between August and October 2019 (*The Wire*, October 22, 2019).³⁰⁶ As many as 198 projects, mostly for road construction, were approved by the FAC in four meetings on September 18, October 3, October 17, and October 21, 2019 (documentation available [at this link](#)). The Forest Advisory Commission also approved the diversion of approximately 1800 acres of designated forest land and the felling of at least 1,847 trees, including 1,471 trees inside designated forest areas and 376 trees in areas earmarked for social forestry, in September and October 2019 (*Scroll*, December 16, 2019).³⁰⁷ Over 60% of the forest land diversion approvals are for road construction, and 33% – 600 acres – for the use of the army and paramilitary forces in Pir Panjal or Gulmarg Wildlife Sanctuary, Kehmil, Jhelum Valley, Samba, and Jammu Forest divisions (*Scroll*, December 16, 2019).³⁰⁸

³⁰⁴<https://www.thethirdpole.net/2020/02/17/mining-expands-on-kashmiri-rivers-despite-dire-warnings/>

³⁰⁵<https://www.newsclick.in/Jammu-kashmir-new-contractors-begin-extraction-mineral-blocks-without-environmental-clearance>

³⁰⁶<https://thewire.in/environment/with-state-under-lockdown-jk-fac-issues-record-forest-clearances>

³⁰⁷<https://scroll.in/article/946888/under-presidents-rule-jammu-kashmir-is-axing-1471-trees-in-designated-forests>

³⁰⁸<https://scroll.in/article/946888/under-presidents-rule-jammu-kashmir-is-axing-1471-trees-in-designated-forests>

13.2.6 Pastoral Communities

Gujjars and Bakarwals are pastoral tribal communities that constitute approximately 12% of J&K's 12.5 million population and migrate seasonally from high-altitude to low-altitude pastoral grounds, caring for both the livestock and the land. Their access to public state forest and grazing lands has been protected for over a century by policies enacted by the Dogra regime in 1912. Since the abrogation, the new laws concerning land as individual property combined with the state's rapid capture of public state land has limited this access, which is needed for animal rearing for their livelihoods. The implementation of India Forest Conservation Act since October 31, 2020 eroded the rights of tribals and residents of forest areas over public forest lands (*NewsClick*, December 20, 2019).³⁰⁹ Attempts are being made to evict nomadic communities³¹⁰ from their forest lands.

As tensions have escalated between India and China on the Line of Actual Control (LAC) in the disputed region of Eastern Ladakh, nomadic pastoralists have been pushed back from the forward areas, which are grazing lands for their livestock (*New Indian Express*, June 10, 2020).³¹¹ In this region, Changpas nomads, known for raising yak and goats, supply one of the finest types of cashmere wool from Changthangi, a Ladakhi breed of goats also known as Pashmina goats (*Al Jazeera*, June 9, 2020).³¹² According to Gyurmet Dorji, a councilor from Korzok in Leh District of Ladakh near the China border, 70,000-100,000 Pashmina goats have been directly affected by loss of the grazing land (*NewsClick*, June 4, 2020).³¹³ As of early June, eight villages near the LAC had been affected by the escalation of military engagements between India and China.

13.2.7 New Land Laws

On October 26, 2020, the Government of India made dramatic changes to land laws in Jammu and Kashmir. It repealed 12 existent laws including the historic land reforms laws and amended others related to sale and purchase of land. Until August 2019, the state assembly had powers to define who permanent residents of J&K who has exclusive rights to immovable property and land in J&K. The condition of residency has now been completely removed making purchase and sale of land in Jammu and Kashmir made available to any citizen of India. The most worrisome aspect of the new laws is that with Government approval, even

³⁰⁹<https://www.newsclick.in/jk-tribal-claims-forest-areas-resurface-after-abrogation-art-370>

³¹⁰<https://www.aljazeera.com/news/2020/11/20/tribal-community-face-eviction-from-forests-in-kashmir>

³¹¹<https://www.newindianexpress.com/world/2020/jun/10/tragic-yarn-india-china-border-standoff-in-ladakh-hits-global-cashmere-production-2154701.html>

³¹²<https://www.aljazeera.com/news/2020/06/india-china-border-dispute-killing-thousands-pashmina-goats-200609063141209.html>

³¹³<https://www.newsclick.in/nomadic-pastoralists-ladakh-face-exodus-Indo-China-tension-spikes-LAC>

agricultural land can now be bought and sold for commercial and non-agricultural purposes.³¹⁴

13.2.8 Change in Directorate of J&K Bank

On May 17, J&K Bank, the premier financial institution in J&K, implemented changes to its management board³¹⁵ transferring membership from local residents to individuals residing outside of Kashmir (*Business Standard*, May 18, 2020).³¹⁶ Local businesses in J&K see this as a way to punish Micro, Small & Medium Enterprises (MSMEs). Many MSMEs have been unable to pay back loans due to the post-August 5 lockdown, while the current militarized public health lockdown has exacerbated the economic downturn. The change in directorate to members aligned with the Indian government suggests that J&K Bank will be less likely to provide financial relief that protect local businesses from failing due to the post-August 5 lockdown and subsequent public health lockdown. If local business owners are unable to receive support from J&K Bank and the government, they may have to sell their assets in distress, leading to a change in hands of economic assets from Kashmiri locals to Indian businesses. In June, the KCCI submitted an SOS communication to the government addressing these concerns.

13.2.9 Media Censorship

Alongside these rapid changes to demography, ownership of, and access to land and resources, the Indian government has implemented a media policy stating that the J&K Department of Information and Public Relations (DIPR) has the de facto right to exercise pre- and post-publication control over all journalism in the territory for the next five years. Ostensibly, the DIPR will check for “fake” or “anti-national” news. Daniel Bastard, head of the Reporters Without Borders Asia-Pacific Desk, states, “As there is no definition of what constitutes fake news or anti-national content, the government has absolutely infinite interpretative leeway to censor any journalism it does not like and to impose its own narrative.” (Reporters without Borders, June 19, 2020).³¹⁷ The 2020 media policy transforms journalism (or the right to freedom of expression and opinion) into a public relations exercise for the Indian government’s actions in J&K constituting a blanket censorship with regard to the violations of Kashmiri economic, social and cultural rights. Local journalists who report on these matters could have

³¹⁴<https://thewire.in/rights/jammu-kashmir-new-land-laws-sweeping-changes-government>

³¹⁵<https://www.jkbank.com/others/common/board-committees.php>

³¹⁶https://www.business-standard.com/article/news-cm/board-of-jammu-and-kashmir-bank-approves-change-in-directorate-120051800232_1.html#:~:text=Board%20of%20Jammu%20and%20Kashmir%20Bank%20approves%20change%20in%20directorate,-Capital%20Market%20%7C%20%7C%20Last&text=The%20Board%20of%20Jammu%20and,Managing%20Director%20of%20the%20Bank.

³¹⁷<https://rsf.org/en/news/rsf-appalled-orwellian-policy-indian-held-kashmir>

their accreditation removed or be imprisoned for writing “anti-national” reports. There is already precedent regarding the arrests and criminalization of journalists as well as civilians posting any material perceived to be “anti-national” – such as Kashmiri journalist Aasif Sultan, who has been unjustly detained since August 27, 2018 under the Unlawful Activities Prevention Act (UAPA) for his alleged complicity in “harboring known terrorists” (Reporters without Borders, August 27, 2020).³¹⁸ Media outlets who report unfavorably on government actions will lose state advertising revenue controlled by the DIPR – such that Kashmiri media will not be able report on the government’s actions at all.

13.2.10 Silencing of human rights defenders

In India, the Government has been carrying out a witch hunt against organizations that have been reporting violation of human rights and civil liberties, particularly in Kashmir. On September 28, 2020, Amnesty India had to halt its work due to “reprisal from Government of India.”³¹⁹ Amnesty reported that the Indian Government started targeting them after the publication of their Kashmir human rights report in 2016.³²⁰

On October 28, 2020, the National Investigation Agency (NIA) of India carried out simultaneous raids on the houses and offices of several human rights defenders, non-governmental organizations, a journalist, and a newspaper office in Kashmir Valley. The Observatory for the Protection of Human Rights Defenders (FIDH & OMCT),³²¹ Amnesty International,³²² and the Rafto Foundation for Human Rights³²³ issued statements requesting urgent intervention.

NIA officers, assisted by Jammu & Kashmir Police and Central Reserve Police Forces personnel, conducted nine simultaneous raids in Srinagar and one in Bandipora, including on: the office of the Association of Parents of Disappeared Persons (APDP) and the house of APDP Chairperson Ms. Parveena Ahangar; the premises of the NGO Athrout, which provides education and medical aid to vulnerable communities; the office of the daily newspaper *Greater Kashmir*; the office of the Jammu & Kashmir Coalition of Civil Society (JKCCS) and the houses of JKCCS Coordinator Mr. Khurram Parvez; journalists Mr. Parvaiz Ahmad

³¹⁸<https://cpj.org/2020/08/cpj-nearly-400-journalists-civil-society-members-call-for-release-of-imprisoned-kashmiri-journalist-aasif-sultan/>

³¹⁹<https://thewire.in/rights/amnesty-international-india-shuts-down-inquiries-investigating-agencies-ed-cbi>

³²⁰<https://www.amnesty.org/en/latest/news/2015/07/india-accountability-still-missing-for-human-rights-violations-in-jammu-and-kashmir/>

³²¹<https://www.omct.org/human-rights-defenders/urgent-interventions/india/2020/10/d26149/>

³²²<https://www.amnesty.org/en/latest/news/2020/10/india-counter-terror-raids-on-civil-society-groups-signal-escalating-crackdown-on-dissent/>

³²³<https://rafto.no/feed/stop-the-persecution-of-human-rights-defenders-in-india-now>

Bukhari and Mr. Parvez Ahmad Matta; and a houseboat business owner Mr. Ameen Dangloo. The NIA also conducted a raid on the home of civil society activist Swati Sheshadri in Bengaluru, Karnataka State.

The NIA reportedly seized laptops, mobile devices, and documents containing sensitive and personal information regarding victims of human rights violations from these homes and offices. In her statement released directly after the raid,³²⁴ Parveena Ahangar stated that the documents and communication devices seized by the NIA “contain sensitive information” collected over decades about human rights victims and their families, and that the dissemination of this information is likely to have “adverse consequences” for them, particularly since many cases are still *sub judice*. There is a credible fear of further intimidation of victim families being assisted by different human rights organisations.

The NIA issued a statement³²⁵ alleging that these NGOs and trusts are “raising funds in India and abroad in the name of charitable activities” for “carrying out secessionist and separatist activities in J&K.” In reality, the NIA seeks to criminalize freedom of speech and expression and intimidate individuals by misrepresenting democratic local, national and international intellectual voices as connected with terror activity. NIA sources have stated³²⁶ that the “individuals in question are sophisticated and used ‘pen’ instead of weapon” – suggesting that scholars could also be targeted by NIA.

Since 2017, the NIA has been conducting raids in Jammu & Kashmir under the direct command of Narendra Modi’s central government focusing on allegations of “terror funding.” Constituted in 2008, the NIA is responsible for the investigation and prosecution of offences allegedly affecting the national security, sovereignty, and integrity of the nation. The NIA is known for investigating cases under the stringent anti-terror Unlawful Activities Prevention Act (UAPA). Through a 2019 amendment, the UAPA authorizes police to conduct warrantless searches and arrest individuals for up to six months, designating them as terrorists, without a trial or bail.

In recent years, the harsh and expansive UAPA has been used in Jammu & Kashmir to intimidate, charge, and arrest pro-freedom leaders,³²⁷ newspaper editors,³²⁸ journalists,³²⁹

³²⁴<https://thekashmirwalla.com/2020/10/apprehensions-of-nia-raid-endangering-families-of-disappeared-persons-says-apdp/>

³²⁵<https://kashmirilife.net/nia-statement-on-raids-250665/>

³²⁶<https://www.indiatoday.in/india/story/terror-funding-case-nia-raids-continue-kashmir-delhi-1736091-2020-10-29>

³²⁷<https://thewire.in/government/nia-jammu-and-kashmir-police>

³²⁸<https://thewire.in/security/nia-questions-greater-kashmir-editor-over-articles-in-newspaper>

³²⁹<https://thewire.in/media/use-of-uapa-against-journalists-is-last-nail-in-coffin-for-press-freedom-in-kashmir>

funeral mourners,³³⁰ social media users,³³¹ internet VPN users,³³² and others. In 2019, 255 cases were registered under the UAPA³³³ in Jammu & Kashmir. In its 2019 Annual Human Rights Report,³³⁴ JKCCS reports that at least 40 people were arrested under UAPA *in the town of Handwara alone* following the abrogation of Article 370 on August 5. In September 2020, the J&K Police charged ten Kashmiri boys under UAPA for allegedly taking part in a cricket tournament held “in the memory” of a slain militant. The UAPA criminalizes dissent through intimidation, harassment, and deprivation of liberty,³³⁵ using overly-broad categories of “sedition,” “separatism,” and “secession.” In April 2020, Amnesty International called on the Government of India³³⁶ to immediately cease the intimidation of journalists through UAPA in Jammu & Kashmir (see also statements by Reporters Without Borders³³⁷ and the Committee to Protect Journalists).³³⁸ The UAPA is an abuse of power, a threat to civil liberties, and, in the context of Kashmir, an instrument of state occupation and terror.

The October 28 raids, set to continue, targeting human rights defenders constitute reprisals aimed at silencing their important work. Recipient of the 2006 Reebok Human Rights Award, Khurram Parvez, who is also Chairperson of the Asian Federation Against Involuntary Disappearances (AFAD),³³⁹ was detained under India’s Public Safety Act (PSA) preventive detention legislation for 76 days in 2016. At that time, he was detained while boarding a plane in Delhi to travel to Geneva to participate in the UN Human Rights Council Session (see UN special experts letter [here](#)). Parvez Imroz and Parveena Ahanger were 2017 laureates of the Norway-based Rafto Human Rights Prize. In September 2020,, APDP submitted around 40 testimonies of victims who were allegedly subjected to arbitrary detention and torture by security forces in Kashmir to the Working Group on Arbitrary Detention and the UN Special Rapporteur on Torture.

On September 25, 2020, Khurram Parvez commented on the UAPA³⁴⁰ that “The act terrorizes the society. . . It’s used to create an atmosphere of fear, an atmosphere of subjugation. Even if the person booked under UAPA is not arrested, the fears loom over the head.” The

³³⁰<https://thekashmirpress.com/2020/08/26/two-persons-arrested-after-pro-freedom-slogans-raised-in-mauharram-procession/>

³³¹<https://www.thekashmirmonitor.net/nri-businessman-booked-after-fb-post-on-kashmir-domicile-law-goes-viral/>

³³²<https://thewire.in/government/kashmir-vpn-uapa-social-media-fir>

³³³<https://kashmirobsrver.net/2020/10/05/255-uapa-cases-filed-in-jk-in-2019/>

³³⁴<https://jkccs.net/annual-human-rights-review-2019-2/>

³³⁵<https://www.jurist.org/commentary/2020/06/bhandari-pokhriyal-uapa-free-speech/>

³³⁶<https://www.amnesty.org/en/latest/news/2020/04/journalists-in-jammu-and-kashmir/>

³³⁷<https://rsf.org/en/news/india-kashmiri-photographer-unfairly-accused-glorifying-anti-national-activities>

³³⁸<https://cpj.org/2020/04/jammu-and-kashmir-police-launch-investigations-int.php>

³³⁹<https://www.afad-online.org/>

³⁴⁰<https://thediplomat.com/2020/09/empty-fields-the-use-and-abuse-of-uapa-in-kashmir/>

October 28 NIA actions in Kashmir have been covered by international media (Washington Post,³⁴¹ AP News³⁴²), Indian media (India Today,³⁴³ Times of India),³⁴⁴ and Kashmiri media (Kashmir Watch,³⁴⁵ Kashmir Observer).³⁴⁶ The raids and the NIA's press statement that clearly invokes grave accusations of supporting terrorism not only put an obstacle in the working of human rights organizations but also endanger the life and liberty of individual rights defenders. The NIA raids, and their claim that they are investigating the sources of funding for terrorists, are clearly designed to intimidate defenders of human rights as well as journalists, and thus to prevent them from carrying out their very necessary investigations and reportage.

³⁴¹<https://www.washingtonpost.com/>

³⁴²<https://apnews.com/article/international-news-india-journalists-media-kashmir-8eeb61fb0a02909893f5d1aa35101c9b>

³⁴³<https://www.indiatoday.in/india/story/nia-raids-in-kashmir-terror-funding-crackdown-1735791-2020-10-28>'

³⁴⁴<https://timesofindia.indiatimes.com/india/ngo-funding-case-nia-conducts-searches-in-jk-bengaluru/articleshow/78918734.cms>

³⁴⁵<http://kashmirwatch.com/nia-raids-residences-offices-of-human-rights-activists-in-kashmir/>

³⁴⁶<https://kashmirobserver.net/2020/10/28/nia-searches-trust-ngos-in-srinagar/>

14 Chapter 13: The Question of Minorities

Changes to Article 370 impact all indigenous residents of the state of Jammu and Kashmir, including majority and minority ethnic/religious groups living in Kashmir and those who have migrated to other parts of India. Kashmir's 12 million population includes multiple religious (Islam, Hinduism, Buddhism, Sikhism), ethnic (Kashmiris, Dogras, etc.), and linguistic (Kashmiri, Dogra, Ladakhi, Shina, etc.) groups. People from all groups have expressed concern about the abrogation.

The actions taken by the Government of India (GoI) on August 5 and 6, 2019 include:

- the elimination of fundamental Indian constitutional rights granted especially to the residents of the Indian State of Jammu and Kashmir (the State);
- the elimination of separate State constitutional rights that benefitted the subjects of the historic Princely State of Jammu and Kashmir (the Princely State);
- the amendment of land-related laws to eliminate historic protections fundamental to the economic welfare of residents of the State;
- the passage of a bill that dissolves the State into two separate territories directly governed by GoI; and

- extension of new GoI laws to those territories, including laws that deprive the subjects of the Princely State their right of return.

These changes impact all residents of the State, including members of all minority groups living in the State and those who have migrated to elsewhere. GoI claims that all members of minority communities (i.e., all groups other than ethnic Kashmiri Muslims) welcome these changes. However, there is widespread displeasure in the State both with these changes and the manner in which they have been undemocratically and brutally imposed on the population, including among various minority groups. For example, a group of prominent ethnic Kashmiri Hindus (Pandits), Sikhs (a religious minority), and Dogras (an ethnic minority) in a statement³⁴⁷ condemned the unilateral and unconstitutional abrogation of Article 370.

In the Kashmir province of the State (Kashmir), the most significant religious minority groups are Pandits, Sikhs and Christians. Kashmir has witnessed three decades of extreme violence and significant human rights violations. That violence is the result of a lack of fundamental civil and political freedoms in Kashmir and is primarily state violence intended to suppress the pro-self-determination movement in Kashmir. According to extensive human rights documentation work conducted by credible organizations in Kashmir, GoI and its instrumentalities are responsible for the vast majority of those human rights violations.

During the last three decades, members of the majority Muslim community and minority Pandit community left Kashmir in large numbers, many escaping the violence and insecurity. Members of other religious minority groups including Sikhs and Christians, whose numbers are smaller than the Pandits, have largely remained in Kashmir and have not experienced religious persecution. As recent ethnographic research³⁴⁸ on Kashmiri Sikhs indicates, “harm from violence is a general concern”—this affects everyone in Kashmir and is primarily state-sponsored violence against civilians — “religious persecution is categorically stated as a non-issue.” Throughout the decades of political turmoil and violence in Kashmir, Sikhs, Christians and significant number of Pandits have continued to live in Kashmir together with their Muslim friends and neighbors.

While not all Pandits left Kashmir after an armed campaign for self-determination began in late 1989, an estimated 24,202 families migrated in the spring of 1990. At that time there were 38,119 registered Pandit families in Kashmir or approximately 150,000 individuals total. Nonetheless, pro-India propagandists claim the killing of 700,000 Kashmiri Pandits in early 1990s. The Kashmiri Pandit Sangharsh Samiti,³⁴⁹ an association working for the rights of

³⁴⁷<https://www.telegraphindia.com/india/pandits-dogras-sikhs-underline-diversity-in-call-to-end-lockdown/cid/1696984>

³⁴⁸<https://www.thehindubusinessline.com/opinion/the-case-of-the-kashmiri-sikhs/article28984332.ece>

³⁴⁹<https://economictimes.indiatimes.com/news/politics-and-nation/at-least-399-kashmiri-pandits-killed-in-jk-since-1990-survey/articleshow/8914441.cms?from=mdr>

Kashmiri Pandits, claims 357 Pandits were killed in Kashmir between 1990-2011. According to the Government of India, a total of 219 Kashmir Pandits were killed during the conflict from 1989-2013.³⁵⁰ The National Human Rights Commission (NHRC)³⁵¹ of India report on June 11, 1999 states that of 157 leaders killed during this period, 37 were Hindus and 120 were Muslims. Hence the NHRC did not classify these killings as “genocide” or “ethnic cleansing”. There is no evidence of hundreds of thousands being ethnically cleansed and murdered by Kashmiri Muslims, as claimed by pro-India propagandists and *Hindutva*³⁵² groups.

The suffering of Pandit victims of the violence in Kashmir has been and is a cause of concern for Kashmiris which both the pro-self-determination leadership of Kashmir and pro-India politicians in Kashmir have sought to address.

While there has never been a full and impartial accounting of what actually caused many Pandits to leave Kashmir, those that left Kashmir primarily did so in the spring of 1990. An indigenous, non-sectarian armed movement for democratic self-determination began in December 1989 (this was sparked by the blatant rigging of elections in 1987 after a concerted grassroots effort to motivate voter participation after decades of political repression and vote-rigging). In response, the Indian government unleashed hundreds of thousands of military and paramilitary personnel in a campaign of mass, indiscriminate brutality. The first major massacre of this era, the Gaw Kadal Massacre, occurred on January 21, 1990. An Indian paramilitary police unit opened fire on a gathering of unarmed Kashmiri civilians publicly calling for their democratic rights. At least 50 were killed and 250 civilians were injured in that single incident.³⁵³ As Datta’s research concludes, for the Pandits it was “the overall deterioration in law and order, alongside selective assassinations and the content of demonstrations”³⁵⁴ that made them feel unwanted and caused many of them to be inclined to leave Kashmir. In Mallika Kaur’s in depth research study,³⁵⁵ the Kashmir Pandit’s cite general lawlessness, and not any targeted threat, as a cause of the migration of Pandits from the Valley.

One firsthand account³⁵⁶ of prominent Pandits of Kashmir who migrated in 1990 was published in 2016 by Mehboob Makhdoomi.³⁵⁷ In a letter addressed to Kashmiri Muslims

³⁵⁰<https://mha.gov.in/sites/default/files/RTI1303022012-KII-YogeshChhabra-70513.PDF>

³⁵¹<http://nhrc.nic.in/sites/default/files/Annual%20Report%201999-2000.pdf>

³⁵²<https://www.npr.org/2019/05/03/706808616/the-powerful-group-shaping-the-rise-of-hindu-nationalism-in-india>

³⁵³<https://www.aljazeera.com/news/2018/01/kashmiris-mark-28th-anniversary-gaw-kadal-massacre-180121185626847.html>

³⁵⁴<http://www.raiot.in/what-about-the-kashmiri-pandits/>

³⁵⁵<https://journals.sagepub.com/doi/pdf/10.1177/011719680901800202>

³⁵⁶<https://kashmirscholars.files.wordpress.com/2019/11/letter-by-23-prominent-pandits.pdf>

³⁵⁷<https://www.greaterkashmir.com/news/opinion/were-sorry-we-betrayed-you/>

dated September 22, 1990 and sent to *Al Safa*, a prominent Srinagar-based newspaper, a group of 23 prominent Pandits sought forgiveness from their Muslim brethren and narrate the real situation of the time and reasons for their flight. The letter states that the Kashmiri Pandit community was made “a scapegoat” by Jagmohan, the then Indian-appointed Governor of Kashmir. They characterize their exodus as a “drama enacted by BJP, RSS, & Shiv Sena”. The BJP (current ruling party of India), RSS and Shiv Sena are *Hindutva* groups. They claim that their migration was presented to them as “a war between Hinduism and Islam” and “vital for preserving & protecting the Dharm & the unity & integrity of India.” They were assured that “it would pave way for realizing the dream of ‘Akhand Bharat.’” The writers also claim that they were assured “in the name of all gods and deities” and that they shall be looked after. They were threatened of ‘dire consequences’ in case they didn’t agree to follow the plan. There are other firsthand witness reports corroborate that the exodus of Kashmiri Pandits was planned by the Government.³⁵⁸ Even Delhi High Court documents evidence that the Government of India facilitated the exit of Kashmiri Pandits from Kashmir.³⁵⁹ India’s NHRC denied classifying Pandits as “Internally Displaced Persons” and instead categorized them as “Migrants.”³⁶⁰ Internally Displaced Persons is a definition reserved for people “forced” to leave their home, where as Migrants are those who left “voluntarily.” Contrary by pro-India propagandists and *Hindutva* groups, Kashmiri Pandits were not forced to go into exile by their Kashmiri Muslim neighbours. Nonetheless, the Indian Government and its supporters have successfully weaponized³⁶¹ the exodus of Kashmiri Pandits from Kashmir, attributing that exodus to “Islamic” or “Pakistani” terrorism.

While armed pro-self-determination fighters from different groups focused on attacking Indian military and police personnel stationed in Kashmir, at least one group in the initial months of the armed movement appears to have also targeted state actors who were especially responsible for administering state repression of the democratic movement in Kashmir. The targets of this campaign were not from a specific religious community – the commonality among targets (regardless of religion) was their direct involvement in state repression. Most of those killed in this campaign were Muslims; however, some Pandits were among those targeted and killed.

The Wandhama Massacre was a major massacre of Pandits in Kashmir (the number killed in this single incident represent over 10% of the official total number of Pandits killed in the

³⁵⁸ <https://kashmirilife.net/pathan-remembers-issue-30-vol-09-154431/>

³⁵⁹ <https://indiankanoon.org/doc/184744682/>

³⁶⁰ <https://www.change.org/p/government-of-india-kashmiri-hindus-are-internally-displaced-persons-idp-and-not-migrants>

³⁶¹ <https://www.aljazeera.com/indepth/opinion/2017/07/kashmir-communalisation-political-dispute-170725082030871.html>

last three decades of violence). It is one of several politicized tragedies where “unidentified gunmen” were responsible for sensational (but unclaimed) acts of brutality at a moment of increased scrutiny of India’s policies in Kashmir. Where popular protest has succeeded in pressuring authorities into conducting an investigation (e.g., in the case of the Pathribal Fake Encounter and Brakpora killings following the Chittisinghpura Massacre),³⁶² conflicted and partial official investigators clearly established state responsibility for civilian killings that the Government sought to attribute to the armed Kashmiri resistance. In January 1998, the Jammu & Kashmir Government announced a 28 billion Rupee rehabilitation program for Pandits who migrated from Kashmir in 1990. The program included a financial incentive for each family, a grant for housing, an employment allowance, an employment incentive program, a loan waiver program and a transition settlement program. On January 25, 1998, a delegation of migrant Pandits arrived in Srinagar to explore returning to Kashmir. That night (the Muslim holy night of *Laylatul Qadr*), 23 of the 24 Pandit residents of the village of Wandhama, Ganderbal, Kashmir were killed while the local Muslim population was participating in night prayers. The official investigation into the incident closed in 2008 for lack of evidence. The authorities have not pursued this case (and others like it) despite Kashmiri demands for a full and impartial investigation.

Another major massacre of religious minorities in Kashmir was the Chittisinghpura massacre³⁶³ in which 36 innocent Sikh men were killed. This event took place on March 20, 2000, on the day of U.S. President Bill Clinton’s visit to India. The Government claimed that the incident was carried out by “Islamic extremists” and they killed five men who were the responsible “Pakistani terrorists.” The Pathribal inquiry revealed that the men killed were in fact local villagers (not “Pakistani terrorists”) who had been abducted and killed by the Indian military in what became known as the Pathribal “fake encounter”,³⁶⁴ which occurred on March 25, 2000.

Importantly, the Chittisinghpura massacre did not lead to another ‘minority exodus’, as was feared in its immediate aftermath. While relations were tense between Sikhs and Muslims, there have been sustained efforts at reconciliation and both communities have worked hard to resist the communalization of the massacre. However, with no clarity on who the perpetrators were and little hope that justice will ever be delivered, maintaining communal harmony remains a process open to exploitation.³⁶⁵ Over time, both Sikhs and Muslims have come to believe that it was the Indian ‘agencies’ who perpetrated the massacre.

³⁶²<https://www.nytimes.com/2000/12/31/magazine/a-kashmiri-mystery.html>

³⁶³<https://www.thequint.com/news/india/remembering-chittisinghpura-anantnag-massacre>

³⁶⁴<https://thewire.in/security/seventeen-years-sc-notice-pathribal-fake-encounter-brings-little-hope-justice-victims-families>

³⁶⁵<http://www.wandemag.com/kashmiri-sikh-women-and-their-experiences-with-militarization/>

Retired Indian Army official, Lt. Col. General Gill alleging that members of the Bharatiya Janata Party, the leading *Hindutva* political party, planned the killing of the Sikh men in Chittisinghpura.³⁶⁶ Tellingly, while inquiries were promised time and again, there has been no impartial inquiry into Chittisinghpura.

Events like Chittisinghpura, of which there are many in Kashmir, have time and again brought up the question of the “deep state” or “agencies” operating in the region.³⁶⁷ The recent arrest of Jammu and Kashmir police officer Davinder Singh,³⁶⁸ who according to some reports was aiding militants and according to others a double agent, undermines the already thin trust between the state and its citizens, as well as trust among Kashmiris of different denominations and puts Kashmiris, especially minorities such as the Sikhs, in the impossible position of negotiating with all actors to ensure their safety.³⁶⁹

The reasons for Pandits’ migration from Kashmir range from feeling threatened by the atmosphere of violence to government-orchestrated³⁷⁰ designs to force the Pandits out of Kashmir for political reasons. While not officially recognized, according to many witnesses, the Indian government arranged for and encouraged (some say threatened) Pandits to leave and facilitated their resettlement (coordinated through *Hindutva* groups), especially in Jammu. It was widely understood at the time that this policy was intended to allow India’s military and paramilitary forces a “free hand” to suppress the pro-democracy self-determination movement in Kashmir (i.e., with diminished concern regarding the accidental killing of Pandits who are a politically sensitive group for the Indian Government). Several other rationales are apparent, including the Indian Government’s desire to paint the Kashmiri self-determination movement as a sectarian, anti-Hindu, Muslim movement inspired by Pakistan and thereby deny the legitimacy of the pro-democracy movement in Kashmir.

Now with the abrogation of article 370, the same politics of communalization has resurfaced stronger than ever and threatens the everyday intercommunal harmony that is painstakingly maintained. Recent events such as a theft in a gurudwara, and the desecration of a Shia mosque, for example, have prompted fears of safety for minorities, but also opened up the possibility for Kashmiri Muslims to be used as pawns too. The March 25th attack on the Sikh community in Afghanistan,³⁷¹ which was claimed to be “revenge for Kashmir”, is

³⁶⁶<https://freepresskashmir.com/2018/03/20/watch-retired-lt-gen-says-indian-army-was-involved-in-sikh-massacre-of-chittisinghpura/>

³⁶⁷<https://www.raiot.in/arundhati-roy-davinder-singh-afzal-guru-deep-state/>

³⁶⁸<https://thewire.in/security/davinder-singh-afzal-guru-nia>

³⁶⁹<https://theprint.in/opinion/davinder-arrest-threatens-the-fragile-trust-kashmiri-sikhs-enjoy-with-indian-state-muslims/361026/>

³⁷⁰<http://www.kashmirlit.org/former-police-officer-remembers-90s/>

³⁷¹ “#NotInMyName, Say Kashmiris After ISIS Claims Kabul Attack Was Revenge for Kashmir”, *The Wire*, 03/26/2020 <https://thewire.in/security/notinmyname-say-kashmiris-after-isis-claims-kabul-attack-was-revenge-for-kashmir>

an example of this.

Hindutva groups' claims of forced conversions, demolition of places of worship and discrimination and claims of mass killings and gang rapes in 1990 while widely promoted in India are not substantiated by the historical record. These claims have been called into question by serious researchers including by new research.³⁷² The documented³⁷³ experiences of the thousands of Pandits who remained in Kashmir refute claims³⁷⁴ that the Hindus of Kashmir were ethnically cleansed. While some factions of the Pandit community have advocated for a separate homeland³⁷⁵ within Kashmir, other Pandits have rejected³⁷⁶ the communalization³⁷⁷ of the Kashmir dispute.

The lack of fundamental civil and political freedoms in Kashmir, state obstruction, militarization, information suppression, long-standing and ongoing conflict and a total lack of transparency (including as a result of the ban on international monitors, journalists and human rights agencies) make a complete and accurate reporting of violations impossible. State obstruction and legalized impunity through statutes like the Armed Forces (Jammu and Kashmir) Special Powers Act 1990 have practically obviated any means of obtaining accountability. There has not been a single credible prosecution of a perpetrator of human rights violations in Kashmir. Despite consistent efforts by Kashmiri organizations to call for full and impartial investigations of violations, the Indian Government's institutions, including the Indian Supreme Court, have not permitted such investigations to take place.

The Kashmiri cause for democratic self-determination is and has been non-sectarian. Since before the creation of the States of India and Pakistan, that movement has always focused on the upliftment of all downtrodden communities in the territory and included representatives of different communities, including the different religious communities, of the territory. While most Pandits opposed democratic movements in Kashmir and viewed all Kashmiri attempts to uplift the downtrodden as a threat to the privileged position the Pandit community historically enjoyed, those Pandits who embraced democratic principles were pro-self-determination activists.

All major Kashmiri civic and political leaders³⁷⁸ with a constituency have (from across

³⁷²https://www.amazon.in/Kashmir-Exposing-Myth-behind-Narrative-ebook/dp/B073CSFLFQ?_encoding=UTF8&btcr=1&portal-device-attributes=desktop&ref_=dp-kindle-redirect

³⁷³https://www.tandfonline.com/doi/abs/10.1300/J500v05n03_06

³⁷⁴<https://www.aljazeera.com/indepth/spotlight/kashmirtheforgottenconflict/2011/07/201176134818984961.html>

³⁷⁵<https://economictimes.indiatimes.com/news/politics-and-nation/separate-homeland-would-satisfy-aspirations-of-kashmiri-pandits-panun-kashmir/articleshow/28052075.cms?from=mdr>

³⁷⁶<https://www.aljazeera.com/indepth/opinion/2017/07/kashmir-communalisation-political-dispute-170725082030871.html>

³⁷⁷<https://thewire.in/communalism/kashmiri-pandits-are-a-pawn-in-the-games-of-hindutva-forces>

³⁷⁸<http://www.uniindia.com/mehbooba-welcomes-geelani-s-statement-on-kps-return-to-kashmir/north/>

the political spectrum) consistently called for all claims of human rights violations to be fully, impartially and transparently investigated and perpetrators held responsible. This, of course, includes all incidents involving Pandits (and every other religious community) in Kashmir.

Kashmiris across the political spectrum consistently requested Pandits to remain in Kashmir and, after many left, to return to Kashmir. They pledged their support, with armed pro-self-determination groups openly offering their protection. It is unclear how many Pandits who left Kashmir since 1989 want to return to Kashmir. Overwhelmingly, Kashmiris remain supportive of the return of Pandits who desire to return to Kashmir and their respectful, dignified re-integration into Kashmir society. Kashmiris are not supportive of Pandits (or anyone else) coming to Kashmir as colonial settlers.³⁷⁹

Indian governments, particularly the BJP government, has successfully weaponized³⁸⁰ the exodus of the Kashmiri Pandit, Kashmir's Hindu minority, from the valley in 1989. The Hindu departure from the Valley in 1989 is attributed to existential Islamic barbarism, and Pakistani machination. Instead of requesting judicial inquiries into violence, rapes, massacres, and losses of both Kashmiri Muslims and Kashmiri Pandits, or addressing the conflict in order to move toward a just peace that would enable Kashmiri Pandits to return to their homes and Kashmiri Muslims to find justice, they want Kashmir to be a rallying point for a Hindu nation. Kashmiri Pandits historically benefited from their high caste status as Brahmins, especially under the Dogras, where they occupied high offices unlike their Muslim counterparts who were forced into bonded labor. Neither Kashmiri Pandits nor Indians will be served by the abrogation of 370. It will only result in further uprising, violence, and deaths, hurt India's international credibility, and put another nail in the coffin of the idea of India as a secular democracy.

Any vision of return must respect the *multiple* histories, identities, and sufferings that have constituted a place and its people for over 70 years. It must also include a willingness to let go of the dominant narratives of exclusive vulnerability that have allowed Kashmiri Pandits to be used as a pawn to endorse India's slide into Hindu majoritarianism. Finally, such a vision of home must necessarily be anchored to an imagination of collective social and political justice for all in Kashmir. If Kashmiri Pandits cite the fear of engulfment by Kashmiri Muslims as a reason for a segregated security state, they might also ask why Kashmiri Muslims should be expected to assimilate into a Hindu state that has persistently killed,

news/1666904.html

³⁷⁹<https://religionunplugged.com/news/2019/7/23/indias-plan-to-resettle-hindus-in-muslim-majority-kashmir>

³⁸⁰<https://www.aljazeera.com/indepth/opinion/2017/07/kashmir-communalisation-political-dispute-170725082030871.html>

tortured, and imprisoned them for seeking their UN-sanctioned right of self-determination.

It is clear that the BJP government is intent on changing the local demographics and opening up Hindu places of worship to give a boost to religious tourism. For example, in a controversial statement, the Union minister G. Kishan Reddy said the government of India will restore and reopen 50,000 closed temples in the Kashmir Valley³⁸¹ when according to Sanjay Tickoo, a prominent Kashmir Pandit leader, who has been fighting for preservation of temples in the Valley since 1989, 50,000 temples never existed in the state. The total number of temples in the state were 4000 and the exaggerated number is to reinforce the government's unfounded allegations that almost all Hindu places of worship were destroyed during Kashmir's armed movement.

Among other issues, the rhetoric of sexual violence has played a key role in sharpening divides between Pandits and Muslims. These claims of threats and widespread crimes of sexual violence against Kashmir Pandit women have been called into question by a recent ethnographic study of migrants. The details and scale of sexual violence experienced by Kashmiri Pandit women remain to be extensively researched and documented, even as claims about the rapes of large numbers of Pandit women circulate freely. In the meantime, Pandit organizations such as Panun Kashmir have used exaggerated narratives of genocide and gang rape to frame Muslim sexuality as predatory.

Human rights violations and killings are unacceptable regardless of the religious or other identity of the victim. Violations committed against Kashmiris of all faiths and ethnic backgrounds must be condemned. No group or sub-population can legitimately claim exclusive suffering. Exclusivist claims only serve the purpose of ideologues who seek to use such claims as a means de-humanize and justify the oppression of others.

Regardless of varied narratives, the displacement of Kashmiri Pandits from their homeland needs resolution. This tragedy of displacement of a whole people is real, and the deplorable conditions, which some of financially less stable families have had to endure in migrant camps, has caused a great deal of anguish for many members of the Pandit community. Resettlement of these migrants in their own homeland without creating separate colonies is essential. A larger authoritative, transparent, fair and impartial process of truth and reconciliation between the Muslims and Hindus must be a priority in the resolution of the Kashmir dispute.

³⁸¹ <https://www.thehindu.com/news/national/karnataka/temples-shut-in-jk-will-be-reopened-kishan-reddy/article29494076.ece>

14.1 Further Reading

Ahmad, Khalid Bashir. *Kashmir: Exposing the myth behind the narrative*, Los Angeles, Sage, 2017.

[Kashmir Pandits must re-imagine the idea of return to Kashmir](#). The claims of threats and widespread crimes of sexual violence against Kashmir Pandit women have been called into question by a recent ethnographic study of migrants.

[Removal of Article 370 turns Kashmiri Pandits into settlers.](#)³⁸²

[The case of the Kashmiri Sikhs.](#)³⁸³

[Kashmiri Pandits condemn abrogation of Article 370.](#)³⁸⁴

[India must stop weaponizing pain of Kashmiri Pandits.](#)³⁸⁵

[Kashmir is under the heels of Indian colonialism.](#)³⁸⁶

[On loving and losing Kashmir.](#)³⁸⁷

[Kashmir: The communalization of a political dispute.](#)³⁸⁸

[Kashmiri Hindus are a pawn in the Games of Hindutva forces.](#)³⁸⁹

[Kashmir: The Pandit question.](#)³⁹⁰

[Why we never fled Kashmir.](#)³⁹¹

[The ironic death of Art 35A will haunt Kashmiri Pandits and India.](#)³⁹²

[A Pandit's longing for homeland, and a Kashmiri Muslim's sense of betrayal.](#)³⁹³

[Kashmiri Pandit: Debate on resettlement misses crucial points.](#)³⁹⁴

<https://thewire.in/rights/how-can-centre-reopen-50000-temples-in-valley-when-there-are-only-4000-in-jk>

<http://www.kashmirlit.org/former-police-officer-remembers-90s/>

<https://theprint.in/pageturner/excerpt/right-wing-exaggerates-number-of-kashmiri-pandits-killed-militants-targeted-muslims-more/271666/>

³⁸²<http://www.raiot.in/removal-of-article-370-turns-kashmiri-pandit-natives-into-settlers/>

³⁸³<https://www.thehindubusinessline.com/opinion/the-case-of-the-kashmiri-sikhs/article28984332.ece>

³⁸⁴<https://caravandaily.com/kashmiri-pandits-condemn-abrogation-of-article-370-in-petition/>

³⁸⁵<https://www.washingtonpost.com/>

³⁸⁶<https://foreignpolicy.com/2019/08/13/kashmir-is-under-the-heel-of-indias-colonialism/>

³⁸⁷https://www.jstor.org/stable/41804076?seq=1#page_scan_tab_contents

³⁸⁸<https://www.aljazeera.com/indepth/opinion/2017/07/kashmir-communalisation-political-dispute-170725082030871.html>

³⁸⁹<https://thewire.in/communalism/kashmiri-pandits-are-a-pawn-in-the-games-of-hindutva-forces>

³⁹⁰<https://www.aljazeera.com/indepth/spotlight/kashmirtheforgottenconflict/2011/07/2011724204546645823.html>

³⁹¹<https://www.aljazeera.com/indepth/spotlight/kashmirtheforgottenconflict/2011/07/201176134818984961.html>

³⁹²<https://www.newsclick.in/ironic-death-art-35a-will-haunt-kashmiri-pandits-and-india>

³⁹³<https://www.newsclick.in/a-pandit-longing-homeland-kashmiri-muslim-sense-betrayal>

³⁹⁴<https://www.thenewsminute.com/article/kashmiri-pandits-debate-resettlement-misses-crucial-points>

15 Chapter 14: The Mental Health Impacts of Military Occupation

The health, and particularly the mental health, impacts of living under foreign occupation for more than 450 years (the last Kashmiri ruler was deposed in 1586), including more than 70 years under Indian military occupation, have been devastating, more wide-ranging, and deeper than what we might expect.

As KSCAN scholars have shown, military occupation is not merely a legal or political project, but also a social, phenomenological, and affective one. Military and counterinsurgency operations, such as emergency laws, sieges, curfews (which not only limit the times of day, but also spaces that are accessible), regular communication blackouts and other forms of “infrastructural war” enacted upon civilian populations, the deliberate suppression of local histories, language, and diversity (cultural genocide), as well as the everyday uncertainty of living in a state of permanent (undeclared) war, produce devastating mental health effects. Prior to the revocation of Jammu and Kashmir’s autonomy in August 2019, rates of psychological trauma, anxiety, and post-traumatic stress had made the region one of the most traumatized places on earth. In one 2006 study conducted by the humanitarian organization

Doctors without Borders, more than 60% of Kashmiris experienced anxiety and trauma that persists through their lifetimes. Unlike other populations (such as refugees) who have experienced collective trauma, most Kashmiris are unable to leave the site of violence or trauma, thus making their psychological suffering ongoing and cumulative.

While most studies of mental illness and trauma in Kashmir focus on persons who have had direct experiences of state violence (for example, a family member killed or been a victim of torture), research shows that experiences of psychological distress are much more widespread.³⁹⁵ All residents of Kashmir live through a continuing, seemingly endless “state of emergency,” which is characterized by day to day uncertainty and instability as well as a sense of psychic loss produced by an inability to control your own body, life, or future. In addition, state counterinsurgency practices of using collaborators, informers, and spies, have helped disrupt a sense of social and interpersonal trust and stability. Sowing mistrust can lead to social and psychological breakdown.

Further, health systems and medical professionals have been directly and indirectly attacked by military forces. These attacks, in addition to violating international humanitarian norms around medical neutrality, also leave long-lasting scars. For example, when the Indian military used pellet guns on unarmed Kashmiri civilians *en masse* in 2016, wounded persons and protestors were subject to police surveillance while admitted for treatment in hospitals. The infiltration of military logics into medical spaces can make people fearful of going to the hospital in the future, making access to care even more difficult. Health systems and medical professionals, which are supposed to function as buffers against violence or harm, can instead become vectors of harm.³⁹⁶

The mental health impacts of military occupation have been aggravated since the revocation of Kashmir’s semi-autonomous status in August 2019. Mental health experts expect the seven-month lockdown (from August 2019-February 2020) followed by a second lockdown due to the COVID-19 pandemic, to produce further psychological harm.³⁹⁷ Meanwhile ongoing lockdown conditions—which many in Kashmir describe as a “lockdown within a lockdown”—make accessing health care even more difficult.³⁹⁸ A study by the humanitarian NGO ActionAid and Institute of Mental Health and Neuro Sciences (IMHANS) estimated that only 6.4 percent of people with a mental illness had seen a psychiatrist, and only 12.6 percent sought any kind of healthcare help at all, *before* the lockdown.

In recent years, trauma research has shifted away from a focus on trauma and victimhood

³⁹⁵ <https://www.dukeupress.edu/the-occupied-clinic>

³⁹⁶ <http://www.anthropology-news.org/index.php/2019/04/17/attending-to-the-dark-side-of-medicine/>

³⁹⁷ <https://www.nytimes.com/2020/04/26/world/asia/kashmir-india-mental-health-coronavirus.html#:~:text=Mental%20health%20workers%20say%20Kashmir,high%20rates%20of%20domestic%20abuse.>

³⁹⁸ <https://www.thenewhumanitarian.org/news/2019/12/23/Kashmir-conflict-mental-health>

to focus on forms of individual and collective resilience. Like other communities living in conditions of long-term violence and occupation, Kashmiris, too, have strategies to make live livable and survivable in these conditions. Resilience or resistance must not be seen as a “natural” characteristic, however, but rather as the outcome of long processes of adaptation and cultural, emotional, and political labor. While media and mental health research continue to emphasize Kashmiris as traumatized subjects, a second strand of research is beginning to emerge which focuses on how Kashmiris develop resources for coping, particularly in the aftermath of crises and disasters. For example, after devastating floods hit the region in 2014, a report³⁹⁹ by the human rights organization Jammu and Kashmir Coalition for Civil Society (JKCCS) demonstrated how local Kashmiri youth had organized to rescue people in the absence of state and military rescue efforts.

To avoid painting Kashmiris as pure victims, it is important that studies of mental health also attend to practices of coping, survival, and resilience, in addition to chronicling the psychological harms caused by military occupation.

³⁹⁹<https://mail.google.com/mail/u/0/?view=cm&fs=1&tf=1&source=mailto&to=https://jkccs.net/reports/>

16 Chapter 15: Press Freedom in Kashmir

The freedom of speech and expression is a fundamental right guaranteed by both International and national laws, and remains central to the people's liberties and rights. It is, therefore, not surprising that authorities and repressive regimes impose restrictions, try to censor, and attack institutions, especially free media that seek to hold them accountable and guard rights of individuals.

The muted state of local press in disputed Kashmir region has exposed how Indian authorities have worked to suppress free media, and in the process, dissent, in the Indian Administered Kashmir. The Indian state has always remained hostile towards journalists in Kashmir, and more often the local press have faced the ire of the authorities for reporting on subjects that raise questions on the functioning of the Indian armed forces in the region and the government itself. Delhi's ruling governments have regularly muzzled the press through intimidation, harassment, coercion and bribe. Foreign correspondents are barred from visiting Kashmir.

In August 2018, police arrested Aasif Sultan, footnote <https://www.newsclick.in/life-journalist-kashmir-why-asif-sultan-detention> a Kashmiri journalist with the Kashmir Narrator monthly magazine, for doing a cover story on rebel commander Burhan Wani. He was arrested on

charges of aiding insurgents and booked under the draconian Unlawful Activities (Prevention) Act. Sultan’s editor and family maintain he was merely reporting on them. In August 2019, Sultan was awarded the Press Freedom Award by American National Press Club,⁴⁰⁰ which noted that: “Sultan’s case reflects worsening conditions for the press and citizenry in Kashmir.” According to Scroll, an online news portal in India, police have subjected Sultan to repeated interrogation during his detention, including questions about why he reported on the conflict in Kashmir, why he had not reported on “development” in the state, and questions about headlines that had appeared in the Kashmir Narrator.

In July 2020, police arrested editor of The Kashmiriyat, Qazi Shibli, for the second time⁴⁰¹ after he was summoned and eventually detained by the Cyber Police. Urging authorities to immediately release Shibli the Committee to Protect Journalists (CPJ) said the Indian authorities “must end their harassment of journalists and allow them to do their jobs without interference. Earlier, Shibli had been imprisoned under the draconian Public Safety Act for nine months in Bareilly Jail⁴⁰² in North Indian state of Uttar Pradesh, after he had tweeted information about the deployment of additional troops in Jammu and Kashmir in the last week of July 2019 just before New Delhi unilaterally revoked the region’s constitutionally guaranteed semi-autonomous status.

In April 2020, Kashmir police charged Masrat Zahra and Gowhar Geelani under the Unlawful Activities Prevention Act⁴⁰³ — for their posts on social media, which the police claimed were “anti-national”. The police also filed a case against a story published in The Hindu, reported by Peerzada Ashiq, and interrogated senior journalist Naseer Ganai for his reporting. Commenting on these cases, a report by three UN special rapporteurs⁴⁰⁴ — on the protection of the right to freedom of opinion and expression, arbitrary detention, and situation of human rights defenders — noted that India’s bid to prosecute Kashmiri journalists suggests a “pattern of silencing independent reporting on the situation in Jammu and Kashmir through the threat of criminal sanction.”

“In this regard, we recall that penalization of a journalist solely for being critical of the government or the political system espoused by the government is incompatible with the State’s obligations under the international human rights law,” reads the report⁴⁰⁵ put out

⁴⁰⁰<https://www.inversejournal.com/2019/10/25/imprisoned-kashmiri-journalist-aasif-sultan-receives-international-press-freedom-award-in-absentia/>

⁴⁰¹<https://cpj.org/2020/08/jammu-and-kashmir-authorities-detain-journalist-and-editor-qazi-shibli/>

⁴⁰²<https://www.firstpost.com/india/in-bareilly-jail-i-was-the-guardian-of-all-kashmiris-says-journalist-qazi-shibli-after-9-months-of-detention-under-psa-8310161.html>

⁴⁰³<https://thekashmirwalla.com/2020/04/kashmirs-press-was-battered-then-came-uapa/>

⁴⁰⁴<https://thekashmirpress.com/2020/07/15/un-special-rapporteurs-expresses-concern-over-criminal-proceedings-initiated-against-four-kashmiri-journalists/>

⁴⁰⁵https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf&action=default&DefaultItemOpen=1

on the website of the Office of the United Nations High Commissioner for Human Rights (OCHCR). The three UN rapporteurs also expressed concern at the “apparent disregard for the prohibition on unlawful and arbitrary interference in the private life of individuals and journalistic privilege.” The UN investigators said the broad scope of the laws under which the journalists have been charged made them “easily amenable to abuse.”

Following the reading down of Article 370 and abrogation of Article 35A in August 2019, the attacks on journalists intensified with authorities imposing strict restrictions on their movement and threatened legal actions for their reportage. According to a report by Paris-based International Federation for Human Rights,⁴⁰⁶ also known as FIDH, the newspapers based in the main city of Srinagar have been “forced” to publish a reduced number of pages because of the unavailability of the internet and the restrictions on movement of journalists who have also faced reprisals for filing critical stories on Kashmir’s lockdown and mass arrests.

On 14 August, police arbitrarily detained a local journalist, Irfan Amin Malik,⁴⁰⁷ during a midnight raid at his home in southern Kashmir’s Tral town. Malik, who worked with Kashmir’s largest circulated English newspaper, Greater Kashmir, became the first journalist detained following Delhi’s latest clampdown. He was subsequently released but neither the police nor the state authorities disclosed the charges against Malik.

Later, a photojournalist from Kashmir’s Kulgam area was picked up by the Indian Army and counterinsurgency Special Operations Group of the police and detained for five days. He was released on 16 September, but no reasons for his detention were officially revealed. Haziq Qadri,⁴⁰⁸ a correspondent for the news website Brut India, was also detained for about 12 hours on 11 August and his phone was confiscated for recording videos of the lockdown.

On 8 September, Indian forces harassed Rifat Mohidin,⁴⁰⁹ at that time a correspondent for Chandigarh-based newspaper The Tribune, when she was on the way to the media facilitation centre set up by the authorities for local journalists. The personnel rained their batons on the reporter’s car “for several minutes” as she sat inside. Kashmir’s Women Journalists Association issued a statement to condemn the attack, and noted that the journalists working in the region often faced “disrespect and abuses” by government forces. “Scores of journalists have complained of harassment and misbehaviour by government forces. Despite valid ID proof and curfew passes, journalists are not allowed free and smooth movement,” it said.⁴¹⁰

⁴⁰⁶https://www.fidh.org/IMG/pdf/20200205_india_kashmir_bp_en.pdf

⁴⁰⁷<https://www.thequint.com/news/india/greater-kashmir-journalist-irfan-amin-malik-detained-by-security-forces-article-370>

⁴⁰⁸<https://cpj.org/2019/08/two-journalists-detained-jammu-kashmir-india/>

⁴⁰⁹<http://www.nwmindia.org/about-us/statements/stop-attacks-on-journalists-in-kashmir-nwmi>

⁴¹⁰<https://cpj.org/2019/09/kashmirs-news-media-faces-existential-crisis-amid/>

On 31 August, Immigration officials at Delhi's International Airport stopped journalist Gowhar Geelani from boarding his flight to Germany for an editors' conference of the Deutsche Welle, a state-owned public broadcaster. Indian officials cited "a request by the [Central] Intelligence Bureau" as the reason for stopping the journalist. Amnesty International said the "attempts to restrict the freedom of the press", like in the case of Geelani, had further "compounded the effect" of the communication blackout in place at the time.

On 17 December, Azaan Javed, who writes for The Print, and Anees Zargar, who works for Newslick, were assaulted while covering a students' protest outside a college in capital Srinagar. Police officers punched and slapped the journalists, and confiscated their mobile phones. Javaid later told the CPJ in a phone interview that local authorities promised an investigation into the incident within 10 days, but said he had not received any updates by January 16.

The Kashmir Working Journalists Association (KWJA) – a local group of journalists – issued a statement noting that the local media has been rendered "defunct". Terming the situation "utterly disabling and perilous", the KWJA said that because of "harassment and pressure from government agencies," the local press was "avoiding reports about the human rights violations, even skipping reports about local protests, clashes, large-scale arrests and detentions, not daring to question the official propaganda, and sticking to government handouts, even if they fail to make sense on the ground".

Earlier in September, at least three prominent journalists in the valley, two of whom represented Reuters and the Associated Press (AP), were ordered by authorities to vacate their government-owned residential properties they had rented. Amnesty termed this move as "nothing but harassment aimed at coercing journalists [into toeing] a particular line".

Global human rights bodies and media watchdogs⁴¹¹ have regularly highlighted that freedom of expression and the press in Kashmir are muzzled by the Indian state. "Foreign reporters are barred from Kashmir and the internet is often disconnected there," noted Reporters Without Borders (RSF) – an advocacy group dealing with issues relating to freedom of information and freedom of the press. "When not detained, Kashmiri journalists working for local media outlets are often the targets of violence by paramilitaries acting with the central government's tacit consent," it asserted. India is ranked 140th out of 180 countries in RSF's 2019 World Press Freedom Index, dropping two places in rankings from 138th in 2018.

In December 2017, state police arrested French journalist and documentary filmmaker

⁴¹¹<https://cpj.org/2020/08/kashmiri-journalists-describe-new-government-tactics-to-control-the-narrative/>

Paul Comiti for filming protests in Kashmir and deported him⁴¹² from the region. In 2016, following mass protests across large parts of the region, Zuhaib Maqbool, a freelance photo-journalist, suffered injuries in both eyes due to shotgun pellets fired by government forces, and eventually lost his sight in one eye.

In June, the BJP government enforced new media regulations⁴¹³ - The Media Policy 2020 - in Kashmir which many argued was akin to the Orwellian-style project aimed at stifling criticism of the state authorities and directed against press freedom protections in the restive region. The policy — which applies specifically to Kashmir — gives the state’s department of Information and Public Relations (DIPR) power to monitor media outlets and journalists in the Indian-controlled territory for misinformation, fake news, plagiarism and anti-national activities. Critics of the new rules assert that it makes state institutions as the judge, jury and the executioner by describing any news item or an opinion piece as ‘anti-national’ or ‘seditious’, and give legitimacy to state to target journalists.

Shuja ul Haq, president of the Kashmir Press Club, said⁴¹⁴ that having government officials “scrutinize stories of journalists and decide what is a ‘fake news’ and what is ‘plagiarism’ . . . goes against the very basics of freedom of expression enshrined in the constitution.” Aliya Iftikhar, a senior researcher at the Committee to Protect Journalists, told VOA, “This policy is just another avenue for the government’s crackdown on criticism and dissent, and yet another effort to silence the Kashmiri people.”

Unfazed by public outcry and continuing its intimidation tactic, the J&K police harassed and assaulted⁴¹⁵ journalist Auqib Javeed for his reportage on the bullying of civilians by Cyber police cell. Javeed was questioned for hours, heckled and slapped by the police officers. Weeks later, the Kashmir police detained, The Kashmir Walla editor Fahad Shah, for hours at gunpoint from the Srinagar-Jammu National Highway along with his colleague. In his first-person account,⁴¹⁶ Shah’s detailed how he was harassed and “treated like a criminal” under the “false and baseless” pretext of routine questioning.

As an act of retaliation for moving the Supreme Court⁴¹⁷ in Aug 2019 against the illegal restrictions on freedom of the Press in J&K, Anuradha Bhasin, the Chief Editor of the oldest English daily, Kashmir Times’s house was ransacked. And, she was finally evicted from her house.⁴¹⁸ The attacks against Anuradha continued when the Srinagar branch office of her

⁴¹²<https://br.reuters.com/article/us-india-kashmir-arrest-idUSKBN1E50H2>

⁴¹³<https://thewire.in/media/kashmir-new-media-policy-press-freedom>

⁴¹⁴<https://www.voanews.com/press-freedom/media-policy-adds-challenges-kashmiri-press>

⁴¹⁵<https://kashmirilife.net/journalist-says-cops-managing-virtual-kashmir-abused-him-physically-246894/>

⁴¹⁶<https://thekashmirwalla.com/2020/10/journalism-is-not-a-crime/>

⁴¹⁷<https://www.barandbench.com/news/supreme-court-notice-anuradha-bhasin-petition-media-restrictions-shutdown-kashmir>

⁴¹⁸<https://www.sabrangindia.in/article/kashmir-times-editor-anuradha-bhasins-home-ransacked>

newspaper was also shut down by the government forces.⁴¹⁹

⁴¹⁹<https://thewire.in/media/anuradha-bhasin-kashmir-times-office-closed-jammu-and-kashmir>

17 Chapter 16: Pakistan and Kashmir

The portion of Kashmir under Pakistan’s rule is currently divided into Azad Jammu and Kashmir (AJK) and Gilgit-Baltistan (GB). Initially they were a single territorial unit. GB was separated from AJK and brought under Pakistan’s federal rule in 1949.⁴²⁰ The sub-region was renamed as the Northern Areas, and eventually as GB in 2009 when it was granted limited self-autonomy. Neither sub-regions of Kashmir are constitutionally part of Pakistan nor are their people represented in the federal parliament. Ever since the UN ceasefire agreement that was signed in Karachi in 1949 by the military representatives of India and Pakistan, the Government of Pakistan has “assumed” the role of administering AJK and GB. The agreed-upon cease-fire line was intended only to be an interim step awaiting a full resolution of the Kashmir conflict.⁴²¹

⁴²⁰Javaid Hayat, 2016. ‘Pakistan’s relations with Azad Kashmir and Gilgit-Baltistan: Recognizing Internal Self-Determination- A Way Forward.’ *South Asia Journal* <http://southasiajournal.net/pakistans-relations-with-azad-kashmir-and-gilgit-baltistan-recognising-internal-self-determination-a-way-forward/> (last accessed 28 September, 2020).

⁴²¹Omer Aijazi (2020). Which Kashmir? Pakistan’s or India’s? *Speaking Justice to Power Series, Association for Political and Legal Anthropology (APLA)*, July 30 (last accessed 28 September 2020). <https://politicalandlegalanthro.org/2020/07/30/which-kashmir-pakistan-wala-ya-india-konsa-kashmir-pakistans-or-indias/>

AJK has a semi-autonomous regional government and has been administered internationally by Pakistan since then. Formally, AJK operates as a limited parliamentary democracy, as established in the Azad Jammu and Kashmir Interim Constitution Act, adopted in 1974. However, tensions persist between AJK's internal administrative structures and the indirect influence of Pakistan's bureaucracy and military.

GB lies to the north of AJK. It has a separate governmental and administrative structure and is governed directly through the Ministry of Kashmir Affairs and Gilgit-Baltistan in Islamabad. A large percentage of the population of GB wants to be merged into Pakistan as a separate fifth province and opposes integration with Kashmir.⁴²² In the past, the Pakistani government has rejected calls for greater integration on the grounds that it would jeopardize the resolution of the Kashmir issue according to UN resolutions. Conversely, an important number of people in GB also oppose integration with Pakistan and prefer further autonomy.

Pakistan has recently decided to integrate GB as a province through a constitutional amendment after the announcement of a new map which showed the entire state of Jammu and Kashmir as part of Pakistan. These changes are set to take place after GB's provincial assembly's elections. Prior to this in 2018, Pakistan through the 13th amendment in the constitution of Azad Kashmir, extended subject areas which were not applicable to AJK previously. Federal institutions and the rights of the constitution of Pakistan were also inducted in the constitution of AJK.⁴²³ The integration of GB into Pakistan as a province albeit provisionally will tantamount to accepting the status quo, likely making the LoC a permanent boundary, and undermining the legal international status of the Kashmir dispute.

17.1 Pakistan's official stance

Pakistan officially maintains that Kashmir is a disputed territory and that the promised referendum should be held so that the people of Kashmir can make their own decisions about the form and future of their homeland. On several occasions it has attempted to pull in third party mediation and raise Kashmir at the UN Security Council. A principal way Pakistan's position on Kashmir differs from India is that it accepts that Kashmir is not an internal matter nor a bilateral issue between the two countries. However, this does not mean that Pakistan should not be held accountable for the portion of Kashmir currently under its jurisdiction.

⁴²²Nosheen Ali (2019). *Delusional States*. Cambridge University Press.

⁴²³APP (2018). 'Act 1974: AJK approves 13th amendment' in *The News*, June 3 <https://www.thenews.com.pk/print/325050-act-1974-ajk-approves-13th-amendment> (last accessed Sept 28, 2020).

17.2 Opportunities for political expression

Political expression in Pakistan-administered Kashmir is tolerated as long as it does not challenge the official narrative of the Pakistani state. This applies to both AJK and GB. Activists in both sub-regions presenting political alternatives have reported surveillance and intimidation. Over the years, several activists have also gone missing.

The Government of Pakistan legally exerts authority in AJK's internal politics through the Azad Jammu and Kashmir Council, through supervision of the state administrative services, and through control over the state budget.⁴²⁴ In addition, candidates for elected office are required to support Jammu and Kashmir's accession to Pakistan, and many government employees are required to sign an oath to that effect. For this reason, the nationalist, pro-independence political parties cannot forward candidates for election in AJK, and anyone in government service cannot be a registered member of a pro-independence party. This constraint has effectively kept independence parties (both pan-Kashmir and AJK-based) out of political office, although they have a presence in nongovernmental political contexts.

The Pakistan Army also exercises coercive power in AJK, which it largely considers as a security threat.⁴²⁵ The army maintains the most direct administrative influence within the official Military Security Zone, which covers a 16-km band along the LoC and encompasses areas within range of Indian Army artillery. Within the zone, the Military Intelligence (MI) of the Pakistan Army, the Inter-Services Intelligence (ISI), which recruits both from the Pakistan Army and the Pakistan Civil Services, along with the Federal Investigation Authority (FIA) oversee the local population. The military also conducts identity checks at regular check posts, monitoring who enters the region. Residents live under the constant impending threat of external armed aggression, and Pakistan is able to suppress political dissent in the name of security. The army also plays a similar coercive and manipulative role in GB.⁴²⁶

17.3 The Line of Control

It is significant to note that many residents live by the volatile Line of Control in AJK. It is estimated that there are nearly 285 villages along the LoC in Pakistan-administered Kashmir, most of which remain heavily populated.⁴²⁷ Prior to the 2003 ceasefire, frequent firing

⁴²⁴Cabeiri deBergh Robinson. *Body of victim, body of warrior: Refugee families and the making of Kashmiri jihadists*. Univ of California Press, 2013.

⁴²⁵Ibid.

⁴²⁶Nosheen Ali (2013). Grounding Militarism: Structures of Feeling and Force in Gilgit-Baltistan. *Everyday Occupations: Experiencing Militarism in South Asia and the Middle East*, 85-114.

⁴²⁷Ershad Mahmud. 2016. 'Tensions along the border' in *The News* on Sunday. Web: <https://www.thenews.com.pk/tns/detail/562191-tension-along-border> (Last Accessed: 23 August 2020)

between Indian and Pakistani armies caused grave damage in these areas.⁴²⁸ In Neelum Valley alone, it is estimated that between 2,000-3,000 people were killed in shelling related incidents between 1989 and the 2003 ceasefire. Deaths and injuries caused by shelling were accompanied by frequent school and road closures, poor access to healthcare and destruction of livestock and other sources of livelihood.⁴²⁹ After the 2003 ceasefire, some of these towns and villages experienced respite and were in the process of rebuilding their livelihood. Since 2016, however, firing between India and Pakistan has escalated and ceasefire violations remain frequent. The impact of shelling has serious implications for locals, particularly women and children who often stay behind to look after livestock and land even as some men are able to relocate to cities further away from the LoC for employment.⁴³⁰

17.4 Moving forward

A recent report released on July 08, 2019 (second UN report) by the Office of the United Nations High Commissioner of Human Rights (OHCHR) has updated the situation of human rights in Indian-administered and Pakistan-administered Kashmir.

There are 19 recommendations for India and 12 recommendations for Pakistan. The common recommendation made to India and Pakistan is:

‘Fully respect the right to self-determination of the people of Kashmir as protected under international law.’

Notwithstanding the powerlessness of Pakistan-administered Kashmir, and in view of the overwhelming majority of people in the region who feel politically, constitutionally, and economically disempowered by Islamabad, the territory remains relatively conflict free and the people of this territory feel emotionally connected to the people of Pakistan. This is unlike the situation in the valley of Kashmir, where the residents are antipathetic and bitter over Indian control. The presence and application of laws that grant impunity to Indian armed forces, such as Armed Forces (Jammu and Kashmir) Special Powers Act 1990 and Jammu and Kashmir Public Safety Act 1978, have resulted in gross human rights violations by the Indian security forces, which have been widely reported by the international media and other organizations.

⁴²⁸Omer Aijazi. 2018. ‘Kashmir as Movement and Multitude.’ *Journal of Narrative Politics* 4, no. 2 (2018): 88-118.

⁴²⁹Anam Zakaria. 2018. *Between the Great Divide: A Journey into Pakistan-administered Kashmir*. HarperCollins Publishers

⁴³⁰Anam Zakaria, Jalaluddin Mughal, Maria Abi-Habib. 2020. “Women Face Dilemma in a Conflict Zone” in *The New York Times*. Web: <https://www.nytimes.com/2020/05/15/world/asia/kashmir-pakistan-shelters-assault.html> (Last Accessed: 23 August 2020)

It is important that both Indian and Pakistan allow international human rights organizations and international media to investigate human rights violations on both sides of the LoC.⁴³¹

⁴³¹Javaid Hayat. 2020. *Azad Jammu & Kashmir: Polity, Politics and Power-Sharing*, Oxford University Press.

18 Chapter 17: Media Review of Kashmir August 2019 - September 2020

For media coverage, reports published, and further reading about the siege of Kashmir since the 5th of August 2019 until September 2020, please click the hyperlink below.

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