



**“WE ARE BEING PUNISHED
BY THE LAW”**

THREE YEARS OF ABROGATION OF
ARTICLE 370 IN JAMMU & KASHMIR

AMNESTY
INTERNATIONAL



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1. EXECUTIVE SUMMARY

“People of Jammu & Kashmir are considered with utmost suspicion, including the most powerful people - whether it's bureaucracy, politicians, intellectuals, or media. Everybody is treated as someone who needs to be subjugated or needs to be shown the right path. For heaven's sake, do people of Jammu and Kashmir have no agency of their own? If Jammu & Kashmir is an integral part of India, so are its people.”

A senior journalist who has faced harassment from the Indian authorities



SRINAGAR, KASHMIR, INDIA: An Indian soldier stands alert on the main road during a shutdown.
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Amnesty International

On 5 August 2019, the Indian government unilaterally repealed the critical provisions of Article 370 of the Indian Constitution - which had guaranteed far-reaching powers to the state of Jammu & Kashmir on a wide range of issues except foreign affairs, defence and communication - and extended its control over the region.¹ After India gained independence in 1947, the former princely state of Jammu & Kashmir acceded to India and was established as a state with specific rights and freedoms guaranteed to its ethnic, linguistic and religious minorities.² Until 5 August 2019, Jammu & Kashmir was the only state in India with a majority Muslim population which otherwise constitutes a minority in the country.³

The revocation was followed by the deprivation of Jammu & Kashmir's statehood and splitting it into two separate union territories governed by the central government.⁴ The move was seen as a brutal dismissal of people's protests over the decades against the human rights violations committed by the state and security forces in Jammu & Kashmir and an aggressive gesture to deprive them of their fundamental freedoms.

In the three years since 5 August 2019, the Indian government has drastically intensified the repression of the people of Jammu & Kashmir, including journalists and human rights defenders by subjecting them to multiple human rights violations. These violations include restrictions on rights to freedom of opinion and expression; to liberty and security of person; to movement; to privacy; and to remedy and access to justice. The authorities have committed these violations with absolute impunity.

The critical decision of revoking the state's autonomy and depriving it of its statehood was made without ensuring consultation and any participation of the people of Jammu & Kashmir, amidst a complete communication clampdown which included the suspension of telephone and internet services, curfew on movement, and mass detentions of political leaders, human rights activists, and lawyers in the region.⁵

Amnesty International has monitored the human rights situation in Jammu & Kashmir for several years and found that the Indian government's clampdown on dissent in Jammu and Kashmir has intensified since 5 August 2019. This intensification has had the impact of establishing increased control over the region through a system of laws, policies and practices that systematically annihilate critical voices and violate the rights to freedom of expression and opinion of journalists and human rights defenders. Between 25 July 2022 and 4 August 2022, Amnesty International spoke to representatives of civil society in Jammu & Kashmir including journalists, lawyers, human rights defenders and a former judge. Amnesty International found unreasonable restrictions placed on freedom of movement and the right to political participation, as well as undue limitations on freedom of expression along with arbitrary arrest and illegal imprisonment of the people. Human rights defenders and journalists are at a higher risk of these violations in Jammu & Kashmir.⁶ This briefing builds on Amnesty's earlier investigations, which found violations of the right to freedom of expression that impeded the ability of Kashmiri politicians and lawmakers from representing the concerns of their constituents effectively and currently

1. The Constitution (Application to Jammu and Kashmir) Order, 2019 C.O. 272, 5 August 2019, <https://cdnbbsr.s3waas.gov.in/s395192c98732387165bf8e396c0f2dad2/uploads/2019/10/20191029100.pdf> <https://pib.gov.in/pressreleaseshare.aspx?prid=1581391>

2. Office of the United Nations High Commissioner for Human Rights (OHCHR), Report: *Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan*, 14 June 2018, <https://www.ohchr.org/sites/default/files/Documents/Countries/PK/Development%20in%20Kashmir%20June2016ToApril2018.pdf>; OHCHR, Press Release on India: UN experts say Jammu and Kashmir changes risk undermining minorities' rights, 18 February 2021, <https://www.ohchr.org/en/press-releases/2021/02/india-un-experts-say-jammu-and-kashmir-changes-risk-undermining-minorities?LangID=E&NewsID=26758>

3. Census 2011, Jammu and Kashmir, 28.44% Hindus and 68.31% Muslims, <https://www.census2011.co.in/religion.php>

4. The Jammu and Kashmir Reorganisation Act, Act No. 34 of 2019, 9 August 2019, <https://www.indiacode.nic.in/bitstream/123456789/12030/1/A2019-34.pdf>

5. Amnesty International India, *Situation Update and Analysis, Jammu & Kashmir After One Year of Abrogation of Article 370*, 5 August 2021, https://www.amnesty.be/IMG/pdf/jammu_and_kashmir_after_one_year_of_abrogation_of_article_370.pdf

6. Between 25 July 2022 and 4 August 2022, Amnesty International spoke with eight individuals including four journalists, one lawyer, a human rights activist former chairperson of the Jammu & Kashmir Human Rights commission and a relative of a detained human rights defender; See Methodology.

hinder the journalists from telling the stories of the people of Jammu & Kashmir independently without fear.⁷ Amnesty International could not access places of detention or courts in Jammu & Kashmir due to the ongoing crackdown on Amnesty International India. In that regard, in some cases, reliance on second-hand testimony or review of publicly available information was necessary. This has been triangulated with official data and other sources.

Through the interviews conducted by Amnesty International and review of media sources, the organisation recorded the details of at least 60 instances in which journalists and human rights defenders have been subjected to interrogations, criminal investigations, arbitrary arrest, detention, and surveillance since August 2019. The passing of repressive policies such as the 2020 Revised Media Policy and 2021 Film Policy have further been used as attempts to legitimise the censorship of expression and ensured a total control of information coming out of the region by the Indian government. Multiple news media outlets and human rights organisations consistently face raids and investigations from the National Investigation Agency and the Income Tax Department over politically motivated charges of financial irregularities. The harassment and intimidation have led to many journalists either losing or leaving their jobs. In addition, the sudden and forced closure of Kashmir Press Club in 2022 by the Indian government has further silenced the culture of debate and solidarity amongst the journalists.

This briefing also documents how since 5 August 2019, the Indian authorities have increased the use of travel bans, which are arbitrary executive actions not backed by any court order, warrant or even a written explanation, on journalists and human rights defenders violating their right to freedom of movement. Amnesty International found that between 5 August 2019 and 5 August 2022, at least six individuals including journalists, human rights activists and academics were stopped from travelling abroad without any reason.

On 8 August 2019, Prime Minister Narendra Modi said that the revocation of Jammu & Kashmir's special autonomy was directed at "normalizing the situation" and 'preventing terrorism' in the region and 'bringing it at par with the rest of India'.⁸ This came with the repeal of over 164 local laws and the extension of 143 central laws to the region.⁹ However, despite a massive alteration in the legislative framework of Jammu & Kashmir, the 1990 Armed Forces (Jammu & Kashmir) Special Forces Power Act (AFSPA), which empowers the army personnel to shoot or kill any person with complete impunity by requiring the central government to grant permission for prosecution of accused security personnel, robustly continues to be in force. Amnesty International analysed the data presented by the Government of India before the Parliament and found that Jammu & Kashmir accounts for the highest number of police involved deaths, known as 'police encounters' in the country between April 2020 and March 2022. At the same time, unlawful killings of civilians by the armed groups have increased by 20% since the abrogation of Article 370.¹⁰ Amongst the civilians, between 2019 and 2021, the killings of the members of the minority community including Hindus and Sikhs have almost doubled.¹¹ According to the Supreme Court of India, armed forces are deployed to restore normalcy and if such

7. Amnesty International India, *Situation Update and Analysis, Jammu & Kashmir After One Year of Abrogation of Article 370*, 5 August 2021, https://www.amnesty.be/IMG/pdf/jammu_and_kashmir_after_one_year_of_abrogation_of_article_370.pdf

8. PMINDIA, PM's Address to the Nation, 8 August 2019, https://www.pmindia.gov.in/en/news_updates/pms-address-to-the-nation-2/?comment=disable&tag_term=pmspeech

9. The Jammu and Kashmir Reorganisation Act, Act No. 34 of 2019, 9 August 2019, <https://www.indiacode.nic.in/bitstream/123456789/12030/1/A2019-34.pdf>; Press Information Bureau, "Cabinet approves Issuance of an Order for adaptation of Central laws in the Union territory of the Jammu and Kashmir under section 96 of the Jammu and Kashmir Reorganisation Act, 2019", 26 February 2020, <https://pib.gov.in/PressReleasePage.aspx?PRID=1604415>

10. Between 5 August 2019 and 9 July, 2022, 118 civilians were killed by armed groups in Jammu & Kashmir whereas 177 civilians were killed between May 2014 and 4 August 2019 (Government of India, Ministry of Home Affairs, Rajya Sabha, Unstarred Question No. 386, 20 July 2022, <https://pqars.nic.in/annex/257/AU386.pdf>)

11. Three people from the minority communities including Hindus and Sikhs were killed in 2018, six in 2019, 3 in 2020 and 11 in 2021 in terror attacks. (Government of India, Ministry of Home Affairs, Rajya Sabha, Unstarred Question No. 3888, 6 April 2022, <https://pqars.nic.in/annex/256/AU3888.pdf>)

normalcy is not restored for a prolonged period, it indicates a collective failure of the armed forces and the civil administration, raising alarming concerns about the lofty promises made by the Indian government during the revocation of Article 370.¹²

In contrast to AFSPA, the Jammu & Kashmir Right to Information - one of the progressive local laws - was replaced by the 2005 central Right to Information Act that has been watered down over the years. Amnesty International found that the repeal has led to many Right to Information activists and human rights defenders endlessly waiting for responses to their information requests.

The annulling of local laws also resulted in the dissolution of seven autonomous oversight institutions in Jammu & Kashmir including the Human Rights Commission, leaving people in the region without an accessible substitute. Through its interviews with the former chairperson of the Jammu & Kashmir State Human Rights Commission, journalists, and a lawyer, Amnesty International found that the dissolution combined with increased pendency in the High Court of Jammu & Kashmir and Ladakh has infringed upon people's right to meaningful remedy against human rights violations, particularly arbitrary arrest, and unlawful detention in the region.

Amnesty International reviewed the case information of 1346 habeas corpus filed with the High Court of Jammu & Kashmir and Ladakh and found that since 2019, overall, the number of habeas corpus petitions filed with the court has increased by 32%. Specifically, the Srinagar wing of the High Court which has a majority Muslim population registered a higher number of habeas corpus petitions. As of 4 August 2022, only 14 habeas corpus petitions out of 585 petitions filed in 2022 were disposed of by the Court. It also reviewed the data published by the National Crime Record Bureau and found that there has been a 12% increase in the use of Unlawful Activities (Prevention) Act (UAPA) – India's primary anti-terror law in Jammu & Kashmir. UAPA allows the authorities to keep a person detained for 180 days as opposed to 90 days in other criminal laws without a charge sheet.

Given the crisis of systemic human rights violations in Jammu & Kashmir, Amnesty International calls on the Government of India to immediately drop all politically motivated charges against journalists and human rights defenders arrested for exercising their freedom of expression, release those arbitrarily detained under administrative detention and other repressive laws, and ensure anyone facing charges for internationally recognized criminal offences are tried promptly and fairly in a regular court. The government must also remove unjust barriers placed on the people of Jammu & Kashmir from expressing themselves freely and provide them access to meaningful remedy and justice.

The Indian government must also take steps to increase the representation and participation of the people of Jammu & Kashmir in decision-making processes. The government's efforts to put in place unlawful measures of interrogating journalists and human rights defenders, as well as seizing their personal devices and arbitrarily detaining them reflect poorly on its role as a member of the UN Human Rights Council. This should concern the international community. Amnesty International also calls on the international community to hold the Indian government accountable for the grave human rights violations committed in Jammu & Kashmir by calling for an immediate and independent investigation into such violations.

12. Supreme Court of India, Extra Judicial Execution Victim Families Association v. Union of India, Writ Petition (Criminal) No. 129 of 2012, para 92

2. METHODOLOGY

In the period between 5 August 2019 and 4 August 2022, Amnesty International has spoken to a total of 25 journalists, civil society actors and human rights defenders in J&K. The current briefing builds on Amnesty International India's previous monitoring and reporting on human rights violations in the region since 2019, which was complemented by interviews conducted with eight individuals including four journalists, one lawyer, one human rights defender, the wife of a detained human rights activist and a former judge between 25 July and 4 August 2022, as well as extensive desk research. The organization's ability to conduct research on the ground has been restricted since 2020 due to the government's crackdown on Amnesty International India in the form of relentless smear campaigns and trumped-up allegations under the Prevention of Money Laundering Act, 2002, Foreign Exchange Management Act, 1999 and Foreign Contribution (Regulation) Act, 2010 and several others by the Indian authorities. This has drastically affected the organization's ability to operate in India. In September 2020, after a sustained campaign against the organisation by the Indian authorities, all its bank accounts were frozen without any prior notice forcing Amnesty International India to shut down its office. Those interviewed explained that people in Kashmir weighed the yearning to tell their lived realities against the fear of reprisals against them and their relatives by the Indian authorities if they did so. Unless otherwise indicated, Amnesty International has withheld the names of sources interviewed in order to protect their security and identity and other identifying details such as dates of arrests, interrogation, and place of residence. For this reason, the briefing does not disclose the details of the interviews.

The Indian government's actions in J&K since 2019 has had a chilling effect on activists, human rights defenders, and journalists in the region, leading to their reluctance in being associated with international human rights organizations such as Amnesty International. Amnesty International also reached out to other journalists but they either did not respond or refused to be interviewed citing fear of reprisal from the Indian authorities. To address these limitations, the organization completed an extensive review of credible media sources, corroborating information with statements by various United Nations Special Rapporteurs, speeches from Indian public officials and political leaders in the Parliament, and research reports from various human rights organizations since 5 August 2019. It also reviewed various laws, regulations and policies passed by the Indian government after 5 August 2019.

Amnesty International also reviewed documentary evidence available on the website of the High Court of Jammu & Kashmir and Ladakh regarding the habeas corpus petitions filed since 2019 challenging unlawful detention. It also reviewed the official social media accounts of Kashmiri journalists and politicians to document arbitrary arrests and travel bans.¹³ It analysed the case information of 1346

13. High Court of Jammu & Kashmir and Ladakh, <https://www.jkhighcourt.nic.in/>

habeas corpus petitions filed with the Jammu & Kashmir and Ladakh High Court to assess the pendency in the Court and the magnitude of administrative detention in the region.

Amnesty International India wrote to the Government of India on 22 August 2022 to seek their response on the findings detailed in this briefing. At the time of publication of this briefing, they did not receive a response.

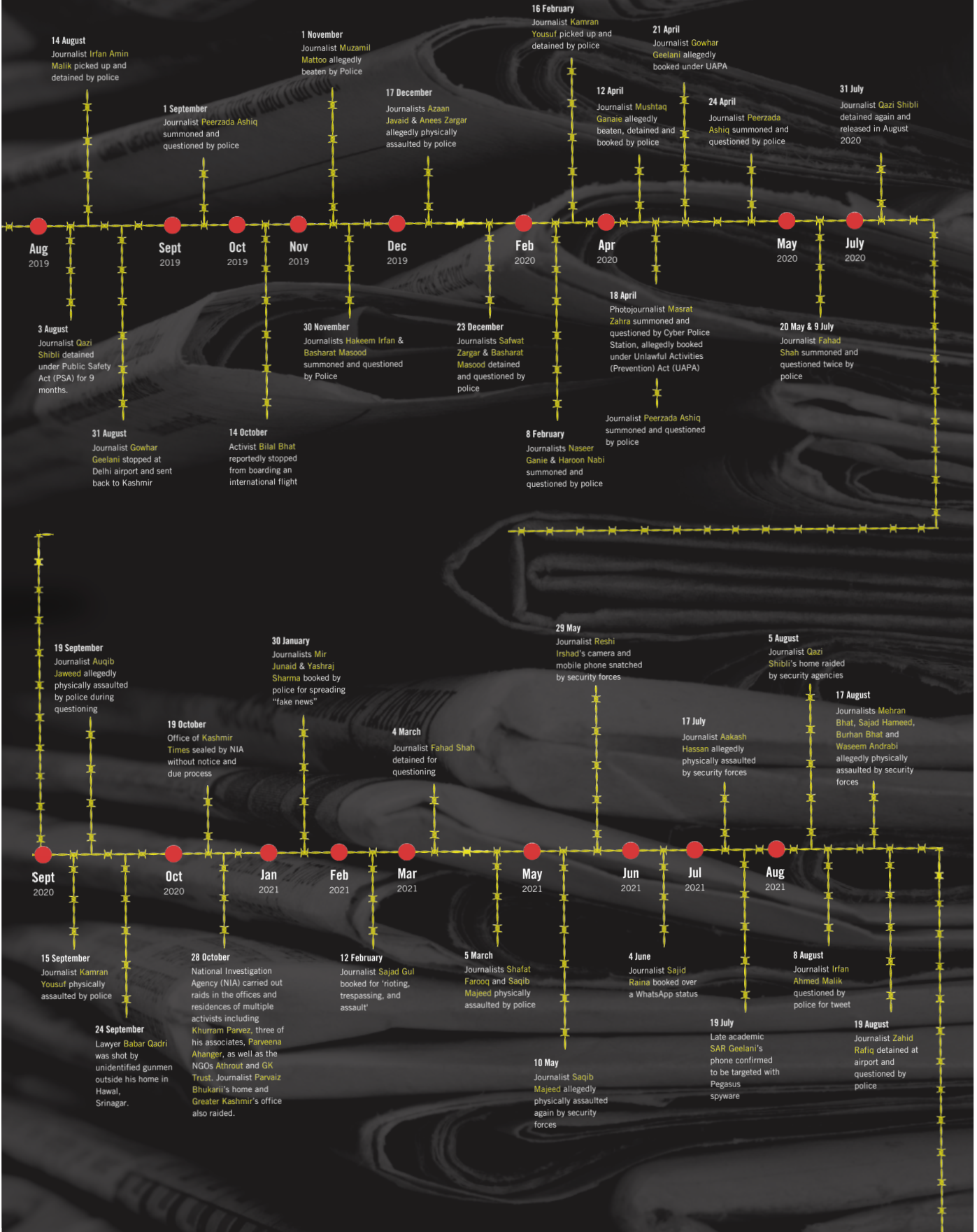
We acknowledge that the research provides a non-exhaustive picture of the human rights situation in Jammu & Kashmir since 5 August 2019, and we are concerned that many violations may be under-reported.

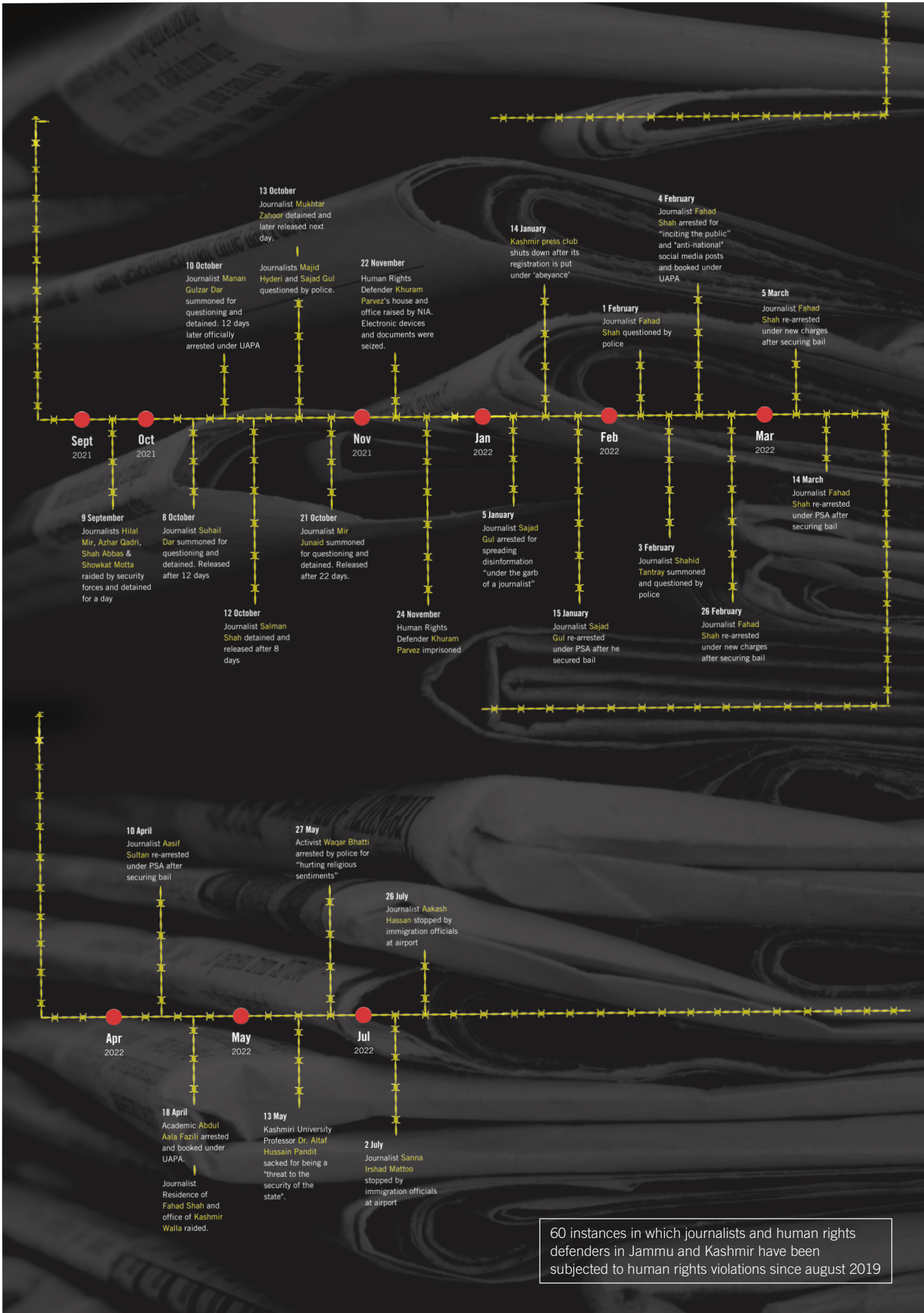
We express gratitude to those who accepted to be interviewed despite risks of reprisals.

3. ASSAULT ON FREEDOM OF EXPRESSION

Timeline of repression of civil society in Jammu & Kashmir

A non-exhaustive list of journalists, activists, and civil society who have faced repression since August 2019





60 instances in which journalists and human rights defenders in Jammu and Kashmir have been subjected to human rights violations since August 2019

To repress dissent, the Indian government has severely restricted the right to freedom of opinion and expression of the people of Jammu & Kashmir. The journalists and human rights activists Amnesty International spoke with reported incessant campaigns of intimidation and harassment by the government in the region.¹⁴

On 4 August 2019, a day before the revocation of Article 370, a blanket internet shutdown was imposed in Jammu & Kashmir which eventually turned out to be the third longest internet shutdown in the world.¹⁵ The blanket internet shutdown impeded the ability of human rights defenders (HRDs) and others to report on violations and communicate about the situation in the region to the outside world. It was only lifted progressively and completely in February 2021 - 18 months after it was imposed – during which time the Indian government had already imposed various other forms of obstacles.

In May 2020, the Indian government issued a punitive “revised media policy” in Jammu & Kashmir which regulates the accreditation of journalists, newspapers and news portals and gives the authorities broad and discretionary powers to decide what is “anti-national activities, fake news and plagiarism” and conduct background checks on journalists.¹⁶ Under the policy, the authorities can arrest and charge the journalists under the Indian Penal Code, 1860 and Information Technology Act, 2000. In September 2021, the Indian government issued a film policy laying down the procedure for the approval of shooting films in the region.¹⁷ The policy includes screening and approval of both location and the script by two separate executive committees. A detailed reading of the policies indicates the legitimisation of the repressive actions of the Indian government against independent voices in Jammu & Kashmir.

During the prolonged internet shutdown, journalists were forced to rely on the Media Facilitation Centre set up by the government for information sharing. The journalists Amnesty International spoke with revealed that the centre was essentially a small kiosk with three to four computers used by over 150 journalists to access internet and other communication channels under complete surveillance of the government agencies. Even though the prolonged internet shutdown has been lifted, the Indian authorities still suspend internet services in various parts of Kashmir often without any prior notice.¹⁸ According to Access Now, a digital rights organisation, people in Jammu & Kashmir faced at least 85 internet shutdowns in 2021 – one of the highest in the world.¹⁹ These shutdowns were also imposed in the name of “counterterrorism” measures and for long periods of time, in violation of international human rights law and an order from India’s Supreme Court that held that internet shutdowns must satisfy the tests of necessity and proportionality.²⁰ All the journalists Amnesty International spoke with said that the prolonged surveillance has created a sense of fear amongst their community.

International law provides that restrictions on freedom of expression must be necessary for a legitimate purpose and strictly proportionate to achieve that end. However, the media and film policies are overly restrictive and can be used to orchestrate a clamp down on media outlets, journalists, and editors by the Indian government.

14. Amnesty International interviews.

15. Access Now, *The Return of Digital Authoritarianism*, 24 May 2022, <https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf>

16. Department of Information & Public Relations, Government of Jammu & Kashmir, “Revised Media Policy”, 12 May 2021, <http://new.jkdirinf.in/images/MediaPolicy.pdf>

17. Department of Information & Public Relations, Government of Jammu & Kashmir, “Jammu & Kashmir Film Policy 2021”, https://jkfilm.jk.gov.in/policy_pdf/Film_Policy_2021_booklet_english.pdf

18. SFLC.in, Internet Shutdowns, <https://internetshutdowns.in/>

19. Access Now, *The Return of Digital Authoritarianism – Internet Shutdowns in 2021*, April 2021, <https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf>

20. Supreme Court of India, *Anuradha Bhasin v. Union of India*, Writ Petition (Civil) No. 1301/2019, 10 January 2020, <https://globalfreedomofexpression.columbia.edu/cases/bhasin-v-union-of-india/>

3.1 PHONE CALLS, ORAL SUMMONS, AND INTERROGATION

According to media reports, since 5 August 2019, at least 180 journalists have been called by the Jammu & Kashmir police for interrogation.²¹ This likely constitutes a huge proportion of the journalists working in the region, considering before the shutting down of the Kashmir Press Club in January 2022, a total of 300 journalists were registered with the body. Even though Amnesty International is aware that many journalists who are based in Jammu & Kashmir and report on the region may not be registered with the body, it still indicates repression of freedom of expression in the region by the Indian authorities at an alarming scale.

The four journalists Amnesty International spoke with in 2022 alleged that the Criminal Investigation Department (CID) of the Jammu & Kashmir Police, the State Investigation Agency (SIA), Indian Army's Military Intelligence Department and the Intelligence Bureau make 'verification' phone calls to journalists who report on human rights abuses in which they not only ask questions related to the journalist's professional and personal background but also of their immediate and extended family residing in Jammu & Kashmir without any legal basis. The four journalists Amnesty International spoke with consider the number of journalists called for interrogation to be a gross underestimation particularly in wake of Indian government's programme on "profiling 80% of Kashmiris" including journalists.²² Such profiling may not always include calling the people of Jammu & Kashmir to police stations for interrogation however, a journalist who has worked with multiple national and international newspapers confirmed their experience of such profiling to Amnesty International, they alleged the police "are creating dossiers of everyone through these calls and interrogations. It is not supposed to be a public document. It is created by the police and shared with every law enforcement agency along with the armed forces as a tool of surveillance."²³

Other journalists have made similar allegations. On 8 June 2022, Shahid Tantray, a journalist with *The Caravan* – an Indian magazine that covers politics and culture, issued a public statement claiming that the Jammu & Kashmir police officials had made numerous such verification phone calls to him and his family.²⁴ He reported that over the calls, the police officials also threatened him with arrests in fabricated cases after he authored an extensive report on the deteriorating press freedom in the region. Indian law provides protection from arbitrary deprivation of liberty. Under Section 41A of India's Criminal Procedure Code (CrPC), the police can only summon a person by serving a written notice, and only in relation to a specific case of an alleged crime if such police officer believes that arrest may not be required. However, during the interrogation, if the police officer gathers adequate information which reveals the commission of a cognizable offence, he can register a First Information Report giving an account of the offence committed by the person. But all the journalists Amnesty International spoke with revealed that the Jammu & Kashmir police either makes phone calls without any legal basis or largely summons journalists orally, without any written communication or reasons and in relation to their reportage instead of a specific case.

A Kashmiri journalist who had been summoned by the Jammu & Kashmir police in 2020 and interviewed by Amnesty International in July 2022 recalled,

21. Caravan, "Dead Lines, How Journalism in Kashmir has been Driven to the Edge", 1 February 2022, <https://caravanmagazine.in/media/crackdown-on-kashmir-journalists-censorship-press-freedom-article370>

22. Indian Express, "Government Curbs Choking Media in J&K: Press Council Panel", 14 March 2022, <https://indianexpress.com/article/india/govt-curbs-choking-media-in-jk-press-council-panel-7818409/>

23. Amnesty International Interview.

24. Caravan, "Statement by The Caravan journalist Shahid Tantray on facing harassment by J&K Police", 8 June 2021, <https://caravanmagazine.in/noticeboard/statement-caravan-journalist-shahid-tantray-harassment-jammu-kashmir-police>

“I was called to the police station and the questioning went on for hours. I reached home at 11 in the night. They asked about my schooling, education background, how much property do I own and my political ideology. They also ask about your siblings, parents, spouse, kids and what not. It is a complete breach of privacy. They tell you in so many ways – subtle as well as brazen – that the cost of pursuing journalism in Jammu & Kashmir is huge.”²⁵

The journalist also reported receiving calls from at least four police stations including from CID’s special branch dealing with media and journalists.

Another senior journalist Amnesty International spoke with said, “In [rest of] India, no journalist would respond to calls like this or go to the police station because it’s clearly not legal. But if they don’t concede in Jammu & Kashmir, they know they will face consequences.”²⁶

Subjecting the journalists of Jammu & Kashmir to police interrogations based on their actual or perceived political opinion is an attack on their right to freedom of expression. Since these interrogations are carried out with the apparent aim of maintaining surveillance over the journalists, it also violates their right to privacy.

3.2 ABUSE OF SECURITY LAWS



© Tauseef Mustafa/AFP via Getty Image

25. Amnesty International Interview.

26. Amnesty International Interview.

According to the data gathered by Amnesty International by collating media reports, at least 27 journalists in Jammu and Kashmir have been arrested and detained by the Indian authorities since 5 August 2019.

The Press Council of India in its fact-finding report said that at least 49 journalists have been arrested in the region since 2016 of which eight have been arrested under the Unlawful Activities (Prevention) Act (UAPA) – India’s primary anti-terror law.²⁷ According to media reports, outspoken journalists including Aasif Sultan,²⁸ Fahad Shah,²⁹ Peerzada Aashiq,³⁰ Masrat Zahra,³¹ Gowhar Geelani,³² Kamran Yousuf,³³ Abdul Aala Fazili³⁴ and Manan Gulzar Dar³⁵ have been charged, arrested or detained under UAPA besides other provisions of the Indian Penal Code for their documentation of human rights abuses in Jammu & Kashmir. Several journalists including Fahad Shah,³⁶ Aasif Sultan³⁷ and Sajad Gul³⁸ have endured ‘revolving door’ arrests. In a continuing pattern, the three have been arrested under one law, granted bail by the court, and then re-arrested almost immediately under the UAPA and Jammu & Kashmir Public Safety Act (PSA), with the effect of keeping them perpetually detained. In parallel, the government-aligned media has subjected journalists, activists and human rights organizations denouncing human rights violations in Jammu & Kashmir, to smear and delegitimization campaigns.³⁹ On 22 July 2022, an article appeared in Rising Kashmir, a Kashmiri news daily that termed 11 journalists seeking accountability from the Indian government through their reportage “anti-state narrative builders” who provide “legitimacy to Pakistan’s state-sponsored brutality against common Kashmiri”.⁴⁰

The United Nations Special Rapporteur on Freedom of Expression promotion and protection of the right to freedom of opinion and expression and Vice-Chair of the Working Group on Arbitrary Detention, both raised serious concerns on the detention of four Kashmiri journalists in 2021, including the arbitrary arrest of the journalists, lack of access to legal representation during their detention, confiscation of their personal devices and punitive demolitions of their properties. They

27. Indian Express, “Government Curbs Choking Media in J&K: Press Council Panel”, 14 March 2022, <https://indianexpress.com/article/india/govt-curbs-choking-media-in-jk-press-council-panel-7818409/>

28. Al Jazeera, “Kashmiri Journalist Aasif Sultan Kept in Jail For More than 1000 days”, 31 May 2021, <https://www.aljazeera.com/news/2021/5/31/kashmiri-journalist-aasif-sultan-kept-in-jail-for-over-1000-days>

29. Quint, “Kashmiri Journalist Fahad Shah Booked Under UAPA for a Third Time”, 20 April 2022, <https://www.thequint.com/news/india/kashmiri-journalist-fahad-shah-booked-under-uapa-second-time>

30. Amnesty International, “India: Government must immediately stop intimidation of journalists in Jammu and Kashmir”, 22 April 2020, <https://www.amnesty.org/en/latest/news/2020/04/journalists-in-jammu-and-kashmir/>

31. Amnesty International, “Government must stop intimidation of journalists in J&K” (previously cited).

32. Amnesty International, “Government must stop intimidation of journalists in J&K” (previously cited).

33. Amnesty International, “Government must stop intimidation of journalists in J&K” (previously cited).

34. NDTV, “Kashmir University PhD Scholar Arrested For ‘Highly Provocative and Seditious’ Article”, 17 April 2022, <https://www.ndtv.com/india-news/kashmir-university-phd-scholar-arrested-for-highly-provocative-and-seditious-magazine-article-2895990>

35. Committee to Protect Journalists, *Manan Dar*, <https://cpj.org/data/people/manan-dar/>

36. United States Commission on International Religious Freedom, Fahad Shah, <https://www.uscirf.gov/religious-prisoners-conscience/forb-victims-database/fahad-shah#:~:text=Fahad%20Shah%20is%20imprisoned%20for%20reporting%20on%20religious,raid%20in%20Jammu%20and%20Kashmir%2C%20a%20Muslim-majority%20area.>

37. Committee to Protect Journalists, Aasif Sultan, <https://cpj.org/data/people/aasif-sultan/>

38. Committee to Protect Journalists, “Two journalists detained in Jammu and Kashmir, Chhattisgarh”, 11 January 2022, <https://cpj.org/2022/01/two-journalists-detained-in-jammu-and-kashmir-chhattisgarh/#:~:text=CPJ%20was%20not%20able%20to%20confirm%20who%20arrested,the%20Jammu%20and%20Kashmir%20police%2C%20not%20the%20army.>

39. Rising Kashmir, “Vultures of Single Narrative Feasting on Misery”, <https://www.risingkashmir.com/Vultures-of-Single-Narrative-Feasting-on-Misery-110745>

40. Rising Kashmir, “Vultures of Single Narrative Feasting on Misery”, <https://www.risingkashmir.com/Vultures-of-Single-Narrative-Feasting-on-Misery-110745>

further reminded Indian authorities of the role of journalists in facilitating free flow of information and development of independent thoughts in a society.⁴¹ However, the Indian government has continued with the abuse of criminal laws to intimidate and harass journalists. This has had a crippling effect on freedom of expression in Jammu & Kashmir.

The heavy intimidation tactics are also presented in the form of malicious activation of various other government agencies such as the National Investigation Agency (NIA) – a powerful investigation agency for terror-related crimes, and the Income Tax Department, to search homes and offices of the region’s major human rights organisations and their staff, seizing documents, laptops, and other devices.

In 2020, the NIA raided the residences and offices of Khurram Parvez, Program Coordinator of Jammu & Kashmir Coalition of Civil Society (JKCCS) – one of the region’s top human rights groups, which has methodically documented torture, indefinite detention and enforced disappearances by the Indian authorities in Jammu & Kashmir,⁴² three of his associates and Parveena Ahanger, Chairperson of the Association of Parents of Disappeared Persons (APDP). Raids have also been carried out on the offices of the NGOs Athrout and GK Trust and on the residence of Agence France-Presse’s Kashmir correspondent Parvez Bukhari.⁴³ Amnesty International spoke with Parvez’s wife, Sameena who recounted, “We live in a joint family of 10 people. The NIA officials seized the phones of everyone including our domestic help along with office laptops. In total, there were 21 devices”. The offices of *Kashmir Times*, a prominent news daily of Jammu & Kashmir have been reportedly raided by the Department of Income Tax at least twice.⁴⁴

A senior editor of a prominent news daily in Kashmir told Amnesty International, “When the NIA raids a journalist’s house or the Enforcement Directorate threatens an editor with false cases, it does not only impact that journalist or editor but the entire community. They fear they can be next. It has become impossible for journalists to continue their work independently.”⁴⁵

Raids without a legal basis constitutes a clear violation of the right to freedom of expression, as enshrined in the International Covenant on Civil and Political Rights. It has also led to many journalists losing their jobs for refusing to parrot state’s views or voluntarily leaving journalism raising concerns about the human cost of the persisting violations of the freedom of expression and opinion in Jammu & Kashmir.

According to media reports, in August 2021, Irfan Amin Malik, former online editor of Rising Kashmir – an English news daily in Jammu & Kashmir, was summoned to the local police station for tweeting against the new Film Policy where he was questioned for five hours. Even though Malik had deleted the tweet two minutes after posting fearing reprisal, Rising Kashmir fired him.⁴⁶

41. Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Working Group on Arbitrary Detention, AL IND 9/2021, 3 June 2021, <https://spcommreports.ohchr.org/>

42. Jammu & Kashmir Coalition of Civil Society, Structures of Violence, *The Indian State in Jammu & Kashmir*, September 2015, <https://jkccs.info/structures-of-violence-the-indian-state-in-jammu-and-kashmir/>; Torture, *Indian State’s Instrument of Control in Indian Administered Jammu & Kashmir*, February 2019, <https://jkccs.info/wp-content/uploads/2019/05/TORTURE-Indian-State%E2%80%99s-Instrument-of-Control-in-Indian-administered-Jammu-and-Kashmir.pdf>; Buried Evidence, November 2009, <https://jkccs.files.wordpress.com/2017/05/buried-evidence-report-on-mass-graves.pdf>

43. Frontline Defenders, *National Investigation Agency Raids NGOs and Human Rights Defenders’ Homes in Kashmir*, <https://www.frontlinedefenders.org/en/case/national-investigation-agency-raids-ngos-and-human-rights-defenders-homes-kashmir-khurram>

44. Newslandry, “Why Do We Keep Ignoring Violations of Journalists’ Rights In Kashmir?”, 16 September 2021, <https://www.newslandry.com/2021/09/16/why-do-we-keep-ignoring-violations-of-journalists-rights-in-kashmir#:~:text=Bhasin%20also%20mentions%20how%20income%20tax%20raids%2C%20which,Kashmir%20to%20intimidate%20news%20outlets%2C%20including%20Kashmir%20Times.>

45. Amnesty International Interview.

46. Wire, “Was Questioned By J&K Police For 5 Hours Over Tweet I Deleted in 2 Minutes: Journalist”, 9 August 2021, <https://thewire.in/rights/kashmiri-journalist-irfan-amin-malik-interrogated-jk-police-tweet-film-policy>

“Many journalists are shifting to jobs in research, teaching and banking and even opening pharmacies. They feel true journalism has become extinct,” the senior editor told Amnesty International.⁴⁷

Moreover, this intimidation is not restricted to journalists. Human rights defenders who have spoken against human rights abuses in the region have faced similar arbitrary actions. Law enforcement has specifically targeted human rights defender Khurram Parvez. On 22 November 2021, Khurram Parvez was arrested by the NIA after a series of raids at his house and office and that of his associates in Srinagar. He was subsequently arrested under UAPA over politically motivated charges of “raising funds for a terrorist act”, “recruitment of any person for a terrorist act” and “membership to a terrorist organisation” and other provisions of the Indian Penal Code. Parvez continues to be held in a high security prison in Delhi.⁴⁸

Speaking to Amnesty International, his wife Sameena recalled, “When the NIA came this time, they kept asking about some of the names in his diary and on a bunch of visiting cards. Many diaries were so old, you don’t even remember some of the names. How can that be used to charge Khurram under India’s anti-terror law and accuse him of waging a war against the country?”⁴⁹

The UN Special Rapporteur on human rights defenders and the Office of High Commissioner for Human Rights have raised concerns⁵⁰ about the current arrest and detention of Khurram Parvez under the UAPA and called on the Indian authorities to safeguard his rights to freedom of expression, association, and personal liberty.⁵¹

3.3 TRAVEL BANS

The Indian authorities have also targeted members of the civil society by placing arbitrary travel bans on them, violating their freedom of movement outside of the country. In October 2019, right before Jammu & Kashmir was dismantled into union territories, over 450 people including journalists, lawyers, politicians, human rights activists, and businessmen were placed on a temporary “No Fly List” without any judicial order.⁵²

Since 2019, at least six Kashmiri journalists, human rights activists, academics, and politicians including Gowhar Geelani,⁵³ Shah Faesal,⁵⁴ Bilal Bashir,⁵⁵ Zahid Rafiq,⁵⁶ Sanna Mattoo⁵⁷ and Aakash

47. Amnesty International Interview.

48. Interview by voice call with Sameena Parvez, wife of Khurram Parvez, 27 July 2022; Arrest Memo of Khurram Parvez under Section 50(i) and Section 50A(1) of the Code of Criminal Procedure, on file with Amnesty International

49. Amnesty International Interview.

50. UN Special Rapporteur on situation of Human Rights Defenders, Mary Lawlor Twitter post, 22 November 2021, <https://twitter.com/MaryLawlorhrds/status/1462821562566987781>: “I’m hearing disturbing reports that Khurram Parvez was arrested today in Kashmir & is at risk of being charged by authorities in #India with terrorism-related crimes. He’s not a terrorist, he’s a Human Rights Defender...”

51. Office of High Commissioner for Human Rights (OHCHR), Comment by UN Human Rights Office spokesperson Rupert Colville on arrest of human rights defender Khurram Parvez and recent killings in Indian Administered Kashmir, 1 December 2021, <https://www.ohchr.org/en/press-releases/2021/12/comment-un-human-rights-office-spokesperson-rupert-colville-arrest-human>

52. Kashmir Times, “450 People on No-Fly List In J&K After August 5”, 3 November 2019, <http://www.kashmirtimes.com/newsdet.aspx?q=96037>

53. Committee to Protect Journalists, “Kashmiri journalist Gowhar Geelani barred from leaving India”, 4 September 2019, <https://cpj.org/2019/09/kashmiri-journalist-gowhar-geelani-barrd-from-lea/#:~:text=Officials%20told%20Geelani%20that%20the%20Jammu%20and%20Kashmir,barred%20from%20leaving%20the%20country%2C%20he%20told%20CPJ>

54. Hindu, “Shah Faesal sent back to Kashmir from Delhi, detained in Srinagar”, 14 August 2019, <https://www.thehindu.com/news/national/shah-faesal-sent-back-to-kashmir-from-delhi-detained-in-srinagar/article61584288.ece>

55. Wire, “Kashmiri Human Rights Activist Stopped From Travelling to Malaysia”, 14 October 2019, <https://thewire.in/rights/kashmir-human-rights-activist-malaysia-flight>

56. Article-14, “Indian Govt Stops Kashmiri Journalists from Travelling Overseas, Gives No Reason”, 26 July 2022, <https://article-14.com/post/indian-govt-stops-kashmiri-journalists-from-travelling-overseas-gives-no-reason--62df4f050bdba>

57. Sanna Irshad Mattoo, Twitter post, 2 July 2022, <https://twitter.com/mattoosanna/status/1543149193912471553>: “I was scheduled to travel from Delhi to Paris today for a book launch and photography exhibition as one of 10 award winners of the Serendipity Arles grant 2020. Despite procuring a French visa, I was stopped at the immigration desk at Delhi airport...”

Hassan⁵⁸ have been barred from flying outside India without any explanation. The travel bans are arbitrary executive actions that are not backed by a court order or warrant or even a written explanation. Lack of written reasons makes it difficult for the activists and journalists to challenge the arbitrary travel bans in the court.

These bans have significant consequences on the lives of impacted individuals, violating their right to freedom of movement, causing them to lose education or professional opportunities abroad and affecting their mental health.

A human rights defender who was barred from flying abroad told Amnesty International, “Yes, the travel ban made me lose a great opportunity. I survived by freelancing which paid me peanuts in comparison to my job abroad. It has placed a huge financial burden on me. Travelling within and away from Kashmir with the constant hounding from the authorities, an international travel ban and without earning a penny has made me feel like a criminal. It has been traumatic.”⁵⁹

Travel bans are simply another facet of the pattern of repression, a tactic used by the authorities to suppress independent, critical voices inside and outside the country.

3.4 CLOSURE OF PRESS CLUB



Deserted Kashmir press club premises after it was closed down by Indian authorities in Srinagar on 18 January 2022. © Muzamil Mattoo/ NurPhoto via Reuters Connect

58. Aakash Hassan, Twitter post, 26 July 2022, <https://twitter.com/AakashHassan/status/1551942808730488832>; “Immigration officials at IGI airport New Delhi barred me from boarding a flight to Colombo, Sri Lanka. I was headed to report on the current crises in the country. The immigration officials took my passport, boarding pass and have made me sit in a room for last four hours...”

59. Amnesty International Interview.

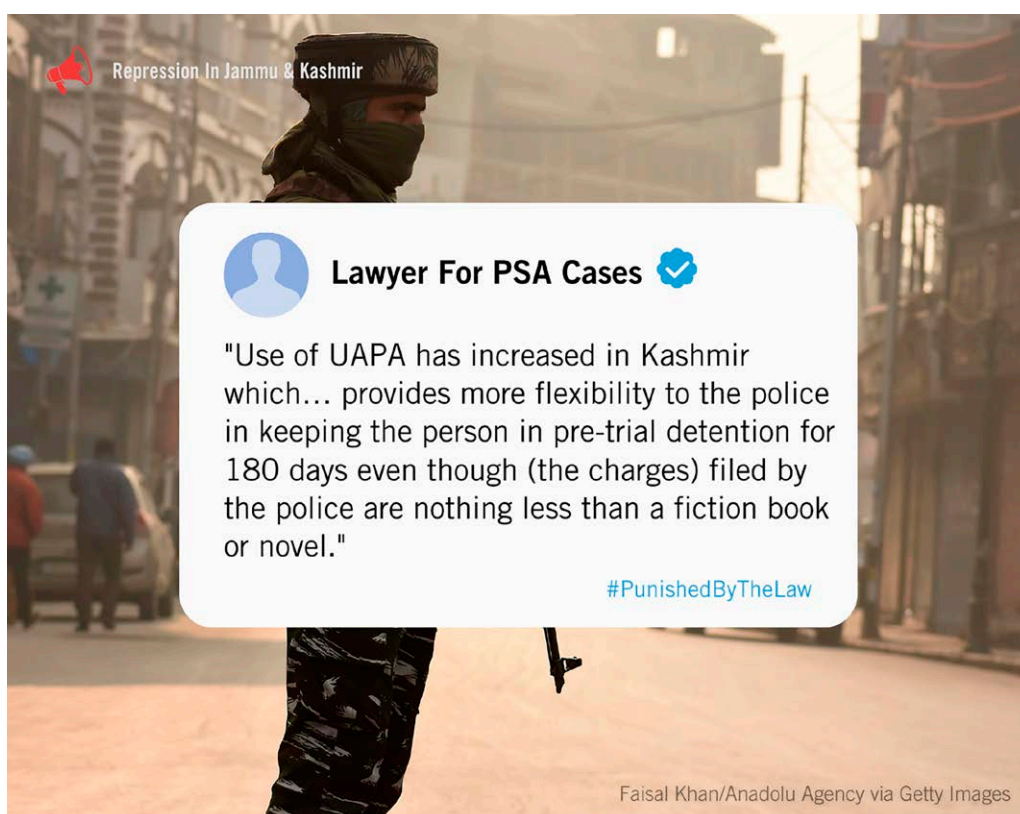
In January 2022, the Kashmir Press Club, an independent media body that provided a safe space to journalists to work and express solidarity was forcibly taken over by police officers and government-aligned journalists and subsequently shut down. The Club's functions were overseen by a body elected democratically by its members. After the splitting of the state into two union territories, new laws regarding the registration of Club were put in place. Before the takeover, the Club's registration was put in a state of temporary suspension by Indian authorities after it had announced the elections for a new body to meet the requirements of the new union territory laws.⁶⁰ Several journalists Amnesty International spoke with described the Press Club closure as a big blow to the already disintegrating media fraternity in Jammu & Kashmir.

Speaking to Amnesty International, a journalist and writer based in Kashmir said, "The club provided a refuge and a comfortable workplace for several independent journalists, freelancers including female journalists who didn't have any institutional or organizational support while working under difficult conditions in Kashmir. It was like a second home for them - one place where they could work, recreate a little and catch up with their young and senior colleagues in an informal setting."⁶¹

60. Hindu, "J&K Government puts Kashmir Press Club registration in abeyance", 14 January 2022, <https://www.thehindu.com/news/national/other-states/jk-govt-puts-kashmir-press-clubs-registration-in-abeyance/article38272232.ece>

61. Amnesty International Interview.

4. ARBITRARY DETENTION



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Since 5 August 2019, Indian authorities have increased the use of the draconian 1978 Jammu & Kashmir Public Safety Act (PSA) which allows them to arbitrarily detain people for up to two years without charge or trial. Even though the Indian government repealed various local laws after the revocation of Article 370, PSA continues to be in force.

The Indian authorities' abuse of the law has been well-documented by Amnesty International and other human rights organisations.⁶² In 2011, Amnesty International described PSA as a 'lawless law', which

62. Amnesty International, 'A 'Lawless Law': Detentions under the Jammu and Kashmir Public Safety Act', (Index: ASA 20/001/2011), www.amnesty.org/download/Documents/28000/asa20001201en.pdf; Amnesty International, 'Still A 'Lawless Law': Detentions under the Jammu and Kashmir Public Safety Act, 1978', (Index: ASA 20/035/2012), www.amnesty.org/download/Documents/20000/asa200353012en.pdf; Amnesty International India, 'Tyranny of A 'Lawless Law': Detentions Without Charge or Trial under the J&K Public Safety Act, July 2019, <https://www.readkong.com/page/tyranny-of-a-lawless-law-3412812>

had in effect supplanted the criminal justice system in Jammu & Kashmir.⁶³ In violation of international human rights law, the authorities abuse the PSA in a manner that furthers human rights violations, including by detaining children, passing PSA orders without due diligence and on vague and general grounds, ignoring the limited safeguards under the Act, subjecting individuals to “revolving-door detentions”, and using the PSA to prevent release on bail and undermine the criminal justice system.⁶⁴ In the past, the UN Special Rapporteur on Human Rights Defenders has called for the repeal of PSA as it “directly affects the work of human rights defenders”.⁶⁵

In the absence of any publicly available or disaggregated data on the use of administrative and pre-trial detention in Jammu & Kashmir, Amnesty International reviewed 1346 cases available on the website of the High Court of Jammu & Kashmir and Ladakh. It found that as on 1 August 2022, the number of habeas corpus petitions has increased by 32% in Jammu & Kashmir, indicating an increase in allegations of unlawful detention.⁶⁶

According to the website of Jammu & Kashmir and Ladakh High Court,⁶⁷ a total of 761 habeas corpus petitions were filed in 2019. Whereas, 585 habeas corpus petitions have already been filed in the first seven months of 2022, of which 569 pertain to detention under PSA. Until 4 August 2022, the High Court has only been able to dispose of a total of 14 petitions. It also reviewed the data published by National Crime Record Bureau and found that there has been a 12% increase in the use of UAPA in Jammu & Kashmir since 2019.⁶⁸

Amnesty International spoke to a lawyer who handles cases of unlawful detention in southern Kashmir who said, “Since 2016, the use of UAPA has increased in Kashmir which makes it increasingly difficult for people to secure bail. At the same time, UAPA provides more flexibility to the police in keeping the person in pre-trial detention for 180 days even though the First Information Reports [which give an account of the primary allegations against a person] and chargesheets filed by the police are nothing less than a fiction book or novel.”⁶⁹

The analysis of the case information on the court’s website also shows an emerging trend of using UAPA in addition to PSA. Of 569 PSA cases, UAPA was invoked in 179 cases (31%). However, the use of UAPA was only limited to the petitions filed with the Srinagar wing of the High Court. Even generally, a higher number of habeas corpus petitions were filed with Srinagar wing (556) of the Court than the Jammu Wing (29). Srinagar wing has jurisdiction over Kashmir valley which has a majority Muslim population whereas the Jammu wing oversees the matters related to Hindu-dominated Jammu region, indicating an increased use of unlawful detention in the Muslim-dominated area of Jammu & Kashmir.

International law and standards require that a person can only be deprived of their liberty in accordance with domestic legislation that clearly defines the power and is sufficiently precise and foreseeable in its operation.⁷⁰ Furthermore, international standards require that anyone arrested or detained is brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.⁷¹

63. Amnesty International, ‘A ‘Lawless Law’: Detentions under the Jammu and Kashmir Public Safety Act’, (Index: ASA 20/001/2011), www.amnesty.org/download/Documents/28000/asa20001201en.pdf

64. Amnesty International India, ‘Tyranny of a ‘Lawless Law’’, July 2019, <https://www.readkong.com/page/tyranny-of-a-lawless-law-3412812>

65. OHCHR, ‘Statement of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, as she concludes her visit to India’, 21 January 2011, <https://www.ohchr.org/en/statements/2011/01/statement-special-rapporteur-situation-human-rights-defenders-margaret-sekaggya>

66. Earlier the courts used the term HCP for habeas corpus petitions in the title of such petitions. In 2020, it was changed to Writ Petition (Criminal) Habeas Corpus Petition.

67. Jammu & Kashmir and Ladakh High Court, <https://www.jkhighcourt.nic.in/>

68. Crime in India, National Crime Record Bureau, Offences Against State, <https://ncrb.gov.in/en/Crime-in-India-2020>

69. Amnesty International Interview.

70. ICCPR, Article 9(1)

71. ICCPR, Article 9(2)

5. UNLAWFUL KILLINGS

In July 2022, the Indian Government revealed that Jammu & Kashmir accounted for the highest number of police involved deaths, known in India as ‘police encounters’ in the country between April 2020 and March 2022.⁷² The culture of impunity in relation to state killings in Jammu & Kashmir sits within a broader lack of accountability for police use of force in the region.

International law has established that the right to life imposes two distinct obligations on a state.⁷³ Firstly, an obligation to protect life, and not to arbitrarily deprive a person of it. Secondly, the state must ensure that any potential breaches of the right to life are adequately investigated and those responsible are held to account.⁷⁴ However, the Armed Forces (Special Powers) Act (AFSPA) which has been in force in Jammu & Kashmir since 1990 provides sweeping powers to the members of the armed forces, including the power to arrest people without warrants and shoot.⁷⁵ This intentional use of firearms is not only restricted to cases of self-defence or the defence of others, but against any person contravening laws or orders “prohibiting the assembly of five or more persons,” which falls far short of international human rights standards.⁷⁶ It also provides virtual immunity to the armed forces by requiring the Central Government to grant prior permission for prosecuting the members of armed forces for human rights violations.⁷⁷ In the 32 years of its existence in Jammu & Kashmir, not a single member of the security forces deployed in the state has been tried for human rights violations in a civilian court.⁷⁸

72. Government of India, Ministry of Home Affairs, Lok Sabha Unstarred Question No. 1459, 26 July 2022, <http://164.100.24.220/loksabhaquestions/annex/179/AU1459.pdf>

73. ICCPR, Article 6

74. By their General Comment on the Right to Life the UN Human Rights Committee are clear about the duty for an effective investigation:

An important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents, including incidents involving allegations of excessive use of force with lethal consequences. The duty to investigate also arises in circumstances in which a serious risk of deprivation of life was caused by the use of potentially lethal force, even if the risk did not materialise. This obligation is implicit in the obligation to protect and is reinforced by the general duty to ensure the rights recognised in the Covenant, which is articulated in article 2 (1), when read in conjunction with article 6 (1), and the duty to provide an effective remedy to victims of human rights violations and their relatives, which is articulated in article 2 (3) of the Covenant, when read in conjunction with article 6 (1).

(UN Human Rights Committee, General Comment 36 on the right to life, para 27, see also *The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016): The Revised United Nations Manual on The Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, Page 4)

75. Armed Forces (Jammu & Kashmir) Special Powers Act 1990, Section 4

76. UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles), adopted on 7 September 1990, Principle 9

77. Armed Forces (Jammu & Kashmir) Special Powers Act 1990, Section 7

78. Government of India, Ministry of Defence, Rajya Sabha, Question No. 1463, 1 January 2018, <https://pqars.nic.in/annex/244/Au1463.docx>; Washington Post, ‘Indian military admits wrongdoing in 3 Kashmir killings’, 18 September 2020, https://www.washingtonpost.com/world/asia_pacific/indian-military-admits-wrongdoing-in-3-kashmir-killings/2020/09/18/94c387c6-f9c3-11ea-85f7-5941188a98cd_story.html

In addition to its application in Jammu & Kashmir, AFSPA is also applicable to parts of north-east India including Nagaland, Manipur, Assam and parts of Arunachal Pradesh.⁷⁹ In 2016, the Supreme Court of India held that armed forces cannot use excessive force even in areas deemed 'disturbed' by the Indian Government.⁸⁰ It further said that armed forces are deployed to restore normalcy and if such normalcy is not restored for a prolonged period, it would indicate a collective failure of the armed forces and the civil administration.⁸¹ In March 2022, the Indian Government completely repealed AFSPA from 23 districts in Assam, and partially repealed it from seven districts in Nagaland, six districts in Manipur, and one district in Assam.⁸² However, AFSPA continues to be in force in Jammu & Kashmir.

In July 2020, security personnel killed three people in Shopian district of Kashmir claiming them to be 'terrorists'.⁸³ In September 2020, they were identified as residents of Rajouri district in Jammu who had come to Kashmir for work, after the family of the three persons filed a missing complaint with the police.⁸⁴ The Indian Army ordered an inquiry and found the powers vested under AFSPA were exceeded by the members of the armed forces.⁸⁵ Despite an admission of wrongdoing, the central government did not grant sanction to prosecute the accused army officer in a civil court. Instead, the accused army officer is being tried in a military court. Military courts suffer from particular structural flaws related to their competence, independence and impartiality, which render them unsuitable for prosecuting human rights violations.⁸⁶ Previously, Amnesty International India has documented the obstacles to justice faced in several cases of human rights violations believed to have been committed by Indian security personnel and the use of military courts to shield the alleged perpetrators of human rights violations, particularly those accused of custodial torture and extrajudicial executions, from prosecution and accountability in Jammu & Kashmir.⁸⁷

The people of Jammu & Kashmir, including the Hindu minority community have also been at the receiving end of targeted killings by armed groups. They have faced long-standing violence that has escalated since the abrogation of Article 370.⁸⁸ On 5 August 2019, the Indian government denied Jammu & Kashmir its historical autonomy in the name of bringing 'normalcy' and 'preventing terrorism' in the region.⁸⁹ However, analysis of the official data presented by the Government of India before the

79. Ministry of Home Affairs, the Armed Forces (Special Powers) Act, 1958, https://www.mha.gov.in/sites/default/files/armed_forces_special_powers_act1958.pdf

80. Supreme Court of India, Extra Judicial Execution Victim Families Association v. Union of India, Writ Petition (Criminal) No. 129 of 2012, para 92

81. Supreme Court of India, Extra Judicial Execution Victim Families Association v. Union of India, para 92 (previously cited)

82. Press Information Bureau, 31 March 2022, <https://pib.gov.in/PressReleasePage.aspx?PRID=1811909>

83. Week, "3 militants killed in encounter with security forces in J-K", 18 July 2020, <https://www.theweek.in/wire-updates/national/2020/07/18/del2-jk-encounter.html>

84. Washington Post, "Indian military admits wrongdoing in 3 Kashmir killings", 18 September 2020, https://www.washingtonpost.com/world/asia_pacific/indian-military-admits-wrongdoing-in-3-kashmir-killings/2020/09/18/94c387c6-f9c3-11ea-85f7-5941188a98cd_story.html

85. Scroll.in, "Shopian 'fake encounter': Army initiates court martial proceedings against Captain Bhupinder Singh", 4 April 2022, <https://scroll.in/latest/1021046/shopian-fake-encounter-army-initiates-court-martial-proceedings-against-captain-bhupinder-singh>

86. Amnesty International India, *Denied: Failures in accountability for human rights violations by security force personnel in Jammu & Kashmir*, July 2015, <https://www.amnesty.org/en/documents/asa20/1874/2015/en/>; Draft Principles Governing the Administration of Justice Through Military Tribunals, 13 January 2006, Principle 9; Conclusions and recommendations of the Committee against Torture: Peru (UN Doc. CAT/C/PER/CO/4), 25 July 2006, p. 3-4, para. 16, <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=publisher&publisher=CAT&ty pe=CONCOBSERVATIONS&coi=PER&docid=453776c80&skip=0> (accessed 10 April 2015).

87. Amnesty International India, *Denied: Failures in accountability for human rights violations by security force personnel in Jammu & Kashmir*, July 2015 (previously cited)

88. In 1991 about 150,000 Kashmiri Hindu Pandits migrated from the Kashmir Valley due to the rising militancy and targeted killings of several prominent members of the Hindu Pandit community, such as leading academics (Amnesty International, "Kashmir: Amnesty International condemns massacre of civilians", 25 March 2003, <https://www.amnesty.org.uk/press-releases/kashmir-amnesty-international-condemns-massacre-civilians>)

89. PMINDIA, PM's Address to the Nation, 8 August 2019, https://www.pmindia.gov.in/en/news_updates/pms-address-to-the-nation-2/?comment=disable&tag_term=pmspeech

Parliament shows that unlawful killings of civilians by the armed groups have increased by 20% since the abrogation of Article 370.⁹⁰

Amongst the civilians, between 2019 and 2021, the killings of the members of the minority community increased by almost double-fold.⁹¹ In 2022 itself, media reports suggest that at least 20 civilians have been killed so far, of which eight belonged to the Hindu minority community. These included government employees, a schoolteacher, shopkeeper, and a casual daily worker.⁹² An increasing number of Hindu minorities have also reportedly fled their homes in Kashmir due to the fear of the rising threat to their lives as armed groups target them for being alleged government 'collaborators'.⁹³

Attacks on civilians are not permitted under any internationally recognized standard of law. Not only are they considered murder under general principles of law in every national legal system, but they are also contrary to fundamental principles of humanity which are reflected in international humanitarian law.⁹⁴ The Indian government has a duty to take measures to prevent attacks on civilians and to bring justice those who order, plan and carry out such attacks albeit in a fair trial. However, such measures must always be in accordance with international human rights standards and international humanitarian law.

90. Between 5 August 2019 and 9 July, 2022, 118 civilians were killed by armed groups in Jammu & Kashmir whereas 177 civilians were killed between May 2014 and 4 August 2019 (Government of India, Ministry of Home Affairs, Rajya Sabha, Unstarred Question No. 386, 20 July 2022, <https://pqars.nic.in/annex/257/AU386.pdf>)

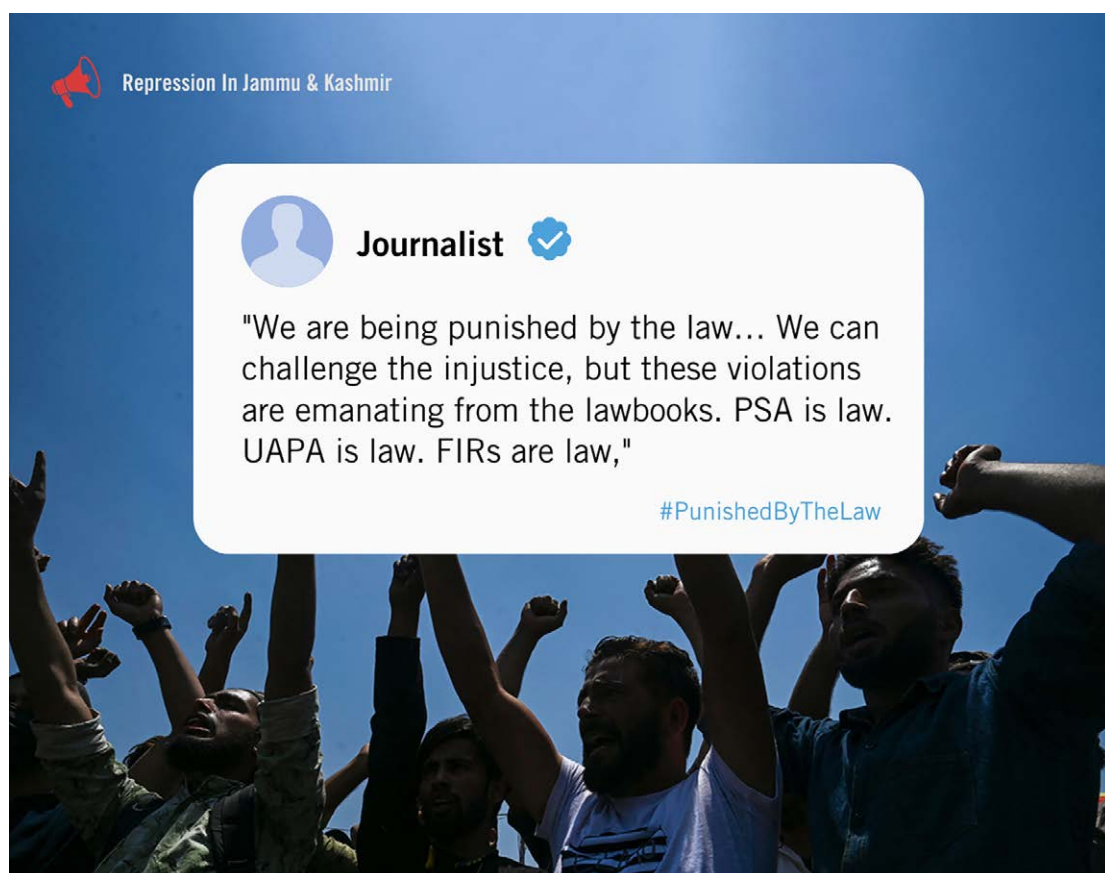
91. Three people from the minority communities including Hindus and Sikhs were killed in 2018, six in 2019, 3 in 2020 and 11 in 2021 in terror attacks. (Government of India, Ministry of Home Affairs, Rajya Sabha, Unstarred Question No. 3888, 6 April 2022, <https://pqars.nic.in/annex/256/AU3888.pdf>)

92. Amnesty International, "India: Increase in unlawful killings in Jammu & Kashmir highlights Government's failure to protect its minorities", 10 June 2022, <https://www.amnesty.org/en/latest/news/2022/06/india-increase-in-unlawful-killings-in-jammu-kashmir-highlights-governments-failure-to-protect-its-minorities/>; After Amnesty International's press statement on 10 June 2022, one more civilian was killed in a targeted killing (Indian Express, "Targeted Killing: Kashmiri Pandit shot dead in Valley attack, another injured", 17 August 2022, <https://indianexpress.com/article/cities/srinagar/jammu-and-kashmir-shopian-militant-attack-kashmiri-pandit-killed-8093034/>)

93. Amnesty International, "India: Increase in unlawful killings in Jammu & Kashmir highlights Government's failure to protect its minorities", 10 June 2022, <https://www.amnesty.org/en/latest/news/2022/06/india-increase-in-unlawful-killings-in-jammu-kashmir-highlights-governments-failure-to-protect-its-minorities/>

94. Additional Protocol to the Geneva Conventions of 12 August 1938, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 51(2)

6. RIGHT TO REMEDY AND ACCESS TO JUSTICE



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For justice to be meaningful, it requires a remedy against human rights violations and India's commitments under international human rights law obliges the government to combat impunity and to bring perpetrators to justice through fair trials.

Until 5 August 2019, Jammu & Kashmir had its own state human rights commission. However, the Jammu & Kashmir State Human Rights Commission (J&K SHRC) was among the seven different

autonomous oversight commissions abolished after the Jammu & Kashmir Re-Organisation Act repealed various state laws including the Jammu & Kashmir Protection of Human Rights Act.⁹⁵ Furthermore, under the Protection of Human Rights Act 1993, the central and various state governments must constitute an autonomous National Human Rights Commission and state human rights commissions respectively to investigate the complaints of human rights violations committed by the government authorities.⁹⁶ While the Re-Organisation Act authorised the National Human Rights Commission to deal with all human rights complaints in the matter, information requests under India's Right to Information Act have revealed that no particular state human rights commission has been designated to take the human rights cases of Jammu & Kashmir.⁹⁷ While human rights violations in states like Delhi have been assigned to the National Human Rights Commission, the distance between Jammu & Kashmir and Delhi where the National Human Rights Commission is based raises concerns about the lack of accessibility.

Speaking to Amnesty International, Justice Bilal Nazki, former head of J&K SHRC said, "Everyone understands that the forum should be accessible. Earlier union territories did not have human rights commissions. But the Supreme Court intervened and now every union territory has an accessible human rights commission. The people of Chandigarh can access the Punjab Human Rights Commission. The people of Delhi can access the National Human Rights Commission [which is based in Delhi]."⁹⁸ At the time of dissolving, the J&K SHRC had over 8000 pending cases but not all dealt with police or security forces and looked at other issues as well such as rising drug addiction and non-disbursement of pension under various government schemes to widowed women.⁹⁹

In July 2015, the Supreme Court of India had ordered the constitution of separate human rights commissions for the centrally governed union territories in India which may not have access to the National Human Rights Commission.¹⁰⁰ Absence of a human rights commission in Jammu & Kashmir is a direct violation of India's highest court and of the right to equal and effective access to justice.

The loss of the state human rights commission has been exacerbated by the persistent delays and pendency of cases relating to critical human rights violations in the High Court of Jammu & Kashmir and Ladakh. With the dissolution of J&K SHRC, the Supreme Court of India delaying the hearing of petition challenging the revocation of Article 370 for over three years and the High Court of Jammu & Kashmir and Ladakh delaying hearing habeas corpus petitions, most journalists conveyed to Amnesty International that they have lost hope.

Lawyers working on PSA cases have shared that the High Court takes more than a year to dispose of the habeas corpus petitions challenging detention orders under PSA. Before 2019, habeas corpus petitions would be disposed of within six-seven months. "The courts are in a way satisfying the two-year limit provided in the PSA for administrative detention. They delay in hearing the cases without giving appropriate reasons. It is unfortunate because courts were our only respite against the arbitrary detention orders passed under PSA," said a lawyer practicing in Southern Kashmir who was interviewed by Amnesty International.¹⁰¹ As noted above, international standards require that persons

95. Jammu & Kashmir Reorganisation Act, 2019, Table 3, Fifth Schedule, <https://www.thc.nic.in/Central%20Governmental%20Acts/Jammu%20and%20Kashmir%20Reorganisation%20Act,%202019.pdf>

96. Protection of Human Rights Act 1993, https://nhrc.nic.in/sites/default/files/PHRAAct_2021_0.pdf

97. Scroll.in, "J&K: Case files of State Human Rights Commission locked up in a room since 2019, says government", 13 February 2022, <https://scroll.in/latest/1017301/j-k-case-files-of-state-human-rights-commission-locked-up-in-a-room-since-2019-says-government>

98. Interview by voice call with Justice Bilal Nazki, 28 July 2022

99. Amnesty International India, *Situation Update and Analysis*, 5 August; 2021, https://www.amnesty.be/IMG/pdf/jammu_and_kashmir_after_one_year_of_abrogation_of_article_370.pdf (previously cited); Interview by voice call with Justice Bilal Nazki, 28 July 2022

100. Supreme Court of India, Dilip K. Basu v. State of West Bengal & Ors., CrI. M.P. No. 16086(1997), 25 July 2015

101. Amnesty International Interview.

detained be brought promptly before a judge – usually within 24 hours, although this can be extended in certain limited circumstances, such as where a person is arrested in a remote area. Once arrested, they should be brought to trial within a reasonable period.¹⁰² Plainly, these requirements are violated by the prolonged detention of those under PSA.

“What is court? It is law and we are being punished by the law. The perpetrators are not militias. The law holders are using the law to punish us. We can challenge the injustice, but these violations are emanating from the lawbooks. PSA is law. UAPA is law. FIRs are law,” said a journalist.¹⁰³

While revoking Article 370 of the Indian Constitution, Prime Minister Modi had said that the special rights guaranteed by the Article to the people of Jammu & Kashmir had excluded them from receiving the benefits of various progressive central laws.¹⁰⁴ Of the many laws that were repealed in the region, one was the 2009 Jammu & Kashmir Right to Information Act which was replaced by the national Right to Information Act, 2005. With the repeal of the J&K Right to Information Act, the local activists have faced great difficulties in gathering information about matters related to public interest from the Indian government.

Jammu & Kashmir was a forerunner in enacting a Right to Information Act, passing its own legislation even before the Indian government passed the 2005 Act. Until 2019, it was strengthened to include the progressive provisions of the central Right to Information Act.¹⁰⁵ On the contrary, the central Right to Information Act was consistently weakened over the years, first by removing political parties from the purview of the legislation and then undermining the impartiality of the information commissioners.¹⁰⁶

Speaking to Amnesty International, a senior human rights activist said, “Earlier, the state RTI system was functional. You would get responses to 70-80 requests if you filed 100 requests. Now you get none.”¹⁰⁷

102. ICCPR, Article 6

103. Amnesty International Interview.

104. PMINDIA, PM’s Address to the Nation, 8 August 2019, https://www.pmindia.gov.in/en/news_updates/pms-address-to-the-nation-2/?comment=disable&tag_term=pmspeech

105. The Jammu & Kashmir Right to Information Act was amended in 2009 to include the progressive provisions of the 2005 central Right to Information Act after a sustained campaign from local civil society activists. As a result, the Jammu & Kashmir Act became far more progressive than the central Act on many counts. For example, it provided a time-bound framework for the disposal of appeals which stand missing from the central Act.

106. In 2018, the Election Commission of India removed the political parties from the purview of the central Act. In 2019, the central Act was amended to effectively undermine the independence of the Information Commissioners, by bringing their salaries and terms of appointment under the control of the central government; The Protection of Human Rights (Amendment) Act, 2019, 27 July 2019, https://nhrc.nic.in/sites/default/files/PHR_ACT2019_27012020_1.pdf

107. Amnesty International Interview.

7. CONCLUSION AND RECOMMENDATIONS

The Indian government claims their actions are a legitimate response to “terrorism”.¹⁰⁸ However, their actions cannot be considered a proportionate response to the purported threat of terrorism and so constitute human rights violations. While national security is recognised by international human rights law as a legitimate justification for the restriction of certain human rights, such restrictions are strictly circumscribed.

Firstly, national security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.¹⁰⁹ Furthermore, national security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.¹¹⁰ International standards are also clear that the systematic violation of human rights undermines true national security and may jeopardize international peace and security. A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.¹¹¹

Secondly, even where national security can legitimately be invoked as a justification for restricting certain rights, the measures introduced must be provided for by law, and must meet the requirements of necessity and proportionality. This means that they must not go any further than is required by the exigencies of the situation, and that they must not do more harm than good.

Specifically, with regard to limitations on the right to freedom of expression, the UN Human Rights Committee is clear that “Extreme care must be taken by States parties to ensure that treason laws and similar provisions relating to national security, ...whether described as official secrets or sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of paragraph 3.”¹¹² Paragraph 3 of Article 19 of the ICCPR limits restrictions to those that are provided by law and strictly necessary. The Human Rights committee goes on to provide that “It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public

108. Press Information Bureau, Government of India, Parliament approves Resolution to repeal Article 370; paves way to truly integrate J&K with Indian Union, 6 August 2019, <https://pib.gov.in/pressreleaseshare.aspx?prid=1581391>

109. Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights; Principle 1(B)(vi) (29)

110. Siracusa Principles, Principle 1(B)(vi) (32) (previously cited)

111. Siracusa Principles, Principle 1(B)(vi) (32) (previously cited)

112. UN Human Rights Committee (UNHRC), “General Comment No. 34: Article 19: Freedoms of opinion and expression,” para 30

information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.”¹¹³

These measures of relentless interrogations, arbitrary travel bans, administrative detention and repressive media policies and blocking access to human rights commission documented in the briefing prevent journalists and human rights defenders in Jammu & Kashmir from communicating freely about the situation and denies them meaningful access to the region, thereby infringing on people's right to access to information.

Amnesty International is calling on the Indian government to immediately release those arbitrarily detained under administrative detention and other repressive laws and ensure that they are tried promptly and fairly in a regular court. The government must also drop all politically motivated charges against journalists and human rights defenders arrested for exercising their freedom of expression and remove the unjust barriers placed on the people of Jammu & Kashmir from expressing themselves freely and provide them access to meaningful remedy and justice. The Indian government must also take steps to increase the representation and participation of the people of Jammu & Kashmir in decision-making processes. The government's efforts to put in place unlawful surveillance measures, arbitrary detention, and restrictions to freedom of expression and simultaneously conceal its actions in Jammu & Kashmir clearly violate international human rights law. Accordingly, the international community must hold the Indian government accountable for the human rights violations it has been committing with absolute impunity in Jammu & Kashmir by calling for an immediate and independent investigation into such violations - not least because it reflects so poorly that a member of the Human Rights Council is acting with such impunity.


113. UNHCR, 'General Comment No. 34', para 30. See also The Johannesburg Principles on National Security, Freedom of Expression and Access to Information and the Tshwane Principles on National Security and the Right to Information.



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