



**JUSTICE FOR ALL
KASHMIR SOLIDARITY COUNCIL
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Republic of India: Kashmir Focus

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**United Nations Human Rights Council
Universal Periodic Review of the Republic of India**

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Introduction

1. **Justice For All** is a US-based Human Rights and Advocacy organization. Established at the time of the Bosnian Genocide. Justice For All tracks, reports on and advocates for Muslim minority populations facing threat of mass killing, extermination and genocidal pogroms. **Free Kashmir Action**, a project of Justice for All, advocates for the rights of the people of Kashmir. The campaign's long-term goals include the call for self-determination of the people of Kashmir, the end of the Indian military's occupation of the territory and a stop to human rights violations. Some of the key areas that we focus on are:
 - Violations of the right to life, liberty, free and fair trial, protection from arbitrary detentions, enforced disappearances, degrading torture, against Kashmiris.
 - The non-observance of freedom of expression and religion, supporting the right to effective remedies.
2. **Kashmir Solidarity Council** is a non-profit advocacy organization made up of Kashmiri diaspora that strives to educate people about the Kashmir Conflict and raise voice against the ongoing human right violations in Kashmir. KSC calls on India to put an end to the systematic use of torture, rape, and custodial killings and provide the Kashmiri people the right to self-determination as per the resolutions and charter of United Nation and numerous promises made by the founding fathers of India.

Background and Methodology

Justice for All respectfully submits its report concerning India's multifaceted human rights violations in Kashmir, for consideration by the Human Rights Council within its Universal Periodic Review scheduled at October-November 2022. Justice For All has been monitoring the situation of Kashmiri rights and freedoms, with a keen focus on issues of growing militarization, arbitrary killings and detentions, state-led abductions, police violence, rampant torture, media curbs, illegal population transfer and settlements in an disputed and occupied territory. **Human rights violations in Indian occupied Jammu and Kashmir are systematic, organized, and state-sanctioned. Many thousands of Kashmiris are arbitrarily detained under special laws that lack vital legal safeguards and**

provide the security forces with sweeping powers to arrest and detain. They are kept in detention for months or years without charge or trial. Torture by the security forces is a consistent practice and so brutal that many have died in custody as a result. Scores of women have been raped as rape is used as a weapon of war against Kashmiri dissidents. Efforts by relatives to use legal avenues to obtain redress have been persistently frustrated: court orders to protect detainees are routinely flouted and the legal machinery in the state has created a culture of impunity.

This report is based on primary data documented and verified by many local non-governmental human rights and civil rights organizations and also some of the most prominent International Human Rights groups.

Scope of international obligations and cooperation with international human rights mechanisms and bodies

- India has ratified the International Covenant on Civil and Political Rights. India is a signatory to the Universal Declaration of Human Rights. India has not ratified the UN Convention against Torture; the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty; the Convention for the Protection of All Persons from Enforced Disappearance; the Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance.
- India ratified the Geneva Convention in 1950 but it is not a signatory to the **Additional Protocols I and II**, because these protocols extended the scope of international humanitarian law as provided in the four Geneva Conventions. The major contribution of these protocols is that they categorize armed movements involving the right to self-determination of an occupied people, as international armed conflicts, thereby bringing the movement and state's response to it within the jurisdiction and protection ambit of international humanitarian law. Ratification of these Additional Protocols would make international humanitarian law applicable to Kashmir's movement for self-determination. Thereby India is reluctant to ratify it, as it would call into question the culture of impunity that shapes Indian governance in Kashmir.
- India has also repeatedly shown an unwillingness to collaborate with the United Nations human rights organizations and offices concerning the situation in Kashmir, as evidenced by the fact that India has regularly rejected U.N. requests to visit the disputed territory of Kashmir.

1.0 Unlawful Activities Prevention Act

The Unlawful Activities (Prevention) Act, 1967 has its origin deeply rooted in the draconian colonial laws that were instituted by the British Colonial Government to suppress freedom of expression of the Indian population. Ironically, these colonial laws are still being deployed by the Indian state against Kashmiris¹. The UAPA legitimizes the detention of an individual without any trial for **six months** and instead of the government justifying the detention, it turns the burden of proof on the accused. The surging use of the UAPA points to its misuse, with the statistics revealing that of 796 UAPA cases registered nationwide throughout India, **287 or 36% were registered in Kashmir alone**.

In Kashmir, the rampant use of the UAPA resulted in many Kashmiris jailed for crimes never committed or crimes that never translated into conviction. After spending years in prison, many of them were declared innocent and released².

One of the clauses of UAPA penalizes any act or speech that “creates disaffection against India”. After experiencing endless human-rights violations at the hands of the varied Indian governments across decades, it’s natural that many Kashmiris feel a sense of disaffection against the state. However, any expression of this disaffection, even if just a social-media post, results in the possible years-long imprisonment of the person and being labelled as “terrorist”³.

Under UAPA, India arrested prominent Kashmiri human rights defender Khurram Parvez. Parvez, 42, is the co-founder of Jammu and Kashmir Coalition of Civil Society, and also the chairman of the Asian Federation Against Involuntary Disappearances (AFAD). He was jailed because for more than 20 years, he had been vocal about highlighting human rights abuses in Kashmir by the Indian forces and his organization documented and published a series of incredible reports surrounding

¹<https://kashmirilife.net/how-lawful-is-the-unlawful-activities-prevention-act-278529/>

²<https://article-14.com/post/in-kashmir-the-random-and-rampant-use-of-india-s-anti-terrorism-law-61bc0c1086e87>

³<https://scroll.in/latest/1012737/in-newspaper-ads-jammu-and-kashmir-police-warn-social-media-users-of-cases-under-uapa>

the “impunity enjoyed by the armed forces” in Kashmir⁴. **His arrest further reinforces the fact that** this impunity is real.

750 people were detained under the Unlawful Activities Prevention Act (UAPA) in Jammu and Kashmir in a period of three years till 2020, according to the most recent submission to India’s parliament by the Home Ministry of India. **346** persons were arrested in 2020 while **177** and **247** were arrested in 2018 and 2019 respectively, marking an increasing rate of the use of UAPA by the Indian state. In the same submission, the government also declared that it has no intentions of amending the UAPA, let alone abandoning its use⁵.

Article 15(1) of the United Nations **International Covenant on Civil and Political Rights** (ICCPR) and **Article 11** of the Universal Declaration of Human Rights (UDHR) enshrine the principle of “**legal certainty**,” which declares that the criminal law must clearly lay out what constitutes an offense so as to avoid any arbitrary application or abuse of the law. In contrast, UAPA offers a very loose and vague definition of what constitutes a “terrorist act”, making abuse of law easier. It is important to note that the definition also includes any act that is “**likely to threaten**” public order, giving the government unrestrained power to jail a person who has not even committed a crime yet⁶.

1.1 Public Safety Act

The Public Safety Act allows the Indian authorities to detain a Kashmiri for an arbitrary range of activities, including “acting in any manner prejudicial to the security of the State” or for “acting in any manner prejudicial to the maintenance of public order”. The possibility of detention on such vague and broadly defined allegations violates the principle of legality required by Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR), to which India is a party.

⁴<https://www.aljazeera.com/news/2021/11/23/india-kashmir-khurram-parvez-arrest-human-rights-uapa-terror-law>

⁵<https://freepresskashmir.news/2022/03/15/750-arrested-under-uapa-in-three-years-till-2020-in-jk-says-goi/>

⁶<https://www.humanrightspulse.com/mastercontentblog/indian-counter-terrorism-law-fails-to-conform-with-international-law>

The Act, referred to as the *lawless law* by Amnesty International, sanctions the detention without charge or trial for up to two years in some cases. The authorities are not obligated to present grounds for arrest. PSA has been widely used by the authorities to curb political dissent. Human rights activists, media personnel, political leaders, and people who take in peaceful protests have all been detained using this Act⁷. For example, on September 15, 2016, human rights advocate, Khurram Parvez, was detained under PSA⁸.

In 2012, the Jammu and Kashmir State Assembly amended PSA to criminalize the detention of teenagers under the age of 18. However, during the 2016 civilian protests and as recently as 2019, multiple cases were reported of children **under 18 years** being detained under the same Act, and shifted to jails miles away from their home⁹. 662 people were detained under PSA in 2019, and the Juvenile Justice Committee of the State High Court confirmed the arrest of 144 juveniles under the Act¹⁰. PSA does not allow for a judicial review of detention, and even when the Jammu and Kashmir High Court ordered the release of some people detained under this law, the Indian state escaped it by issuing consecutive detention orders, to keep people behind bars for several months or years¹¹.

As a party to the International Covenant on Civil and Political Rights, India is bound to ensure the right to liberty and security, which also includes the right not to be detained arbitrarily, and to be informed of charges and the grounds for detention. It also includes the right to be presented in front of a judge within a small period of time following the arrest, and to appeal to a court of law to review the case. As a result, the Human Rights Committee says¹² that the Act violates the rights enshrined in the **International Covenant on Civil and Political Rights**, especially the rights to liberty and to a free and fair trial.

1.2 Armed Forces Special Powers Act

The AFSPA gives the Indian armed forces wide powers to shoot to kill, arrest on a flimsy pretext, and conduct warrantless searches. With these special powers, Indian soldiers have raped, tortured, “disappeared,” and killed

⁷<https://www.amnesty.org/en/wp-content/uploads/2021/06/asa200122011en.pdf>

⁸<https://www.fidh.org/en/issues/human-rights-defenders/khurram-parvez-still-illegally-detained-despite-high-court-order-for>

⁹<https://scroll.in/article/939516/in-kashmir-boys-aged-14-and-16-held-under-dreaded-public-safety-act-and-sent-to-uttar-pradesh-jails>

¹⁰ <https://www.newsclick.in/Kashmir-662-Booked-Under-PSA-2019-Youths-Comprise-Majority-August-5>

¹¹<https://www.greaterkashmir.com/kashmir/masarat-alam-49-cases-32-psa-detentions-and-19-years-in-jail>

¹² <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

Kashmiris for decades without fear of being held accountable¹³. The Act violates provisions of international human rights law, including the **right to life**, the **right to be protected from arbitrary arrest and detention**, and the **right to be free from torture and cruel, inhuman, or degrading treatment**.

For example, Indian soldiers in a locality, known as Handwara, shot at a group playing cricket, suspecting that a militant was among them, and killed four boys, including an eight-year-old kid. The Indian army itself accepts that the extraordinary powers that AFSPA grants them has led to “mistakes.” For example, the army described as “error of judgment” the killing of three teenage boys in Kupwara who had sneaked away to smoke a cigarette at night and were shot dead without warning by Indian troops¹⁴. The right to life is central to major international human rights treaties, including the **International Covenant on Civil and Political Rights (ICCPR) which India has ratified**. Similarly, Article 3 common to the four Geneva Conventions of August 12, 1949 strongly proscribes the killing of any non-combatant.

Such incidents have been extremely commonplace since the 1990s. Section 7 of AFSPA 1990 prohibits the prosecution of security forces personnel unless the Government of India grants prior permission to prosecute. This has resulted in virtual impunity for security forces against prosecution for any human rights violation. In the nearly three decades that the law has been in force in Jammu and Kashmir, **there has not been a single prosecution of armed forces personnel granted by the central government**¹⁵.

During India’s UPR in 2008, 2012, and 2017, several United Nations Member States recommended that India repeal or revise the AFSPA. However, in March 2018, the Union Minister of State for Home Affairs told the Indian Parliament that there was no proposal to repeal or amend AFSPA **in Jammu and Kashmir**¹⁶. It is still in force and according to the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, AFSPA grants far-reaching powers to soldiers that violate the right to life and legitimizes excessive use of force.

1.3 Torture

According to the Article 7 of the International Covenant on Civil and Political Rights, torture under **any** circumstances is banned, and no

¹³<https://www.hrw.org/news/2020/08/14/india-new-reports-extrajudicial-killings-kashmir>

¹⁴https://www.hrw.org/legacy/background/2008/india0808/india0808.htm#_ftn55

¹⁵<https://www.amnesty.org/en/latest/news/2015/07/india-accountability-still-missing-for-human-rights-violations-in-jammu-and-kashmir/>

¹⁶<https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

individual can be “subjected to torture or to cruel, inhuman or degrading treatment or punishment”. While India has signed UN Convention Against Torture, it has not ratified it¹⁷. Arguably, this is because torture has been consistently used by the military and police forces in Kashmir against various detainees and prisoners¹⁸.

According to Human Rights Watch, torture has been used routinely by all the security forces operating in Kashmir and techniques include severe beatings, electric shock, stretching apart of legs, suspension from the wrists or hanging upside down for extended periods leading to paralysis, and the insertion of an iron rod coated with chili paste inserted into the rectum. One of the most insidious forms of torture is the use of a heavy log or roller to apply excruciating pressure to the detainee's legs. The roller is rotated over the victim's legs, sometimes weighed down by a number of policemen who sit or stand on it¹⁹.

In a recent report on state-sanctioned torture in Kashmir, that studied 432 cases, it discovered that out of the 432 victims, 222 (51.4%) suffered some form of health complications after being tortured. Out of these 222, 209 (94.1%) people suffered health issues with long-term ramifications, and among them, 49 (23.4%) suffered acute ailments e.g. cardiac problems, nephrological issues, complete or partial loss of eyesight or hearing ability, amputations, sexual impotency, etc. **301 out of 432** torture victims in the report were non-combatant civilians. The civilians who were tortured include political activists, human rights workers, journalists and students. Of the 432 victims, **27** were minors when tortured.

Professionals like doctors, paramedics and journalists have also been regularly targeted and assaulted since the early 1990s²⁰. A 29-year-old school teacher, Rizwan Pandit, died in police custody due to torture in 2019²¹. After 10 months of his custodial death, the Jammu and Kashmir high court shut down a Public Interest Litigation (PIL) seeking a probe by the Central Bureau of Investigation into the “killing”²². The

¹⁷<https://cjp.org.in/why-has-india-still-not-ratified-un-convention-against-torture/>

¹⁸ <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

¹⁹<https://www.hrw.org/reports/1999/kashmir/abus-tor.htm#>

²⁰ <https://www.kashmiraction.org/torture-in-jammu-and-kashmir-a-report/>

²¹ <https://thewire.in/rights/kashmiri-school-principal-brutally-tortured-burnt-before-custodial-death>

²² <https://thewire.in/law/jammu-kashmir-pil-rizwan-pandit-custodial-death>

perpetrators were never brought to court and have not faced any charges.

1.4 Enforced Disappearances

Two of the most prominent Kashmir-based human rights organizations, Jammu and Kashmir Coalition of Civil Society and the Association of Parents of Disappeared Persons, maintain that over **8,000** people have been forcibly disappeared since 1989. As recently as 2017, **we find seven documented cases of enforced disappearances reported in Kashmir**. The bodies and remains of five people were found a few months later. According to JKCCS, three of them were traced back to the Indian security forces, while the other four remain unknown.

A recent victim of Enforced Disappearance was *** Khan, a shopkeeper from a district in Kashmir. According to his family members and neighbors, Mr. Khan had been detained by the armed forces, and despite repeated pleas from his family, the army refused to reveal his whereabouts. He was detained with another Kashmiri, N ***, who was later found with visible signs of torture all over his body. **N*** says that both of them were tortured ruthlessly in custody²³**.

Various International human-rights groups have investigated the suspicious disappearance of Kashmiris, including the European Union, Human Rights Watch, and the National Human Rights Commission of India (NHRC). The International Convention for the Protection of All Persons from Enforced Disappearance declares that every individual has the right to be free from enforced disappearances in all circumstances.

India signed the Convention for the Protection of all Persons from Enforced Disappearance on February 6,2007 but did not ratify it. The Government of India has repeatedly conveyed to the Human Rights Council several times that it is committed to ratifying the Convention, but there is no evidence or concrete action that points to such a commitment. Rather, **the continued use of enforced disappearances**, and the refusal of the government to launch an investigation into **thousands of unmarked graves that we believe**

²³<https://thewire.in/government/practice-of-enforced-disappearances-seems-to-have-resurfaced-in-the-valley>

belong to those who were disappeared, signals that there's a complicity at play²⁴. When a missing person is rarely located, the armed forces who are responsible for his disappearance and custodial torture are protected from prosecution by the Armed Forces (Jammu and Kashmir) Special Powers Act. This makes the process of redressal and remedy ineffective and impossible²⁵.

Khurram Parvez, human-rights activist currently under detention, has said that his organization appealed to the state government many times to identify the dead in unmarked graves using DNA examination, so that it would help families of some 10,000 disappeared people end their decades-long search. As a result of Enforced Disappearances, thousands of married women identify as **half-widows**, women who do not know the whereabouts of their husbands²⁶.

1.5 Failures of authorities to prevent, investigate and prosecute: Impunity for Serious Human Rights Violations

In February 2018, the Union Ministry of Home Affairs informed the Indian Parliament that over the past three decades, the Jammu and Kashmir Government had requested the permission of the central government for prosecution of members of the Indian security forces in 50 cases of varying human rights violations. **The central government refused to allow prosecution in 47 of these cases, while the decisions surrounding the other 3 cases remain pending as of April 2018.**

While the Indian authorities have maintained that any allegations of human rights violations by security forces are justly taken care of by the military justice system, according to the Special Rapporteur on Independence of Judges and Lawyers, military courts do not uphold international fair trial requirements and standards and as a result, are not suitable to undertake trials concerning offenses committed against civilians. In April 2013, the Supreme Court of India granted security forces the option to oversee the trials of their own personnel. This permission has been used by security forces to their own advantage²⁷. For example, In July 2017, the Armed Forces Tribunal suspended the life sentences and granted bail to five Indian Army personnel

²⁴ <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

²⁵ <https://www.thequint.com/news/law/enforced-disappearances-in-kashmir-no-law-no-relief-for-families#read-more>

²⁶ <https://www.aljazeera.com/news/2013/10/12/the-dilemma-of-kashmirs-half-widows>

²⁷ <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

who had been convicted by an army court-martial on 12 November 2014 for their involvement in the extrajudicial killing of three civilians in one of the districts in Kashmir, Baramulla, in 2010²⁸. The killings resulted in civilian protests in Kashmir in the summer of 2010 and the Indian forces killed over 100 of these protesters and injured many more.

The content of the Armed Forces Tribunal's decision and order to put an end to the life sentences has not been made public and the central authorities have not challenged the Armed Forces Tribunal's order. This pattern is seen in many other cases as well²⁹. In June 2017, a military court acquitted two soldiers who had been involved in the killing of a 16-year-old Kashmiri, named Zahid Farooq, in 2010. The military had successfully prevented the case from being transferred to the jurisdiction of a civilian court. In 2011, more than 2,000 unmarked graves were found in Kashmir, believed to be of victims of extrajudicial murder by the military forces. In November 2017, the State Human Rights Commission issued a directive to the state government to launch an investigation into these graves. The directive had previously been issued in 2011 too, but on both the occasions, no action followed³⁰.

1.6 Freedom of Press

Reporters Without Borders has termed India as "one of the world's most dangerous countries for journalists," and **has placed it in the bottom 40 countries on its World Press Freedom Index**³¹. India's actions in Kashmir tell us why: Just a few weeks after the Press Club in Kashmir was shut down by the state³², a renowned journalist, Fahad Shah, was detained in February 2022 by the police in Kashmir and booked under the region's sedition laws. Fahad Shah was detained because of his news outlet's coverage of a police raid, in which four people were killed, including a 17-year-old. The police declared the three of them as "militants", while the 17-year-old was termed "hybrid-militant".

Fake encounters are common in Kashmir, and when Shah's media house interviewed the teenager's family, they rejected the accusations of the police and requested the government to return his withheld dead body. Fahad was booked multiple times under the Unlawful Activities Prevention Act and Public Safety Act and if deemed guilty, Fahad, who received the 2021 Human Rights Press Award for his work on the February 2020 anti-Muslim riots in Delhi that

²⁸ <https://thewire.in/government/machil-fake-encounter-armed-forces-tribunal-verdict-kashmir>

²⁹ <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

³⁰ <https://www.amnesty.org/en/documents/pol10/6700/2018/bp/>

³¹ <https://www.aljazeera.com/news/2022/1/26/india-kashmir-press-club-journalism-sajad-gul-media>

³² <https://www.occpr.org/en/daily/15799-india-shuts-down-kashmir-press-club>

caused more than fifty deaths, may be sentenced to life imprisonment only for his press coverage³³.

According to Human Rights Watch, **the arrest was a case of political vendetta** and can be seen as **“part of the government’s crackdown on the media and civil society groups in Jammu and Kashmir.”** It added that since 2019, around **35 Kashmiri journalists**, including female journalists, have been subjected to police interrogation, raids, intimidation and threats, assault and beating, or falsified cases for their coverage³⁴. Journalists in Kashmir have even been subjected to pellet injuries. They are regularly called to police stations and interrogated about their reports and their sources of information. India is a party to all four Geneva Conventions and incorporated the Geneva Convention Act of 1960 into its domestic legal framework, therefore, civilian journalists are bound to be protected as long as they do not take part in any direct hostility or act of violence³⁵. Another journalist, called Asif Sultan, has been in detention for more than 3 years now for his journalistic work. The National Press Club awarded Asif with the Press Freedom Award in 2019 for his “courageous reporting”³⁶.

1.7 Freedom of Religion

Since August 2019, the Muslim population who happen to be a majority in the conflict region of Kashmir have been deprived of their basic religious rights which includes offering Friday congregational prayers at the biggest mosque in Kashmir, the Jamia Masjid in Srinagar. There is virtually no religious freedom for Kashmiri Muslims under the Hindu right-wing ruling party.

Kashmiri Muslims have only been doubly persecuted for their religious identity as well as their demand for political self-determination. The mosque in Kashmir's main city has largely remained closed for the past two years and the mosque's chief Imam has been detained in his home almost persistently throughout this time period, and the mosque's main gate is padlocked and the entire area is heavily militarized, which is

³³<https://www.occrp.org/en/daily/15916-journalist-arrested-in-kashmir-in-latest-blow-to-region-s-press-freedom>

³⁴ <https://www.hrw.org/news/2022/02/08/india-kashmiri-journalist-held-under-abusive-laws>

³⁵ <https://www.dailysabah.com/opinion/op-ed/how-india-stifles-news-media-in-kashmir>

³⁶<https://theprint.in/india/jailed-kashmiri-journalist-who-won-us-media-award-was-arrested-after-burhan-wani-profile/281597/>

deemed as a desecration by the Muslim community³⁷. A religious educational institute for Kashmiri girls, known as Dar-ul-Uloom Khadijatul-Kubra, which empowered them and gave them space to progress, was shut down by the state. India forces gate-crashed the educational institute, insulted and maltreated female students and forcefully evicted them before sealing the building³⁸.

Hundreds of people are **denied passports** and other **travel documents** to perform Hajj and Umrah, which are fundamental religious practices for Muslims, because of their political opinions³⁹. In August, 2020, Government forces fired shotgun **pellets** and **tear gas** to disperse hundreds of Shia Muslims participating in a Muharram procession, injuring around 40 people, including women. Some main Muharram processions have been proscribed by the state in the Muslim-majority Kashmir region⁴⁰.

All of this is done despite the fact that the freedom of religion or belief is guaranteed by **article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.**

1.8 Freedom of Expression and Internet Freedom

India has regularly denied Kashmiris the right to access the internet and communication. The Kashmir region experienced frequent communications blockades during 2016 as the state government suspended mobile and internet services on multiple occasions. The authorities proscribed mobile internet facilities that affected nearly **7 million people in Kashmir for almost 7 months**. Communications blackouts like these severely affect the right of Kashmiris to search for, receive, and spread information, which is very central to the right to **freedom of expression**.

³⁷<https://www.aljazeera.com/news/2021/12/16/india-kashmir-srinagar-jamia-mosque-religious-freedom-muslims>

³⁸ <https://www.arabnews.pk/node/2042506/pakistan>

³⁹ <https://www.thenews.com.pk/print/707010-kashmiris-deprived-of-even-religious-freedom>

⁴⁰<https://www.aljazeera.com/news/2020/8/29/police-fire-pellet-guns-on-kashmir-muharram-procession-witnesses>

The Doctors Association of Kashmir has said that the frequent communications blackout had a very negative impact on the **right to health and right to life**, as civilians found it very difficult to access medical services without phone or internet connections. Internet services in Jammu and Kashmir were suspended **32 times in 2017, compared to 10 times in 2016**. In 2017, the government imposed a ban on social media networks and mobile services. **The Special Rapporteurs on promotion and protection of the right to freedom of opinion and expression and on the situation of human rights defenders** demanded an end to Indian policy of banning communication and argued that, “the internet and telecommunications bans have the character of collective punishment and fail to meet the standards required under international human rights law to limit freedom of expression⁴¹.

After the revocation of Article 370 in Kashmir, Kashmir witnessed its longest internet blockade ever. The 7 million people in the Kashmir Valley were forced to live in a pre-Internet era. They were unable to operate online businesses. After four months of internet ban, they began disappearing from WhatsApp because accounts are automatically deleted after 120 days of inactivity. Shutting down the Internet has become a regular feature of law enforcement in India, as it has now acquired the distinction of **imposing the most blackouts in the world**⁴². Kashmir is the most affected, as it accounts for more than **60 percent** of the blackouts in the country⁴³.

1.9 Domicile Laws

On August 5, 2019, India abrogated the nominally special constitutional status of Kashmir, a status that was put in place in the formative years of the Indian state, to grant a limited degree of autonomy to its only Muslim-majority state, one that it had occupied militarily without the will of its inhabitants. A provision within it, known as Article 35A, gave the local Kashmiri dispensation the right to determine who is a “permanent resident” of the state, and only permanent residents could buy or own

⁴¹ <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

⁴² https://www.washingtonpost.com/world/asia_pacific/indias-internet-shutdown-in-kashmir-is-now-the-longest-ever-in-a-democracy/2019/12/15/bb0693ea-1dfc-11ea-977a-15a6710ed6da_story.html

⁴³ <https://internetshutdowns.in>

property in the valley.

This was seen as necessary by the people in order to preclude the evolution of a India's occupation into a settler-colonial occupation, enabling the possibility of Indian settlers buying property and land in Kashmir, and expelling the local population, with the support of the Indian army, who constitute over **half a million** in number, and already occupy vast tracts of land (over 54,000 acres of land) in the form of cantonments, barracks, and pervasive bunkers⁴⁴. A new set of domicile laws have been introduced that allow Indian citizens to permanently reside and buy land in Kashmir if they have worked in the region for fifteen years or studied there for seven years.

The intent behind these moves is to change the demographics of Kashmir from a Muslim-majority state to one that has a Hindu majority. By turning Kashmiris into a minority in their homeland, the outcome of the long awaited UN-mandated plebiscite on Kashmir's political future will be drastically impacted, acting as the final nail on the coffin of the resolution of the Kashmir issue⁴⁵. Between May and June 2020, more than **25,000 people** who applied for residency status were granted domicile certificates. The powerful Hindu nationalist ruling party has already expressed its will to establish segregated Hindu colonies in Kashmir.

According to Kashmiri political analysts, these colonies will require their own militarized infrastructure, which means an increase in the number of troops in the valley, further militarizing the most militarized zone⁴⁶ in the world, along with additional checkpoints and bunkers. The most fundamental human right that Kashmiris have been deprived of is their **right to self-determination**. This right has been denied to them since the illegal accession of J&K to India in 1947 which violated UNSC **Resolution 47**. Specifically, this resolution promised a plebiscite to Kashmiris to freely decide their fate.

⁴⁴<https://www.versobooks.com/blogs/4817-destroying-to-replace-settler-colonialism-from-kashmir-to-palestine>

⁴⁵<https://harvardlawreview.org/2021/05/from-domicile-to-dominion-indias-settler-colonial-agenda-in-kashmir/>

⁴⁶https://www.washingtonpost.com/world/asia_pacific/indias-residency-law-in-kashmir-amplifies-demographic-fears/2020/08/04/5f83fd6a-d60b-11ea-a788-2ce86ce81129_story.html

The domicile law presents the next step in a long history of violation of the right to self-determination by India. India has ratified the International Covenant on Civil and Political Right and the International Covenant on Economic, Social and Cultural Rights but has done so with multiple conditions and caveats. One of the critical conditions is the **annulment of Article 1 of both Covenants on the right to self-determination.** As a result, self-determination in India is only limited to “foreign domination”, thereby excluding Kashmiris and their popular demand to be free from Indian rule⁴⁷. Ram Madhav, who is the national general secretary of the ruling Hindu nationalist party, is quoted to have said that his party was “committed to helping bring back an estimated number of 200,000-300,000 Hindus” and settle them in the valley⁴⁸.

At the same time, through the Jammu and Kashmir Reorganization Act (2019), the Indian state dispensed with the previous 37-year-old law that allowed the return of Kashmiri Muslim residents who fled to Pakistan between the years 1947 and 1954, and as a result, Jammu residents who fled to Pakistan in 1947 no longer have a right to return to their homeland. The Right of Return is a universally recognized right in international refugee law, and human rights law. It is also provided for in the Universal Declaration of Human Rights (Article 13), which declares that **"Everyone has the right to leave any country, including his own, and to return to his country"**⁴⁹.

The prohibition on deporting or transferring parts of a State’s own population into the territory that is disputed is codified in the Fourth Geneva Convention. According to the Statute of the International Criminal Court, “the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies” is to be seen as a war crime⁵⁰.

⁴⁷<https://www.humanrightspulse.com/mastercontentblog/new-domicile-law-in-jammu-and-kashmir-threatens-autonomous-status>

⁴⁸ <https://www.aljazeera.com/news/2019/7/12/indias-bjp-to-revive-hindu-settlement-plan-in-kashmir-report>

⁴⁹<https://www.hrw.org/legacy/campaigns/israel/return/#>

⁵⁰ https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule130

Recommendations

We make the following recommendations to the State of India:

- Repeal the Armed Forces (Special Powers) Act and remove effective immunity granted under the Criminal Procedure Code to security forces for violations of fundamental rights, including torture and ill-treatment, enforced disappearances, and extrajudicial killings.
- Promptly and impartially investigate and appropriately prosecute officials who order, commit, or tolerate human rights violations, including torture, custodial killings, faked armed encounter killings, and enforced disappearances.
- Ratify the UN Convention against Torture; the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty; the Convention for the Protection of All Persons from Enforced Disappearance; the Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance.
- Ratify the Additional Protocols I and II of Geneva Convention that extend the scope of international humanitarian law.
- Repeal Domicile Laws
- Release human rights defenders and journalists