

# Issues Of Human Rights Violations After the Abrogation of Article 370 In Jammu and Kashmir

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## **ABSTRACT**

The history of Jammu and Kashmir and Ladakh which was relegated to the status of two union territories legally and constitutionally, starts a new chapter in 2019. It was accompanied by extraordinary lockdowns, curfew and shutdowns on phone and internet connections, which caused significant anxiety, particularly in the valley. There have been questions regarding whether the Indian governments claim that it can bring peace by heavily militarizing an area that is already heavily militarized or whether it is only increasing centralized control over the area. The former state of Jammu and Kashmir's special status was revoked in 2019, which has a number of effects on its citizens. Following the COVID-19 pandemic, the double lockdown once implemented in the valley, further deteriorated the situation. This paper addresses the human rights situation in the valley after four years of article 370 annulment.

**KEYWORDS :** JAMMU AND KASHMIR, HUMAN RIGHTS, CURFEW, CENTRALIZED CONTROL.

## **INTRODUCTION**

On August 5, 2019, Prime Minister Narendra Modi and the Indian government sought to arrest a thirty-year insurgency with an extraordinary change to the country's constitution to revoke autonomy provisions for the state of Jammu and Kashmir, split it off from the territory of Ladakh, and downgrade both from statehood to union territories. Since then, also a huge crackdown on political and communal freedoms and human rights in the Kashmir valley has drawn crucial transnational scrutiny. The unforeseen unilateral change in Kashmir's status may be one of the most consequential developments in the region since the 1989 outbreak of insurgency of the 1998 nuclear test by India and Pakistan, war-ranting. Some methodical analysis of what brought India to this point and the region's likely future.

Stability in Kashmir is central to stability in the entire South Asian region. Just six months before New Delhi's decision to bifurcate article 370 of the constitution, a suicidal bombing attack on Indian security forces in South Kashmir sparked a dangerous interstate extremity and rapid escalation between nuclear-armed rivals India and Pakistan that alarmed many policymakers. It re-inclined indigenous and transnational spectators why President Bill Clinton in 2000, cited this fault line as the most dangerous place in the world, several times after his CIA director linked it as the most likely flashpoint for use of weapons of mass destruction. Reignition of uneasiness in the Kashmir valley would have disastrous implications, but the sources of implicit ignition

have fallen out of sight over the past decade indeed as Kashmir has displayed a fusing Steady supplement in popular discontent, mass resistance and violence.

### **THE HISTORICAL BACKDROP OF ARTICLE 370**

It importantly clause in the Indian constitution known as article 370 gives the state of Jammu and Kashmir special status. This article is temporary in that way the Jammu and Kashmir constituent assembly has the authority to change, omit or maintain it. It was also regarded as temporary only until a plebiscite was held to discover the public's preference. But there has recently been a heated argument over whether or not this article should be considered transitory. The government and judiciary have asserted that these rules are unalterable on several occasions.

India and Pakistan each assert complete sovereignty over Kashmir, a region in the Himalayas. The area formerly known as Jammu and Kashmir, joined India in 1947, not long after the subcontinent was divided after the British rule ended. After India and Pakistan went to war over it and came to control different areas of the region, a ceasefire line was agreed upon. A separatist revolt against Indian rule has resulted in violence in the Indian controlled state Jammu and Kashmir for 30 years.

### **BRIEF ABOUT ARTICLE 370 OF INDIAN CONSTITUTION**

Article 370 of the constitution grants the state autonomy. The transitional clause in this article is taken from XXI of the constitution's temporary, transitional and special provisions, which accords the state of Jammu and Kashmir unique status. On October 17, 1949, this article was added to the constitution, exempting the state from the Indian constitution save for article 1 and 370 and allowing the state to create its own constitution. Additionally, it limits the legislative authority of the parliament over Jammu and Kashmir. There are numerous laws and statutes in India that are relevant to the entire country but do not apply to the state of Jammu and Kashmir. With the exception of the topics pertaining to defense, foreign policy, finance and communication, this article enabled the state to have complete power over 94 of the 97 items on the union list, however, because each state has its own set of laws, the parliament must obtain the state government's approval before implementing any of the 94 items listed above. Regarding citizenship, ownership and fundamental rights, the residents of the state are subject to different laws and regulations than those of the union. This made it impossible for any Indian person who is not a citizen of the state to purchase property in Jammu and Kashmir.

The revocation of article 370 in August 2019 effectively ended Jammu and Kashmir's special status, making a significant turning point in the region's history that received little opposition from the international world. Except for China and Pakistan, most countries were hesitant to openly denounce India's actions in Kashmir. The minimal international response to India's actions was primarily focused on the humanitarian crisis in the valley, as opposed to the constitutional amendments itself. With the exception of article 1 and 370 itself, Jammu and Kashmir was exempt from the implementation of the Indian constitution and was given permission to enact its own constitution. The state government to be consulted only when extending a central law to subjects powered by the instrument of accession, to expand it to other situations, though, the state

governments approval is necessary. The Indian independence act of 1947 resulted in the division of British India and Pakistan, and the instrument of accession into effect.

### **HUMAN RIGHTS CONCERNS AFTER REVOKING ARTICLE 370**

In the four years since the region of Jammu and Kashmir's new status, the Indian government has dramatically increased the separation of rights in Jammu and Kashmir. Article 370 was repealed in Jammu and Kashmir four years ago, after that civil society and in particular journalist, lawyers and human rights advocates, have been subjected to unrelenting interrogations, arbitrary travel bans, revolving door detentions and repressive media policies while being denied access to legal remedies and human rights bodies.

The Indian government has been brutally suppressing civil society and the media in Jammu and Kashmir for the past four years. Many human rights organizations raised their voices. Heavy-handed persecution has silenced all criticism and created a climate of dread and insecurity in the area.

### **VIOLATION OF FREEDOM OF EXPRESSION AND MOVEMENT**

Since August 2019, Amnesty International has documented at least 60 instances of persucation Of journalists and human rights activists. According to a journalist from Kashmir who has experienced harassment from the authorities, they(security forces)tell you in so many ways subtle as well as brazen that the cost of pursuing journalism in Jammu and Kashmir is huge.

Following the adoption of stringent media laws like the 2020 Revised Media Policy and the 2021 Film Policy, the Indian government now has complete control over information leaving the region. The Indian government continues to often end abruptly suspended Internet service in different sections of Kashmir after an initial six month Internet blackout. Additionally, the Indian government's unexpected and forced closure of the Kashmir Press Club in 2020 dealt A severe damage to the already failing media industry.

At least six people, including journalists, human rights activists end academics, have been denied the right to freedom of movement in the last four years due to arbitrary executive actions that were not supported by any court order,warrant,or even a written justification. These individuals were prevented from traveling abroad despite having the necessary travel documents.

### **ABUSE OF SECURITY LAWS AND AGENCIES**

Amnesty International figures shows that August 5<sup>th</sup>, 2019, Indian authorities have detained and arrested at least 27 journalists. A number of journalists, notably sajjad Gul, fahad Shah and Asif Sultan, have been arrested repeatedly. They have consistently been detained after being arrested under one statute, been given bail by the court, and then being quickly detained again under the Unlawful Activities(Prevention)Act(UAPA),Which is India's main anti-terror law in Jammu and Kashmir.

Amnesty International looked at 1346 cases from the High Court of Jammu and Kashmir that were available online. It was discovered that by first August 2022, there would have been a 32% increase in writ petitions,

showing an increase in unlawful detention during the previous four years. Amnesty International examined the National Crime record bureaus statistics and discovered that the use of UAPA in Jammu and Kashmir has increased by 12% since 2019. An examination of the data on the high courts website demonstrate the growing tendency of employing the harsh UAPA In addition to the frequently violated Public Safety Act(PSA).

The NIA carried out numerous raids in 2020 on the homes and workplace of well known human rights activist such as khurram parvez, three of his companions, and Parveena Ahanger. Additionally, the offices of the NGO's Athrout And GK trust, as well as the home of Agence France-Presse's Kashmir correspondent Parvez Bukhari, Have all been raided. Raids without a valid reason are blatant violations of the International Covenant On Civil and Political Rights guarantee of the right to freedom of expression.

### **UNLAWFUL KILLINGS**

People in Jammu and Kashmir, particularly the minority Hindu population, have experienced an uptick in illegal killings by armed forces in recent months. According to a Government of India examination of official data, there has been a 20% increase in illegal killings of civilians by armed forces during the last four years.

In addition, the government had recently disclosed that between April 2020 and March 2022, Jammu and Kashmir had the most fatal police encounters in all of India. Due to the continuous execution of the Armed Forces(Special Powers)Act(AFSPA), Which gives them extra authority, impunity and violates international human rights norms, there is a lack of accountability for the use of force by the police in the region.

According to international law, the government is required to take action to protect civilians and to hold those responsible for such attacks on homicides accountable in a fair trial without using the death sentence.

### **RECOMMENDATION TO ENSURE HUMAN RIGHTS IN JAMMU AND KASHMIR**

1.The PSA and other preventive detention laws should be repealed or modified to adhere to our fundamental principles. Enforce the world and spirit of the law governing juvenile protection, including as it relates to child fighters. Release all young people in custody and drop all charges. Retract unfounded complaints made under the PSA or UAPA Against political figures, journalists and activists And launch time bound investigations into claims of tortured in custody. Such as those made in relation to Waheed Para, The head of the people's Democratic Party(PDP).

2.Launch criminal and civil proceedings against members of the police, military and paramilitary who have been found guilty of violating human rights, particularly in relation to attacks on journalists.

3.To prevent civilian deaths, injuries or any other harm or loss, make sure the armies additional directorate for the human rights is given complete freedom in the role it can play in looking into claims of human rights violations and overseeing compliance with the humanitarian standards to be followed when conducting cordon and search operations(CASO).

4. Limit the use of section 144 to only situations in which there is an obvious and immediate risk, and make sure district magistrate rigorously adhere to the court rules limiting its application. Attacks on news organizations and courier services that had permitted to operate During curfew can and must be prevented.

5. Provide fair compensation to uninvolved residents whose homes were damaged during CASO order land reclamation campaigns. Make sure nomadic tribes received the rights granted to them under the Forest Rights Act of 2006.

6. Restore all of the former states statutory oversight organizations, particularly those that are responsible for keeping an eye on human rights, such as the Jammu and Kashmir Women and Child Rights Commissions and the Jammu and Kashmir Human Rights Commission. In the interim, Jammu and Srinagar cities food establish branches of their national counterparts, whose jurisdiction these rights fall under, such as the national human rights or women's commissions.

7. Rollback the current media regulations, including the prohibition on the reporting from counter insurgency areas, the use of drones by video journalist, and police checks or raids on media organizations. To make sure the media houses are not penalized for disagreement, review the empanelment rules. Make sure that no more lawsuits are launched That are obviously meant to restrict news that is critical of the government.

8. Make sure the homecoming of Kashmiri pandits is facilitated with the help of the local communities. Returnees won't be safe and reintegrating will be very challenging without local support.

## **CONCLUSION**

The Kashmiri people have suffered severe consequences as a result of international actors , neglect of the unresolved Kashmir problem. International attention should be paid to the region of Kashmir's current human rights crisis. Since 1989, more than 100,000 people have been killed. The Special Powers Act gives the Indian army the authority to detain anyone without a court order, and the people of Kashmir have no chance of obtaining justice in a legal proceeding. Fundamental human rights are still being violated In the Kashmir valley, even after article 370 was repealed. Since 5<sup>th</sup> August 2019, an area wide curfew imposed by the Indian government prevents the inhabitants of Kashmir from moving around freely . Their social, economic and political rights are violated by the Indian military.

The first and most important of many acts that must be taken in order to lessen the situation in Jammu and Kashmir are the immediate lifting of the curfew, the release of all detained political figures as well as regular citizens, and the lifting of the communication blockade.

The Kashmiri people will become more enraged and more likely to rebel and take up weapons against the Indian armed forces as a result of ongoing, unabated crackdown, curfews and human rights violations, and the situation will only become worse for the Indian government.

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