

Five Years Without an Elected Administration:

**Human Rights in Jammu and Kashmir,
August 2022 – July 2023**

With a Special Section on Ladakh



THE FORUM FOR HUMAN RIGHTS

IN JAMMU AND KASHMIR

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The Forum for Human Rights in Jammu and Kashmir deeply mourns the loss of its member Hindal Tyabji, whose concern for the people of Jammu and Kashmir has been unwavering since he was a young IAS subaltern fifty years ago. We are poorer for his absence.

The Forum would also like to thank former research associate Abhishek Babbar, Vaibhav Laddha and Shagun Bhargava for their aid in drafting this year's report.

THE REPORT AND ITS METHODOLOGY

The Forum for Human Rights in Jammu and Kashmir comprises an informal group of concerned citizens who believe that, in the prevailing situation in the former state, an independent initiative is required so that continuing human rights violations do not go unnoticed.

This is the fourth annual report issued by the Forum, which has also issued two mid-term and/or thematic reports). It has largely been compiled from government sources, media accounts (carried in well-established and reputed newspapers or television), NGO fact-finding reports, interviews, and information garnered through legal petitions. The various sources listed above have been fact-checked against each other to ensure the information is as accurate as possible, and only that information has been carried that appears to be well-founded. Where there is any doubt regarding a piece of information, queries have been footnoted.

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MEMBERS OF THE FORUM

Co-Chairs:

Gopal Pillai, former Home Secretary, Government of India [SEP]

Radha Kumar, former member, Group of Interlocutors for Jammu and Kashmir

Members:

Justice Ruma Pal, former judge of the Supreme Court of India

Justice AP Shah, former Chief Justice of the Madras and Delhi High Courts

Justice Bilal Nazki, former Chief Justice of the Orissa High Court

Justice Hasnain Masoodi, former judge of the Jammu and Kashmir High Court

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Lieutenant-General H S Panag (retd)

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Enakshi Ganguly, Co-founder and former Co-director, HAQ Centre for Child Rights

Ramachandra Guha, writer and historian

Anand Sahay, columnist

EXECUTIVE SUMMARY

In an additional counter-affidavit filed before the Supreme Court in July 2023 against petitions challenging the constitutionality of the Presidential Orders of August 5, 2019 (reading down Article 370 of the Indian Constitution), as well as the Jammu and Kashmir Reorganisation Act of August 9, 2019, the union Ministry of Home Affairs claimed that that the changes wrought by the two actions had ‘brought unprecedented development, progress, security and stability to the region.’¹

The facts, however, suggest otherwise. In its three annual and two thematic reports, the Forum has documented over three dozen economic, political and social rights that have been violated between August 2019 and July 2022, including economic losses of over Rs. 50,000 crores at a conservative estimate, vitiation of land and domicile rights, marginalisation and even purges of local personnel in the civil and police services, questionable arrests under draconian legislation, communication bans, media intimidation, and routinised curbs on the freedom of expression and movement.² Equally glaring, the right to representation has been denied for five years, as of June 2023.

This report on the state of human rights in Jammu and Kashmir between August 2022-July 2023 finds that while there has been improvement on some parameters, human rights violations continue on most. Its findings are as follows:

¹ Additional Counter-Affidavit on Behalf of the Union of India, signed by Joint Secretary in the Ministry of Home Affairs Prakash Lokhande, in *Mhd. Akbar Lone v Union of India*, Writ Petition (Civil) No. 1037 of 2019, July 10, 2023, paragraph 3, p.2. The bench that will be hearing this and allied petitions from August 2, 2023, has said that it will not be considering ground conditions but solely constitutional issues.

² The Forum for Human Rights in Jammu and Kashmir, *Three Years as a Union Territory: Human Rights in Jammu & Kashmir (August 2021-July 2022)*; The Forum for Human Rights in Jammu and Kashmir, *Two Years of Lockdown: Human Rights in Jammu and Kashmir, August 2021*; The Forum for Human Rights in Jammu and Kashmir, *Human Rights in Jammu and Kashmir: Mid-Term Report (August 2020-January 2021)*; The Forum for Human Rights in Jammu and Kashmir, *The Impact of Lockdowns on Human Rights (August 2019-July 2020)*.

1. *Civilian insecurity* persists. Targeted attacks on Pandits and migrant workers – both Hindu and Muslim – continue. While the number of lives lost due to armed attacks and counter-insurgency operations was lower than in the previous year, the number of police personnel who died, including Central Reserve Police Forces (CRPF), continues to be unacceptably high. 71 CRPF troops were killed in the four years between 2019-2022, twice as many as in the previous four years, 2014-2018, when 35 died. By comparison, in the four years between 2012-2015, which can be categorised as an uneasy interregnum between the post-peace process years and the rise of conflict in the BJP-PDP coalition, 27 CRPF troops were killed.
2. *A high volume of small arms*. In 2023, it was found that Jammu and Kashmir had the largest number of licensed gun holders amongst union territories and the highest per capita amongst states as well as union territories, at 500,105 in June 2023, or four per hundred people.
3. *Resurgence of militancy in Jammu*. After decades of peace, the bordering areas of Poonch and Rajouri districts in Jammu division are re-emerging as a locus for militancy with cross-border support from Pakistani-held territories of the former state. The 2022 delimitation of fresh legislative constituencies, adding Poonch and Rajouri to Kashmir's Anantnag, may have added to the alienation that these Muslim-majority areas face with the sharpening of communal divides in Jammu. Increasing weaponisation through Jammu's village defence guards, a problematic policy that the Forum highlighted in its 2022 report, has added further insecurity in the region. As has the 2023 Jammu and Kashmir Scheduled Tribes (Amendment) bill, which has pitted Paharis against Gujjars and other listed scheduled tribes of the region.
4. *Continuing civil rights abuses*. There has been no improvement in gross violations of the freedom of expression and movement, especially the rights of the media to a safe working environment. Arrests under draconian legislation such as the Unlawful Activities (Prevention) Act (UAPA) and the Public Safety Act (PSA) continue, despite judicial attempts to limit their application. Along with Delhi, Jammu and Kashmir has the highest rate of undertrials as a proportion of its prisons population, at 91 percent, considerably higher than the national average of 76 percent.³

³ Deeptiman Tiwary, '76% prisoners are undertrials; ratio is highest in Delhi, J&K', *The Indian Express*, May 4, 2022.

5. *Custodial deaths and overcrowded prisons.* The Jammu and Kashmir courts have flagged overcrowding and negligence as causes of custodial deaths. The region's prisons can house a total of 3,629 inmates, but they lodged 5,300 as of June 2023.
6. *Denial of political rights.* Two issues of political rights dominate this year's report. The demand for an assembly election in Jammu and Kashmir; and the demand for a legislative assembly in Ladakh, along with rights under the sixth schedule of the constitution of India.

Elections. It has been nine years since the last legislative election in Jammu and Kashmir. The union administration accepted the delimitation commission's report a year ago and it is eight months since fresh electoral rolls were prepared. All the preparations for an election have thus been completed, but the election commission has yet to announce dates for it. Despite their valid criticisms of the delimitation commission's report, Jammu and Kashmir's political parties have demanded that the election be held this year (2023). Fresh reservations to woo new constituencies through four bills scheduled to be introduced in the monsoon session of parliament will, if enacted, entrench caste-based voter mobilisation. One of them was debated on July 26.

Ladakh Kargil and Leh, the two districts of Ladakh, have united around the demand for an elected administration with substantive powers over economic and social development such as those provided under the Sixth Schedule of the Indian constitution, or, alternatively and it seems preferably, the grant of statehood. The union administration has repeatedly promised to discuss the inclusion of Ladakhis in the sixth schedule, but little has resulted. Given Ladakh's geo-strategic location, bordering both Pakistan and China, the union administration might prefer to govern the union territory directly. However, direct administration has resulted in alienating Ladakh's elected councillors as well as its people, both of which impact negatively on Indian democracy as well as national security.

7. A record year of tourism in 2022 boosted *the economy*, but it still lagged behind the national average on per capita income and rates of growth. The multidimensional poverty index for 2023 showed an impressive reduction in the proportion of its population living in poverty from an estimated figure of 12.56

percent in 2015-2016 to 4.8 percent between 2019-2021, but it ranked sixth out of eight union territories on the sustainable development goals (SDG), with Ladakh at seventh. Its forest cover decreased from 39.66 percent to 39.15 between 2020-2021.⁴

8. **Unemployment and drug abuse.** At 23.1 percent in March 2023, unemployment was almost three times the national average of 7.8 percent. According to the union ministry of health, Jammu and Kashmir is among the top two states and union territories for drug abuse, with an estimated 900,000 habitual drug users, roughly 1 in 130.⁵
9. **Data scarcity.** There is a paucity of readily available figures for the former state. Though the 2023 budget presentation for parliament forecast a NSDP growth rate of 14.9 percent for Jammu and Kashmir in 2022-2023, the economic survey of 2023 said that figures for its per capita NSDP were not available from 2019 to date, as did the 2022 Reserve Bank of India statistics on states.⁶

⁴ NITI Aayog (2021), 'NITI Aayog Releases SDG India Index and Dashboard 2020–21, *Performance and Ranking of States and UTs on SDGs 2020–21, including change in score from last year*', June 3, 2021, Delhi: Press Information Bureau, Government of India; NITI Aayog (2023), *India National Multidimensional Poverty Index: A Progress Review 2023*, Figure: MPI based on NFHS-5 (2019-21), Delhi: NITI Aayog, Government of India, xviii; Planning and Monitoring Department, Civil Secretariat, *J&K Progress Report 2022*, SDG Goal 1, 1.2.1: proportion of population living below the national poverty line, 1.2.1a: Poverty Head Count Ratio, Goal 12, 12.2.1.b: Forest area as a proportion of total land area, Jammu: Planning and Monitoring Department, Civil Secretariat, Government of Jammu and Kashmir, 3, 63.

⁵ Mukeet Akmal, 'Drug use rising: J&K has around 9 lakh drug addicts', *Greater Kashmir*, March 29, 2023.

⁶ Department of Economic Affairs, Ministry of Finance, Government of India (January, 2023), *Economic Survey 2022-23*, Statistical Appendix, Table 1.11B: Growth of Per Capita Net State Domestic Product at Current Prices (2011-12 Series) As on 01.08.2022; Reserve Bank of India, *Handbook of Statistics on Indian States* (2022).

RECOMMENDATIONS

1. Release all remaining political detainees who were taken into preventive detention on or after August 4, 2019. Strictly implement the rights to bail and speedy trial. Repeal the PSA and other preventive detention legislation or amend them to bring them in line with our constitutional ethos. Strictly implement juvenile protection legislation in letter and in spirit. Withdraw unsubstantiated charges under the PSA/UAPA against political leaders, journalists and activists. Release Irfan Mehraj, Fahad Shah, Aasif Sultan and Khurram Pervez, amongst others.
 - 1.a Treat overcrowding of prisons, which is partially a by-product of indiscriminate arrests to suppress dissent, and contributes to custodial deaths, as a human rights issue in line with UN guidelines⁷, and supreme court instructions that it is a violation of fundamental rights.⁸
2. Hold the assembly election immediately, as sought by the political leaders and people of Jammu and Kashmir. Put the current reservation bills on hold until the supreme court rules on the constitutionality of the August 2019 Presidential orders, the reorganisation act and the measures taken under it.

⁷ The Office of the United Nations High Commissioner for Human Rights (UNHCHR) (2015), *Human rights implications of overincarceration and overcrowding*: The issue of overcrowding stems from 'deficiencies within the criminal justice system; excessive recourse to pretrial detention; absence and/or improper administration of alternatives to detention; specific sentencing policies; and lack of oversight over the places of detention.' Moreover, preventive custody impinges upon the right to liberty of individuals and contributes to the problem of overincarceration and overcrowding. The Supreme Court of India has also time and again stated that the issue of over-crowding of prisons is a violation of fundamental rights, specifically Article 21 of the Constitution. *Human rights implications of overincarceration and overcrowding*, 2015, United Nations High Commissioner for Human Rights. Available at: <https://digitallibrary.un.org/record/848736?ln=en>.

⁸ Inhuman Conditions in 1382 Prisons, In re, (2016) 3 SCC 700; Rama Murthy v. State of Karnataka (1997) 2 SCC 642.

3. Accept and implement the tribal welfare ministry's recommendation that Ladakh be included in the sixth schedule. Restore the executive authority of the Kargil and Leh hill councils. Discuss statehood with concerned stakeholders, including in Jammu and Kashmir.
4. Initiate criminal and civil actions against personnel of police, armed forces and paramilitary forces found guilty of violation of human rights, especially with regard to attacks on journalists. Release action-taken reports on the July 2020 extra-judicial killing of three Rajouri youth in Shopian, the December 2020 Hokersar deaths and the alleged custodial death of Irfan Ahmed Dar of Sopore, and the status of subsequent prosecutions.
5. Ensure that the army's additional directorate for human rights is given full freedom in the role it can play in investigating alleged human rights abuses and monitoring adherence to the humanitarian guidelines to be followed when conducting cordon and search operations (CASO), to prevent civilian deaths, injuries or any other damage or loss.
6. Adequately compensate innocent citizens whose houses have been destroyed in CASO, eviction or land reclamation drives. Ensure that nomadic tribes are extended the rights that they are entitled to under the Forest Rights Act of 2006.
7. Reconsider the establishment of village defence guards and the reinstatement of special police officers. In each case, these initiatives have been found to increase the vulnerability of employees as well as the public to acts of violence.
8. Ensure that local communities are involved in facilitating the return of Kashmiri Pandits. Without local support, returnees will not be safe, and their reintegration will prove extremely difficult.
9. Reinstate all the former state's statutory oversight bodies, especially those monitoring human rights, such as the Jammu and Kashmir Human Rights

Commission and the Jammu and Kashmir Women and Child Rights Commissions. In the interim, their national counterparts under whose purview these rights fall, such as the National Human Rights or Women's Commissions, should set up branches in Jammu and Srinagar cities.

10. Rollback the new media policy, including police checks and/or raids on media outlets, bans on drones used by video-journalists and the bar on reporting from counter-insurgency sites. Review the empanelment policy to ensure media outlets are not punished for dissent.
11. Involve panches in a transparent land for the landless program to ensure genuine beneficiaries.
12. Explain the allocation of close to two lakh houses under the affordable housing scheme and adopt a transparent process for it.

RIGHTS VIOLATIONS COVERED IN THIS REPORT

1-7 Right to habeas corpus, right to live in peace, right to protection against arbitrary arrest, illegal and/or preventive detention, custodial violence and injury, right to bail, right to fair and speedy trial.

The Constitution of India, Article 21: No person shall be deprived of his life or personal liberty except according to a procedure established by law. Includes:

Habeas corpus (*Maneka Gandhi v Union of India*⁹, *Sunil Batra v Delhi Administration*¹⁰, *Francis Coralie Mullin v Administrator, Union Territory of Delhi and Others*¹¹); Protection from injury (*Kharak Singh v State of Uttar Pradesh*¹²); Right against illegal detention (*Joginder Kumar v State of Uttar Pradesh*,¹³ *D.K. Basu v State of West Bengal*¹⁴); Right to bail (*Babu Singh v State of Uttar Pradesh*¹⁵); Right to speedy trial (*Hussainara Khatoon v Home*

⁹ AIR 1978 SC 597. In this case, the Court discussed the inter-relationship between Article 14, 19 and 21 and held that procedures under Article 21 must comply with the principle of reasonableness and meet the challenges of Articles 14 and 19.

¹⁰ AIR 1980 SC 1579. In this case, the Court expanded the scope of the habeas corpus writ to address custodial torture and affirmed that the right to life under Article 21 meant something more than mere animal existence.

¹¹ AIR 1981 SC 746. In this case, the Court reaffirmed the principle that the right to life cannot be restricted to mere animal existence.

¹² AIR 1963 SC 1295. In this case, the question was whether surveillance of the petitioner who was accused of dacoity and subsequently released for lack of evidence violated his fundamental rights. Held, 'domiciliary visits' were violative of the petitioner's right to 'personal liberty' under Article 21.

¹³ AIR 1994 SC 1349. In this case, the Court held that no arrest can be made merely on the allegation of the commission of a crime and without a reasonable satisfaction reached after investigation as to the genuineness of the complaint. The Court also held that the rights of the arrested person under Articles 21 and 22 must be protected.

¹⁴ AIR 1997 SC 610. This case was regarding deaths of detenués in police lock-ups and custody.

¹⁵ AIR 1978 SC 527. In this case, the Court discussed the conditions to be satisfied to grant bail.

Secretary, State of Bihar,¹⁶ *A.R. Antulay v R.S. Nayak*,¹⁷ *Anil Rai v State of Bihar*,¹⁸ *Zahira Habibullah Sheikh v State of Gujarat*¹⁹).

The Constitution of India, Articles 22(4) and 22(5). Protection against arrest and detention in certain cases: Preventive detention must be no more than three months unless an Advisory Board comprising High Court judges or their equivalent determines that there is sufficient cause for extension of the detention period. Detainees should be given the earliest opportunity of making a representation against the order.

The Universal Declaration of Human Rights, 1948 (to which India is a party), Article 8: right to an effective legal remedy; Article 9: protection against arbitrary arrest, detention or exile; and Article 10: fair and public hearing.

The International Covenant for Civil and Political Rights, 1966 (to which India is a party), specifies pre-trial detention only for narrow purposes such as to 'prevent flight, interference with evidence, or the recurrence of the crime'. The Working Group on Arbitrary Detention of the UN Human Rights Council (of which India is a member) states that 'any detention must be exceptional and of short duration and a release may be accompanied by measures intended only to ensure representation of the defendant in judicial proceedings.'²⁰

¹⁶ AIR 1979 SC 1369. In this case, the Court observed that the State has a constitutional obligation to provide speedy trial to the accused.

¹⁷ AIR 1992 SC 1701. In this case, the Court while holding that the right to speedy trial flows from Article 21 laid down guidelines for speedy trial.

¹⁸ AIR 2001 SC 3173. In this case, the Court reaffirmed that it was the policy and purpose of law to have speedy justice.

¹⁹ AIR 2006 SC 1367. In this case, the Court observed that the failure to provide fair hearing violates the minimum standards of due process of law.

²⁰ Human Rights Council, 'Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fifth session', 12–16 August 2019, Opinion No. 34/2019 concerning Vladimir Alushkin (Russian Federation), A/HRC/WGAD/2019/34, 20 September 2019, para 59, https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session85/A_HRC_WGAD_2019_34%20ADVANCEEDITEDVERSION.pdf.

8-9 Women's rights to protection against violence and sexual harassment.

The National Policy on the Empowerment of Women, adopted in 2001, stressed the importance of tackling violence against women using operational strategy, such as, '...para 13.3 (d) Women's Cells in Police Stations, Women Police Stations, Family Courts, Mahila Courts, Family Counselling Centres, Legal Aid and Nyaya Panchayats will be strengthened and expanded to eliminate violence and atrocities against women.'²¹ This infrastructure is to implement rights under the Protection of Women from Domestic Violence Act, 2005²², and The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013²³, but has not been put in place by the Jammu and Kashmir administration.

The UN Declaration on the Elimination of Violence Against Women, 1993, Article 4, obliges states to prevent and punish acts of violence against women. The Convention on the Elimination of All Forms of Discrimination against Women, 1979 also contains a similar set of rights, most prominently in Article 5. India has ratified both of these conventions.

10-15 Protection of children from sexual offences, kidnapping and or/abduction, protection against mental harassment, making the child free of fear, trauma and anxiety and helping the child to express views freely, protection of the rights of the child by the National Commission for Protection of Child Rights.

The Constitution of India, Articles 21A and 45, and the Right of Children to Free and Compulsory Education Act 2009, Sections 3(1), 17(1): making the child free of fear, trauma and anxiety and helping the child to express views freely, protection of the rights of the child by the National Commission for Protection of Child Rights.

²¹ UN Women Global Database on Violence against Women, 'National Policy on Empowerment of Women', <https://evaw-global-database.unwomen.org/pt/countries/asia/india/2001/national-policy-on-the-empowerment-of-women-2001>.

²² Made applicable to the Union Territory of Jammu and Kashmir under The Jammu and Kashmir Reorganisation Act, 2019, <http://egazette.nic.in/WriteReadData/2019/210407.pdf>.

²³ Ministry of Law and Justice, Legislative Department, 'The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, <http://legislative.gov.in/actsofparliamentfromtheyear/sexual-harassment-women-workplace-prevention-prohibition-and-redressal> .

The Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, and sections 359-367 of the IPC.

Jurisprudence: *Sheela Barse v Union of India*,²⁴ *Munna v State of U.P.*²⁵, *Rajeev Kumar v State of U.P. & Ors.*²⁶, *Vinod Solanki v Union of India*²⁷, *Vikram Deo Singh Tomar vs. State of Bihar*²⁸, *Salil Bali v Union of India*²⁹, *Tanvi Ahuja v State of J&K and others.*³⁰

16-17 Right to freedom of speech and expression, right to peaceful assembly.

The Constitution of India, Article 19(1): All citizens shall have the right, (a) to freedom of speech and expression; and (b) to assemble peaceably and without arms. Article 19(2): any restriction on speech must have a proximate connection with a specific head set out in the article and must show a real and imminent risk of harm arising from the speech and not vague speculation about possible future harms: *Chintaman Rao and*

²⁴ AIR 1989 SC 1278. In this case, the Court held that children should not be made to stay in Observation Homes for too long and as long as they were there, they should be kept occupied.

²⁵ AIR 1982 SC 806. In this case, the Court held that even if the youths were found guilty, they should not be maltreated. It also noted that they do not shed their fundamental rights when they enter jail.

²⁶ 2019 (2) SCT 697(Allahabad). In this case, the Court held that the right to privacy and confidentiality of a juvenile is required to be protected by all means and through all the stages of the proceedings, and this is one of the reasons why the identity of a juvenile in conflict with law is not disclosed.

²⁷ (2008) 16 SCC 537. In this case, the Court reiterated the well-settled principle that presumption of innocence as contained in Article 14(2) of the International Covenant on Civil and Political Rights is a human right.

²⁸ 1988 AIR 1782. In this case, the Court held that it is incumbent upon the State when assigning women and children to these establishments, euphemistically described as 'Care Homes', to provide at least the minimum conditions ensuring human dignity.

²⁹ AIR 2013 SC 3743. In this case, the Court held that the essence of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the 2007 Rules is restorative and not retributive, and is aimed at providing for the rehabilitation and reintegration of children in conflict with law into mainstream society.

³⁰ W/PIL no.9/2015. In this case, the Jammu and Kashmir High Court held that the J&K JJ Act 2013 and Rules 2014 had not been implemented on the ground, and ordered that the Juvenile Justice Board, which had not been constituted in the two years since the enactment of the legislation, be established. However, it was only in 2018 that the State established Juvenile Justice Boards, Child Welfare Committees, Juvenile Police Units, and District Child Protection Units.

Others v The State of Madhya Pradesh,³¹ *Sakal Papers (P) Ltd., and Others v Union of India*,³² *Shreya Singhal v Union of India*,³³ *Subramanian Swamy v Union of India*.³⁴

The Universal Declaration of Human Rights, 1948, Article 19: right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The Universal Declaration of Human Rights, 1948, Article 20(1): right to freedom of peaceful assembly and association.

18-21 Freedom of the press, right to know, right to publish, freedom of circulation.

The Constitution of India, Article 21: the freedom of expression includes the freedom of the press: *Romesh Thapar v State of Madras*,³⁵ *Indian Express Newspapers v Union of India*,

³¹ AIR 1951 SC 118. In this case, the Court observed that the restriction must have a reasonable relation to the object which it seeks to achieve.

³² AIR 1962 SC 305. In this case, the Court observed that the State cannot restrict one freedom even for the better enjoyment of another freedom.

³³ AIR 2015 SC 1523. This case was regarding the constitutional validity of certain provisions of the Information Technology Act, 2000 and whether the provisions violated the freedom of speech and expression. The Court held that mere fear of serious injury in the absence of reasonable ground to believe that injury is imminent cannot justify the suppression of free speech and assembly.

³⁴ AIR 2016 SC 2728. This case was regarding the constitutional validity of Sections 499 and 500 of the Indian Penal Code (criminal defamation) and whether such provisions have a 'chilling effect' on the freedom of speech. The Court reaffirmed the principle that restrictions should not be excessive and that reasonableness would have to be adjudged based on the ultimate 'impact' on the right in question.

³⁵ AIR 1950 SC 124. In this case, the Court observed that 'where a law purports to authorise the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as if may be applied within the constitutional limits, as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void. In other words, clause (2) of article 19 having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to the State is involved, an enactment, which is capable of being applied to cases where no such danger could arise, cannot be held to be constitutional and valid to any extent.'

³⁶ *Sakal Papers v Union of India* ³⁷; The right to know: *Reliance Petrochemicals. Ltd. v Proprietors Indian Express Newspapers*,³⁸ *Bombay Pvt. Ltd, Essar Oil Ltd. v Halar Utkarsh Samit*.³⁹

22-23. Right to regular, free and fair elections, right to vote.

Sections 14 and 15 of the Representation of Peoples Act, 1951, read with Articles 325 and 326 of the Indian constitution, and Article 52 of the now nullified Jammu and Kashmir constitution, specify the right to regular, free and fair elections. The right to vote has also been recognised as a constitutional right associated with the freedom of expression under Article 21(a) of the Indian constitution, since a vote involves expressing the choice of political candidate.⁴⁰

Successive supreme court judgements have held that ‘democracy is a basic feature of the Constitution and elections conducted at regular prescribed intervals are essential to the democratic system envisaged in the Constitution.⁴¹ So is the need to protect and sustain the purity of the electoral process.’ (*Kihoto Hollohon*, AIR 1993 SC 412). Again, in the same case, Verma, J., declared in his minority opinion: ‘democracy is a part of the

³⁶ AIR 1986 SC 515. In this case, the Court observed that in today’s free world, freedom of press is the heart of social and political intercourse.

³⁷ AIR 1962 SC 305. The Court has reiterated that the Indian Constitution does not expressly provide for the freedom of press but it has been held by this Court that this freedom is included in “freedom of speech and expression” guaranteed by clause (1) (a) of Article 19. The same was also observed in *Brij Bhushan v The State of Delhi*, AIR 1950 SC 129.

³⁸ AIR 1989 SC 190. In this case, the Court observed that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. The Right to Know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution.

³⁹ AIR 2004 SC 1834. In this case, the Court observed that the citizens who have been made responsible to protect the environment have a right to know and that there is a strong link between Article 21 and the right to know particularly where “secret Government decisions may affect health, life and livelihood”. It further observed that the role of voluntary organisations as protective watch-dogs to see that there is no unrestrained and unregulated development cannot be over-emphasized.

⁴⁰ *Jyoti Basu v. Debi Ghosal*, (1982) 3 SCR 318; *Lily Thomas v. Speaker, Lok Sabha*, (1993) 4 SCC 234.

⁴¹ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp 1 SCC 198, *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405.

basic structure of our Constitution; and the rule of law, and free and fair elections are basic features of democracy.’ The supreme court has also emphasized the Election Commission’s duty to conduct free and fair elections.⁴²

Article 21(3) of the Universal Declaration of Human Rights, 1948, to which India is a signatory, states that the will of the people shall be expressed in periodic and genuine elections, and Article 25(b) of the International Covenant on Civil and Political Rights, 1966 lists the right to vote and be elected at genuine periodic elections, guaranteeing the free expression of the will of the electors.

24-25 Right to work, right to livelihood.

The Constitution of India, Article 19(4(g)): the right to practise any profession, or to carry on any occupation, trade or business.

The Constitution of India, Article 41: The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work. *State of Maharashtra v Shobha Vitthal Kolte and Ors*,⁴³ *Air India Statutory Corporation v United Labour Union & Ors*,⁴⁴ *M/S Zee Telefilms Ltd. & Anr v Union of India & Ors*,⁴⁵ *Samir*

⁴² *Ashok Shankarrao Chavan v. Madhavrao Kinhalkar*, (2014) 7 SCC 99.

⁴³ AIR 2006 Bom 44. In this case, the Court held that right to work as fundamental right could be considered fundamental right in those cases where there was legislative guarantee.

⁴⁴ AIR 1997 SC 645. In this case, the Court observed that due to economic constraints, though right to work was not declared as a fundamental right, the right to work of workman, lower class, middle class and poor people is a means to development and source to earn livelihood.

⁴⁵ AIR 2005 SC 2677. In this case, the Court observed that right to work, although is not a fundamental right but a right to livelihood, is within the terms of Article 21 of the Constitution of India.

*Bhattacharya And Ors. v The State of West Bengal And Ors,*⁴⁶ *Rishi Kumar v State Of U.P. And Ors*⁴⁷.

The Constitution of India, Article 21: the right to life includes the right to livelihood. *Delhi Development Horticulture Employees' Union v Delhi Administration, Delhi and Ors.*⁴⁸.

The Constitution of India, Article 39(a): the right to an adequate means of livelihood, the right not to be deprived of a livelihood. *Olga Tellis v Bombay Municipal Corporation.*⁴⁹

Universal Declaration of Human Rights, 1948, Article 23(1): the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment; and Article 23(3): the right to just and favourable remuneration.

International Covenant on Economic, Social and Cultural Rights, 1966, Article 1(2): All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice. In no case may a people be deprived of its own means of subsistence); and Article 6(1): the right to work includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.

⁴⁶ 1992 (1) CLJ 494. In this case, the Court drew light from a previous judgment that the right to life includes right to livelihood and observed that the right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment, the Court said, is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

⁴⁷ 2003 3 AWC 1770 All. In this case, the Court reiterated that instrumentality of the State should ensure the service security to its employees and that there should be an end to arbitrary termination of services of such employees. It further observed that Articles 14 and 21 of the Constitution of India conferred upon a citizen the right to work and dignity of person with means of livelihood.

⁴⁸ AIR 1992 SC 789. In this case, the Court observed that there is no doubt that broadly interpreted and as a necessary logical corollary, the right to life would include the right to livelihood and, therefore, right to work.

⁴⁹ AIR 1986 SC 180. In this case, the Court stated that the right to live and the right to work are integrated and inter-dependant and, therefore, if a person is deprived of his job as a result of his eviction from a slum or a pavement, his very right to life is put in jeopardy.

26-27 Rights to a clean environment and protected forests, rights of indigenous and forest dwelling communities.

Article 48-A: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, vests tribal populations with the rights to protection against forced displacement of forest dwelling communities, grazing rights and access to forest resources and products.⁵⁰ The act also provides for the right to livelihood for tribal populations. Section 3 describes the rights of forest-dwelling scheduled tribes and other traditional forest dwellers to hold and inhabit forest land, use it for cultivation, collect and use forest produce and products of water bodies.⁵¹

The Supreme Court has held that the customary and cultural rights of tribal populations, forest dwellers, and indigenous peoples are fundamental rights under Articles 25 and 26 of the Indian constitution.⁵²

India is also signatory to the United Nations Declaration on the Rights of Indigenous Peoples, 2007 (UNDRIP). Article 26 provides that indigenous peoples have the rights to lands, territories, and resources that they have traditionally used. Article 11 provides for the right of indigenous peoples to practice their cultural traditions and customs.

28-29 Right to registration of complaints (FIR), right to magisterial investigation in cases of alleged custodial deaths.

Section 174, CrPC. Since murder and causing grievous injury are cognizable offences and the police cannot claim immunity as of right, a report should be instituted by the police when family members make a complaint, even if the police themselves have a different or conflicting story. This issue acquires especial salience in the case of the

⁵⁰ 'The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006', <https://www.indiacode.nic.in/bitstream/123456789/8311/1/a2007-02.pdf>.

⁵¹ *India Code website*, 'Section 3. Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers', https://www.indiacode.nic.in/show-data?actid=AC_CEN_42_71_00001_200702_1517807323238§ionId=12491§ionno=3&orderno=3.

⁵² *Orissa Mining Corporation v. Ministry of Environment and Forests*, (2013) 6 SCC 476.

death of Irfan Dar, who family members allege was detained by the police and died in custody, whereas the police claim he was found dead on account of cardiac arrest. Section 174 of the CrPC mandates that such matters have to be reported to the executive magistrate who is to hold an inquest to rule out foul play.

30. Right to due process in arrests.

Section 41B of the CrPC. The police are obliged to prepare an arrest memo which has to be attested by a family member and countersigned by the person arrested. If a family member is not available, the arrested person has to be informed that s/he has the right to have a relative informed of her/his arrest.

31-39 Principle of natural justice and the principle of a fresh start, arrest only by a special juvenile police unit, detention only in homes for juveniles, presumption of innocence, non-waiver of rights, right to bail, right to privacy and confidentiality, aftercare and rehabilitation, treatment of children in armed conflict.

The Juvenile Justice (Care and Protection) of Children Act 2015, section 3 (xvi), (i), (ix), (xi), which are based on the UN Convention on the Rights of the Child, 1992 (to which India is a party), Articles 38, 39, 40 (1, 2, 3): Principle of natural justice, presumption of innocence, non-waiver of rights, right to privacy and confidentiality. Under section 8 of the act, the Juvenile Justice Board is responsible for ensuring aftercare and rehabilitation. Section 2 (14) (xi) of the act includes within the ambit of 'child in need of care and protection', a child 'who is victim of or affected by any armed conflict, civil unrest or natural calamity'.

The Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013, section 11(1), The Juvenile Justice (Care and Protection) of Children Act 2015, Chapter IV, sections 10(1) and 12(1): arrest (in heinous offences) only by a special juvenile police unit, production before the juvenile justice board within 24 hours, detention only in homes for juveniles, right to bail.

40 Due process in evictions and/or eviction drives

Article 300-A of the Indian constitution states that no person shall be deprived of their property save by authority of the law.

CIVILIAN SECURITY

Overall security situation

Government as well as independent figures suggest that the overall security situation has improved over the past year. Total deaths due to militant attacks and counter-insurgency operations have more than halved from 182 between August 2021-June 2022 to 74 between August 2022-July 14, 2023. Civilian deaths have reduced from 43 to 28, security forces' lives lost have come down from 44 to 19, and the number of militants or terrorists killed has fallen from 208 to 87.⁵³

Looked at over the past four years, 2019-2023, the figures show a rising trend of violence between 2019-2020, when total deaths due to militant attacks and counter-insurgency operations were reported to be 52 in August-December 2019, rising to 321 in 2020, followed by a declining trend, when the number fell to 274 in 2021, 253 in 2022 and 51 in January-July 14, 2023.

When compared to the interregnum years of 2012-2015, however, the figures for civilian deaths between August 2022-July 2023 remain significantly higher than during 2012-2015, when they fell below 20 in four of the five years (it was 28 in 2013). Moreover, between August 2019-July 2023, 128 civilians died in militant attacks and counter-insurgency operations, compared to 85 in 2012-2015 (January-December).⁵⁴ Attacks on police personnel too were more numerous, at 88 in 2019-2023, with 48 deaths, against 65 attacks in 2012-2015, with 47 deaths. Similarly, seven special police officers were

⁵³ South Asia Terrorism Portal, Datasheets: Jammu And Kashmir, Fatalities Between 2000-2023, Yearly Fatalities, Monthly Fatalities Yearwise, <https://Www.Satp.Org/Datasheet-Terrorist-Attack/Fatalities/India-Jammukashmir>.

⁵⁴ South Asia Terrorism Portal, Datasheets: Jammu and Kashmir, Fatalities Between 1988 and 2000, <https://www.satp.org/datasheet-terrorist-attack/india-jammukashmir/j-and-k-fatalities-1988-2000>; Datasheet- Terrorist attacks, Jammu and Kashmir, 2000-2023, <https://www.satp.org/datasheet-terrorist-attack/fatalities/india-jammukashmir>.

killed in 2019-2023, while five were killed in 2012-2015 and nine in the four years preceding August 2019, between 2015-2018.

Attacks on the CRPF also increased sharply: there were 50 attacks in the four years between August 2019-July 2022 (data for 2023 is not given), as against 27 in the four years between 2012-2015. While 15 CRPF personnel were killed between 2012-2015, and 35 in the four years preceding August 2019, 36 died between 2019-2022.⁵⁵

A similarly mixed pattern can be seen in the data on arms, explosions and arrests. The number of arms recoveries fell from 219 in August 2021-July 2022 to 153 in August 2022-July 2023, as did arms explosions, from 68 explosions leaving 13 dead and 157 injured, to 19 explosions leaving 10 dead and 21 injured. In comparison to 2012-2015, however, arms recoveries rose from 420 to 685 in August 2019-July 2023, indicating either that recoveries were more efficient from 2019 onwards, or that the flow of arms had increased during the same period, or both. The number of explosions too rose from 102 between 2012-2015 to 167 between 2019-2023.⁵⁶

In 2023, it was found that Jammu and Kashmir had the largest number of licensed gun holders amongst union territories (and the highest per capita amongst states as well as union territories), at 500,105 in June 2023, or four in a hundred people (taking the 2011 census' population figures). In December 2016, the last available data, there were 369,191 licence holders. Between 2016 and 2018, after which the issuing of gun licenses was banned, and January-June 2023, when the issuing of gun licenses was renewed, 130,914 fresh licenses were issued.⁵⁷

⁵⁵ South Asia Terrorism Portal, Security Forces Data: Attacks on Police Personnel, Jammu & Kashmir, <https://www.satp.org/security-force-data-details/Police/india-jammukashmir>; Security Forces Data: Attacks on Special Police Officers (SPOs), Jammu & Kashmir, <https://www.satp.org/security-force-data-details/SPO/india-jammukashmir>; Security Forces Data: Attacks on CRPF Personnel, Jammu & Kashmir, <https://www.satp.org/security-force-data-details/CRPF/india-jammukashmir>.

⁵⁶ South Asia Terrorism Portal, Datasheets: Jammu and Kashmir, Yearly Arms Recovery, Monthly Arms Recovery, 2000-2023, <https://www.satp.org/datasheet-terrorist-attack/recovery-of-arms/india-jammukashmir>; Datasheets: Jammu and Kashmir, Yearly Explosions, Monthly Explosions, 2000-2023, <https://www.satp.org/datasheet-terrorist-attack/explosions/india-jammukashmir>.

⁵⁷ Yakut Ali, 'Uttar Pradesh, Jammu and Kashmir Lead the Country in Gun Licences', *The Wire*, July 5, 2023. Figures provided by the ministry of home affairs in response to a right to information query.

Taken together, the data suggests that while the security situation might have improved from 2019, it is considerably worse than it was prior to 2019, especially during the interregnum years of 2012-2015. Moreover, Jammu division has seen a deterioration in security, especially in areas bordering the line of control with Pakistan.

Resurgence of cross-border militancy in Jammu

Security analysts have warned over the past two years that, after decades of relative peace, Jammu division is once again providing loci of militancy, with a rising graph of armed attacks in Poonch and Rajouri districts, in particular Poonch's Surankote tehsil and the areas of Rajouri bordering it.

In mid-July 2023, the security forces shot four militants in a joint cordon and search operation, after receiving intelligence inputs on their location. Two militants were killed attempting to enter Krishna Ghati in Poonch district from across the Line of Control; three had died in a similar attempt at the same place on June 24. On May 31, three local militants were arrested trying to smuggle arms and drugs from across the Line of Control; on May 5, five soldiers were killed in the Rajouri forests, and on April 20, armed militants ambushed an Indian army truck in Bhimber Gali in Poonch, killing five soldiers and severely injuring a sixth. On August 11, 2022, militants attacked an army camp in Rajouri district, killing five soldiers. Two militants were shot while trying to exit the camp.⁵⁸ According to Director-General Jammu and Kashmir Police Dilbag Singh, there are between nine and twelve foreign fighters in the area, and they have local support.⁵⁹

A civilian named Manzoor Lone, a father of a two-month child, was killed during a counter-terror operation in Kulgam, Kashmir, and a soldier was injured.⁶⁰ He later

⁵⁸ Express News Service, '4 militants killed in encounter with security forces in J&K's Poonch', *The Indian Express*, July 18, 2023; Nirupama Subramaniam, 'The challenge in Poonch: A new terror push in Jammu, likely alienation of Gujjar-Bakerwals', *The Indian Express*, April 27, 2023.

⁵⁹ Yogesh, 'Poonch attack carried out with active local support; steel coated bullets, IED used to blow army vehicles: DGP Dilbagh Singh', *SNS Kashmir*, April 29, 2023.

⁶⁰ NDTV News Desk, Civilian killed during anti-terror operation in Jammu and Kashmir's Kulgam, NDTV, August 5, 2022. Available at: <https://www.ndtv.com/india-news/civilian-killed-during-anti-terror-operation-in-jammu-and-kashmirs-kulgam-3229590>.

succumbed to his injuries in the hospital on August 5, 2022. The bodies of two local residents, Shalinder Kumar and Kamal Kishore, were found outside an Army camp in Rajouri's Falyana area on December 16, 2022.⁶¹ Residents accuse an army sentry of opening fire on the victims, who worked as porters in the camp.

Suspected militants killed seven civilians, including two minors, and grievously injured ten people in two separate attacks carried out within 12 hours in Rajouri district on January 1, 2023.⁶² Deepak Kumar, Satish Kumar, Pritam Lal, Prince Sharma and Shiv Pal were shot in the Dangri locality. Unidentified police sources and eyewitnesses claimed that the victims were targeted: according to one source, '(i)t seems they have checked the identity cards of some of the victims before firing at them.'⁶³ Four-year-old Vihan Sharma and 16-year-old Samiksha Sharma, cousins, died in an IED blast in the same locality.

The revival of village defence committees in 2022, renamed village defence guards, added further to insecurity through the proliferation of small arms. It was tried in 2002 by then home minister L.K. Advani, and found to be counter-productive.

Escalating threat to Kashmiri Pandits

Targeted killings of the Kashmiri Pandit minority in Kashmir and their exodus, as reported in the Forum's 2022 report⁶⁴, continue. Sunil Kumar Bhat and Pintu Kumar, two Kashmiri Pandit brothers, were shot at in an apple orchard at Shopian on August

⁶¹ Jehangir Ali, "Outrage as 2 Civilians Found Dead Outside Rajouri Army Camp, J&K Police Begins Probe," The Wire, December 16, 2022, <https://thewire.in/security/jammu-kashmir-rajouri-civilians-army-death>.

⁶² Outlook Web Desk, "J&K's Rajouri Village's Death Toll Rises to Six as Child Succumbs to Injuries, Village Holds Tearful Cremation," Outlook India, January 3, 2023, <https://www.outlookindia.com/national/j-and-k-rajouri-village-death-toll-rises-to-six-as-child-succumbs-to-injuries-village-holds-tearful-cremation-news-250547>.

⁶³ Anees Zargar, "Five Killed, near Dozen Injured in Back to Back Attacks in Rajouri Village," NewsClick, January 2, 2023, <https://www.newsclick.in/Five-Killed-Near-Dozen-Injured-Back-Back-Attacks-Rajouri-Village>.

⁶⁴ FHRJK 2022, op. cit., 4: Kashmiri Pandits, Delhi: The Forum for Human Rights in Jammu and Kashmir, 19-27; Peerzada Ashiq, 'Kashmiri Pandits flee Kashmir Valley', *The Hindu*, June 3, 2022.

16, 2022.⁶⁵ Sunil succumbed to his injuries. This was the second attack on the members of the community within 24 hours: earlier, Karan Kumar Singh was injured when terrorists lobbed a grenade at a 'minority habitation' in Budgam.⁶⁶ Puran Krishan Bhat, a Kashmiri Pandit orchardist, was shot dead on October 15, 2022.⁶⁷

In protest, hundreds of Kashmiri Pandit employees in the prime minister's return and rehabilitation scheme blocked the Jammu-Akhnoor road, demanding that they be transferred to Jammu.⁶⁸ A second wave of exodus, of Pandit families that had remained in the valley through decades of conflict, joined the first wave⁶⁹ that began in May 2022 and continued through June.⁷⁰

Armed groups declared the intent of ethnic cleansing. In December 2022, the Resistance Front posted a list of 56 Kashmiri Pandits working in the PM's scheme on their blog 'Kashmir Fight', claiming that they would turn the transit accommodation for them into graveyards.⁷¹ Militants shot dead Sanjay Sharma, a Kashmiri Pandit working as an ATM guard in Achan, Pulwama, on February 26, 2023.⁷² The Jammu and Kashmir Freedom Fighters (JKFF, see NIA section below) took responsibility for the attack.⁷³

⁶⁵ Mir Ehsan, 'Kashmiri Pandit Shot Dead, Brother Injured in J&K, 2nd Attack in Two Days', *The Hindustan Times*, August 16, 2022.

⁶⁶ PTI, 'Two Persons Injured in Grenade Attacks in Kashmir', *The Economic Times*, August 15, 2022.

⁶⁷ Nazir Masoodi, 'Another Kashmiri Pandit Shot Dead by Terrorists in Latest Targeted Killing', NDTV.com, October 15, 2022.

⁶⁸ PTI, 'Angry Kashmiri Pandits Block Jammu Road to Protest Latest Target', *The Tribune India*, October 15, 2022.

⁶⁹ Fayaz Wani, 'Targeted killings trigger fear, Kashmiri Pandits leave Valley', *The New Indian Express*, October 26, 2022; Nazir Masoodi, 'Last Kashmiri Pandit In Terror-Hit Village, A Woman, Migrates To Jammu', NDTV.com, October 28, 2022.

⁷⁰ FHRJK 2022, op. cit.; Peerzada Ashiq, 'Kashmiri Pandits flee Kashmir Valley', *The Hindu*, June 3, 2022.

⁷¹ Sunil Bhat, "'Will Turn Transit Colonies to Graveyard': Kashmir Fight's Fresh Threat to Kashmiri Pandits', *India Today*, December 19, 2022.

⁷² PTI, 'Kashmiri Pandit Sanjay Sharma Shot Dead by Terrorists Was Cremated in Pulwama District', *The Telegraph*, February 28, 2023.

⁷³ Peerzada Ashiq, 'Militants Gun down Kashmiri Pandit, New Terror Outfit Claims Hand in Killing', *The Hindu*, February 27, 2023.

Despite the clear atmosphere of fear and intimidation⁷⁴, the Divisional Commissioner of Kashmir responded to Pandit demands for transfer by imposing biometric clock-ins for all employees⁷⁵, resulting in the cessation of salary payments to protesting employees who had relocated to Jammu. After 300 days, protesting employees were forced to called off their strike and return to the valley, as they were unable to sustain themselves financially.⁷⁶ ‘We are not safe here; it is our helplessness that has made us come back to the Valley. Here, the situation is such that we do not even go to the office every day. We just go twice a week. We are also refraining from conversing much with anyone. Every time we step out of the house, we are scared’, said Amit Bhat, a Kashmiri Pandit employed under the PM’s scheme.

Attacks on migrant workers continue

Attacks on migrant workers, an issue highlighted in the Forum’s 2022 report, have continued over the past year. Mohammad Mumtaz was killed on August 4, 2022, when suspected militants lobbed a grenade at a migrant workers’ tent at Gadoora village in Pulwama, injuring two others.⁷⁷ Seven days later, militants shot dead 19-year old Mohammed Amrez from Madhepura, Bihar, on August 11, 2022 in Soadnara, Bandipora.⁷⁸ Sarpanch Abdul Majid said that the village had not witnessed such violence for two decades.

On November 3, 2022, suspected militants shot at and grievously injured Vikram from Bihar and Bahadur from Nepal, inside the Sabir Abdullah Public School premises in

⁷⁴ Tribune News Service, ‘‘Terror Outfit Lists 56 Kashmiri Pandits, Vows to Continue Attacks,’’ *The Tribune*, December 5, 2022.

⁷⁵ Hrishikesh Raj Anand, ‘Protest by Kashmiri Pandits under PM Employee Package Completes 240 Days, No Sign of Relocation’, *NewsClick.com*, January 7, 2023.

⁷⁶ Sunil Bhat, ‘Kashmiri Pandit Govt Employees Suspend Agitation after Administration Fails to Address Issues’, *India Today*, March 4, 2023.

⁷⁷ The Wire Staff, ‘Terrorists kill migrant worker in Jammu and Kashmir’s Pulwama’, *The Wire*, August 5, 2022.

⁷⁸ Jehangir Ali, ‘Bandipora: Killing of migrant worker sparks a fresh wave of fear in this quiet village’, *The Wire*, August 12, 2022.

Wanihama area of Anantnag district.⁷⁹ About a week later, Chhotu Prasad and Govind from Uttar Pradesh were shot at in Anantnag by suspected militants, sustaining leg injuries.⁸⁰ Muneerul Islam from West Bengal was shot at by unidentified militants in Ugergun Newa of Pulwama district on September 2, 2022, where he was employed.⁸¹ Monish Kumar and Ram Sagar, migrant workers from Kannauj, Uttar Pradesh, were killed in a grenade attack in Hermain village of Shopian district on October 18, 2022, the night before they planned to return home.⁸² A Lashkar-e-Taiba member was arrested in connection with the attack.

Again in Anantnag, militants killed Deepak Kumar from Udhampur, who worked at an amusement park, on May 29, 2023. The JKFF claimed responsibility for the attack, as they did for the Kashmiri Pandit killing.⁸³

National Investigation Agency (NIA) raids

In May 2023, the NIA was reported to have conducted raids in Budgam and Shopian districts of Kashmir division, continuing an investigation begun in June 2022 (RC-05/2022/NIA/JMU) into the activities of the Resistance Front, the United Liberation Front Jammu and Kashmir, the Mujahideen Gazwat-ul-Hind, Jammu and Kashmir Freedom Fighters and the Kashmir Tigers. According to the NIA, these were ‘new offshoots’ of banned terrorist groups such as the Lashkar-e-Taiba, Jaish-e-Mohammed, Hizb-ul-Mujahideen, Al-Badr and Al-Qaeda, who were involved in collecting and

⁷⁹ Express News Service, ‘J&K: 2 migrant workers from Bihar and Nepal shot by suspected militants’ *The Indian Express*, November 4, 2022.

⁸⁰ Shabir Ibn Yusuf, ‘2 Labourers Injured in Anantnag Terror Attack: Police’, *Greater Kashmir*, November 13, 2022.

⁸¹ Zulfikar Majid, ‘Militants Open Fire at Non-Local Labourer in J&K’s Pulwama’, *Deccan Herald*, September 2, 2022.

⁸² Bashaarat Masood, ‘Two Migrant Workers Killed in J&K Grenade Attack’, *The Indian Express*, October 19, 2022.

⁸³ The Hindu Bureau, ‘Residents Protest in Udhampur over Civilian’s Killing by Militants’, *The Hindu*, May 30, 2023.

distributing narcotics and armaments, including sticky bombs, dropped by drones from Pakistan.⁸⁴

Crimes against children and juvenile justice

In September 2022, the National Crime Records Bureau (NCRB) reported that the number of crimes against children in Jammu and Kashmir had risen from 606 in 2020 to 845 in 2021 (it was 470 in 2019). In the same period, crimes committed by juveniles had risen from 171 in 2020 to 323 in 2021 (it was 299 in 2019).⁸⁵ In November 2022, a supreme court bench of Justices J.B. Pardiwala and Ajay Rastogi questioned the efficacy of the 2015 juvenile justice act, which laid down guidelines that accorded with international laws for dealing with juvenile criminals. ‘We have started gathering an impression that the leniency with which the juveniles are dealt with in the name of goal of reformation is making them more and more emboldened in indulging in such heinous crimes’, the judges remarked.⁸⁶

Crimes against women

The 2022 NCRB report also showed that crimes against women have risen steadily, from 3,069 in 2019 to 3,405 in 2020 and 3,937 in 2021. Of the 3,405 crimes reported in 2020, 2,329 were pending investigation in 2021. Of the 6,275 cases to be investigated in 2021, 1,135 were declared false. The vast majority of cases were of kidnapping and sexual harassment.⁸⁷

⁸⁴ NIA press release, ‘NIA Cracks Down Again on Newly Floated Terror Outfits Across Kashmir, Seizes Incriminating Material’, May 31, 2023, https://www.nia.gov.in/writereaddata/Portal/PressReleaseNew/1472_1_Pr.pdf.

⁸⁵ National Crime Records Bureau (NCRB), *Crime in India 2021*, Chapter 4A: Crime Against Children (States/UTs), TABLE 4A.1 Crime Against Children (State/UT-wise) - 2019-2021; Chapter 5A: Juveniles in Conflict with Law (States/UTs), TABLE 5A.1 Crime Committed by Juveniles (IPC+SLL) - 2019-2021.

⁸⁶ Criminal Appeal No. 1928 of 2022, *The State of Jammu & Kashmir (Now U.T. Of Jammu & Kashmir) & Ors. Versus Shubam Sangra* (2022) SC 965, November 16, 2022. One of the accused in the 2018 Kathua rape and murder, Sangra was found to have wrongly claimed that he was a juvenile.

⁸⁷ *Crime in India 2021*, op. cit., Chapter 3A: Crime Against Women (States/UTs), Tables 3A.1: Crime against Women (State/UT-wise) - 2019-2021, 3A.2: Crimes Against Women (Crime Head-wise & State/UT-wise) – 2021, 3A6: Police Disposal of Crime Against Women Cases (State/UT-wise) – 2021.

Arrests

The number of arrests fell from 347 between August 2021-July 2022 to 187 between August 2022-July 2023. Overall, however, it was more than twice that in 2012-2015. There were 1,071 arrests in 2019-2023 (not counting the over 5,000 political leader and cadre, journalists and civil society activists arrested in August 2019, including 144 minors), as compared to 448 in 2012-2015.⁸⁸ Despite earlier and current judicial efforts to curtail the use of draconian legislation such as the UAPA and the PSA, both continue to be used, including against the media.

UAPA and PSA cases

In December 2022, Minister of State for Home Affairs Nityanand Rai reported to parliament that there were 830 pending investigations into UAPA arrests at end 2021.⁸⁹ Jammu and Kashmir had the highest number of cases registered as offences against the state amongst union territories at 284, and the fourth highest amongst states and union territories combined (after Uttar Pradesh, Tamil Nadu and Assam).⁹⁰ Of 668 people arrested for offences against the state, 651 were charge-sheeted, none were convicted, one was discharged and 26 were acquitted.⁹¹ In February 2023 it was reported that up to 22 people had been detained under the PSA since January 1.⁹²

One reason for the low rate of convictions is that there are only three special courts, in Srinagar, Anantnag and Baramulla, that try an average of 25 cases each per day. But a graver reason is shoddy evidence collection and blurring of the line between freedom of expression and dissent on the one hand, and incitement to violence against the state on the other.

⁸⁸ South Asia Terrorism Portal, Datasheets: Jammu and Kashmir, Yearly Arrests, Monthly Arrests, 2000-2023, <https://www.satp.org/datasheet-terrorist-attack/arrest/india-jammukashmir>.

⁸⁹ The Wire Staff, '3,998 UAPA Cases Pending Investigation by End of 2021: MHA', *The Wire*, December 13, 2022.

⁹⁰ *Crime in India 2021*, op. cit., Chapter 10A: Offences against the State, TABLE 10A.1: Offences against State (State/UT-wise) - 2019-2021.

⁹¹ *Ibid*, TABLE 10A.8 Disposal of Persons Arrested for Offences against State (State/UT-wise) – 2021.

⁹² Ananya Bhardwaj, 'With PSA detentions getting quashed & revoked, how J&K cops are trying to make 'tighter' cases', *The Print*, February 17, 2023.

In November 2022, taking note of the lack of convictions, the union home ministry established a state investigation agency (SIA) to coordinate with the NIA, along with district-level special investigation units (SIUs) to improve evidence collection for prosecutions. Notably, there was little mention of improving investigation before arrests, though one district superintendent was reported as saying that the special investigation units ‘would also bring a shift in arrests, as only “accused with solid evidence that can be produced in court” would be held’.⁹³ The country-wide record of the NIA and SIAs, however, leans towards wrongful arrests and biased prosecution, as the section on non-application of mind below shows.

Curiously too, the union territory was given a state investigation agency without its statehood being returned, and when not a single state oversight and human rights institution had been restored.

Continuing media arrests under the UAPA and PSA: Irfan Mehraj

In March 2023, journalist Irfan Mehraj was arrested by the NIA under the UAPA, as part of its ongoing investigations into Kashmiri non-governmental organisations (NGOs), trusts and societies alleged to fund ‘terror-related activities’.⁹⁴ The NIA alleged that Mehraj propagated ‘a secessionist agenda’; he was ‘a close associate’ of prominent human rights defender Khurram Parvez, and worked at his organisation, the Jammu and Kashmir Coalition of Civil Societies (JKCCS). Mehraj had left the JKCCS in March 2022. He was founding-editor of the *Wande Magazine* and contributed to TwoCircles.net, the *Deutsche Welle* newspaper and Al Jazeera, writing extensively about human rights violations in Kashmir, including fake encounter killings, and the situation in Kashmir after the reading down of Article 370.⁹⁵ Both the office of the UN high commissioner for

⁹³ Naveed Iqbal, “Low Conviction, High Pile-up: Jammu and Kashmir Taps Special Units for UAPA Cases,” *The Indian Express*, November 28, 2022.

⁹⁴ NIA press release, ‘NIA makes first arrest in NGO Terror Funding Case’, March 21, 2023. Available at: https://www.nia.gov.in/writereaddata/Portal/PressReleaseNew/1420_1_Pr.pdf.

⁹⁵ Front Line Defenders, *Profile of Irfan Mehraj*. Available on: <https://www.frontlinedefenders.org/en/profile/irfan-mehraj>.

human rights and Amnesty International sought his release.⁹⁶ His arrest, the Press Council of India said, ‘ominously points towards a violation of freedom of speech and expression’. It seemed to be, the Journalists’ Federation of Kashmir said, ‘another tactic of intimidating journalists in Kashmir’.⁹⁷

Soon after Mehraj’s arrest, Khurram Parvez was re-arrested under the same case. He has remained behind bars since November 2021, after his arrest by the NIA on terror-funding and conspiracy charges.⁹⁸

In June 2023, the Court of the Principal District & Sessions Judge, Patiala House Courts, New Delhi allowed the NIA to detain Mehraj and Parvez in judicial custody for an additional period of 45 days, i.e., up to 135 days.⁹⁹

Ongoing cases against journalist Fahad Shah and PhD scholar Abdul Aala Fazli

In its 2022 report, the Forum reported the arrests and denial of bail to Fahad Shah, editor-in-chief of *The Kashmir Walla*, and PhD scholar Abdul Aala Fazli (also spelled Fazili), under the UAPA (FIR No. 01/2022). Shah was also facing UAPA charges in three other cases and had been detained under the PSA as well.¹⁰⁰

⁹⁶ UNHCHR, ‘India: UN expert demands immediate end to crackdown on Kashmiri human rights defenders’, UN Human Rights, 24 March 2023. Available at: <https://www.ohchr.org/en/press-releases/2023/03/india-un-expert-demands-immediate-end-crackdown-kashmiri-human-rights>; Amnesty International, ‘India: End reprisals against the Jammu and Kashmir Coalition of Civil Society (JKCCS) and human rights defenders in Kashmir’, 12 May 2023. Available at: <https://www.amnesty.org/en/documents/asa20/6781/2023/en/>.

⁹⁷ The Hindu Bureau, ‘Kashmiri journalist arrested under UAPA’, *The Hindu*, March 21, 2023.

⁹⁸ BBC News, ‘Khurram Parvez: Kashmiri rights activist arrested under anti-terror law’, BBC.com, 23 November 2021.

⁹⁹ Nupur Thapliyal, ‘Delhi Court Extends Judicial Custody Of Activist Khurram Parvez, Journalist Irfan Mehraj For 45 More Days In UAPA Case’, LiveLaw.in, June 13, 2023. Available at: <https://www.livelaw.in/news-updates/delhi-court-judicial-custody-irfan-mehraj-khurram-parvez-uapa-case-nia-230576?infinite-scroll=1>.

¹⁰⁰ FHRJK, *Three Years as a Union Territory: Human Rights In Jammu and Kashmir, August 2021-July 2022*, ‘Civilian Security’, 7.

In October 2022, a charge-sheet was filed against Shah, claiming that: a) the police found 41 seditious items/articles on *The Kashmir Walla* (the articles were not listed); b) the paper's subscription 'helps anti-India elements conceal their connections and funding from hostile foreign agencies and terrorists and secessionist entities'; c) Shah had intentionally conspired with Fazli on the content of Fazli's 2011 article; d) it found a book of 'seditious' poems on Shah's computer; e) that the 2011 article ignited feelings of jihad in the youth; and g) funding received from Reporters without Borders (RSF) was 'suspicious' as 'RSF is unfairly critical of south Asian countries, especially India'.¹⁰¹ RSF, the French media watchdog, had ranked India 142nd out of 180 countries in the 2021 World Press Freedom Index; 150th in 2022; and 161st out of 180 in 2023.¹⁰²

In December 2022, a special NIA court granted default bail to Fahad Shah in two cases, as the Jammu and Kashmir police failed to file charge-sheets within the stipulated deadline of 180 days.¹⁰³ However, neither he nor Fazli were granted bail in in FIR No. 01/2022. In a summary order, the High Court dismissed their bail applications due to the serious 'allegations levelled against the appellant.'¹⁰⁴

On March 16, 2023, the special NIA court framed charges against Shah and Fazli in FIR No 01/2022, under sections 13 and 18 of the UAPA, and sections 121 (abetting waging of war against the government of India) and 153B (imputations, assertions prejudicial to national integration) of the IPC. Fazli was additionally charged under the IPC's section 201 (causing disappearance of evidence of offence). Shah was additionally charged under sections 35 and 39 of the Foreign Contribution (Regulation) Act (FCRA), for contravening its provisions.¹⁰⁵

¹⁰¹ Tanishka Sodhi, 'Key takeaways from Kashmir Walla chargesheet', Newslandry.com, March 31, 2023.

¹⁰² Reporters Without Borders World Press Freedom Index 2021, 2022, 2023. Available here: <https://rsf.org/en/index?year=2021>, <https://rsf.org/en/index?year=2022>, <https://rsf.org/en/index>.

¹⁰³ NL Team, 'Kashmir Walla editor Fahad Shah granted bail in two cases by NIA court', Newslandry.com, December 9, 2022.

¹⁰⁴ Basit Amin Makhdoomi, 'UAPA: JKL High Court Denies Bail to PhD Scholar Arrested Over 11 Yrs Old Online Article', Live Law.in, December 24, 2022.

¹⁰⁵ Scroll staff, 'NIA court frames charges against 'The Kashmir Walla' editor, academician for 'seditious' article', Scroll.in, March 18, 2023.

In April 2023, a single-judge bench of the Jammu and Kashmir high court quashed the PSA order against Shah on the ground that his fundamental right under Article 22.5 of the constitution and section 13.2 of the PSA, guaranteeing that no person who is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest, had been violated.¹⁰⁶ The Jammu and Kashmir police had failed to provide Shah with a copy of the dossier and material records, such as copies of FIRs, which had been relied on.

The second ground for quashing the PSA order was the blanket use of terms such as maintenance of public order in the detention order. ‘(M)ere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the ‘maintenance of public order’, judge Nargal observed.¹⁰⁷

STATUS OF CASES PENDING AGAINST FAHAD SHAH

S. No.	FIR NUMBER	STATUS
1.	FIR 19/2022, PS Pulwama	Default bail was granted on 8 December 2022.
2.	FIR No. 70/2020 of PS Safakadal Srinagar	Default bail was granted on 8 December 2022.
3.	FIR No. 06/2021 of PS Imamsahib, Shopian	The trial emanating from this FIR has still not begun. It remains pending for arguments on charge.
4.	FIR No 01/2022	Charges have been framed against both, Shah and Fazili.

¹⁰⁶ Basit Amin Makhdoomi, *Jammu & Kashmir High Court Quashes Journalist’s Detention Under PSA, Says Detaining Authority Used Public Order, State Security With “Wavering Mind”*, Live Law.in, April 20, 2023. Available at: <https://www.livelaw.in/high-court/jammu-kashmir-high-court-journalist-fahad-shah-preventive-detention-public-order-security-of-state-226779>.

¹⁰⁷ The Hindu Bureau, ‘J&K court quashes Kashmiri journalist Fahad Shah’s detention under PSA’, *The Hindu*, April 19, 2023.

18 June 2023, marked 500 days since Shah's arrest.¹⁰⁸ Fazli completed a year of incarceration on April 17, 2023.

Journalist Aasif Sultan, whose arrest and trial the Forum has covered in its 2020 and 2022 reports, will have been incarcerated for 5 years in August 2023.

Other arrests under the UAPA and PSA

Abdullah Saud Ansari, purportedly a member of the Popular Front of India (PFI), was arrested in September 2022 and booked under sections 7,8,13(1)(a)(b) and 13(2) of the UAPA and 153A, 153B of the IPC.¹⁰⁹ He was allegedly found in possession of inflammatory materials and speeches.

September 2022 also saw arrests under the PSA of three clerics from South Kashmir, Mushtaq Ahmad Veeri, Abdul Rashid Dawoodi and Sarjan Barkati. Veeri was previously detained under the PSA in March 2019 and was finally released after 21 months of detention on October 30, 2020. According to Kashmir's additional Director General of Police, Vijay Kumar, the police had ample proof that the clerics were 'provoking people'.¹¹⁰

In the same month, five alleged activists of the Jamaat-e-Islami (JeI), which was banned in 2019, were also arrested under the PSA.¹¹¹

No charge-sheets, non-application of mind: bail and quashing orders

A series of court orders underline the cynical use of draconian legislation by the NIA and Jammu and Kashmir police.

¹⁰⁸ Mubashir Naik & Betwa Sharma, '500 Days: Kashmiri Journalist Fahad Shah's Incarceration Is An Exercise In Assumptions & Retribution', Article 14.com, June 19, 2023.

¹⁰⁹ Ratna Singh, 'Special NIA Court grants bail to Abdullah Saud Ansari booked under UAPA for alleged PFI membership', Bar and Bench, January 10, 2023.

¹¹⁰ Irshad Hussain & Mubashir Naik, 'Islamic Preachers Latest to be Detained Under Feared J&K Law, as Kashmir Crackdown Widens', Article 14.com, October 25, 2022.

¹¹¹ Bashaarat Masood, 'Jammu and Kashmir: Two clerics, 5 Jamaat activists held, booked under PSA', *The Indian Express*, September 16, 2022.

Fayaz Ahmad Khan, a casual labourer from Kupwara who was arrested under the UAPA on May 14, 2022, secured default bail on November 10, 2022 due to the NIA's failure to file a charge-sheet within the stipulated 180 days. The NIA did not even file a reply to his bail application.¹¹²

On December 31, 2022, the Jammu and Kashmir high court quashed the PSA detention of 18 years-old Sahil Shakeel.¹¹³ Stating that the detention order was 'reflective of the non-application of mind on the part of the District Magistrate, Shopian', the judge found that the '(i)mpugned order of detention is nothing but a mere postal delivery of the Dossier of Senior Superintendent of Police, Shopian.' Detention at 'such an impressionable age' had exposed Shakeel to 'the company of the hardcore jail inmates/detenues' and the time spent in detention 'must have caused psychological damage to him.'¹¹⁴

On January 2, 2023, Mannan Gulzar Dar, a Kashmiri journalist who was arrested in October 2021, secured bail from an NIA court in Delhi. He had been accused of working with Pakistan-based handlers/commanders of the Hizb-ul-Mujahideen, Lashkar-e-Taiba, Al-Badr and others to 'execute a spree of targeted killings in the Valley in October 2021.'¹¹⁵ While granting bail, the court noted that 'none of the evidence referred to...indicates any act of terrorist activity in any manner.'¹¹⁶

On January 7, 2023, Abdullah Saud Ansari was granted bail by an NIA court in Lucknow on the grounds that neither he nor his family was given any information

¹¹² Tarique Anwar, 'Bail in 3 Cases Shows NIA Laxity, Insufficient Evidence', NewsClick.in, January 11, 2023.

¹¹³ Syed Rukaya, 'High Court quashes Public Safety Act against minor', *Rising Kashmir*, January 8, 2023.

¹¹⁴ Sahil Shakeel v. UT of J&K and others, WP (Crl) 463/2022 CrIM 832/2022.

¹¹⁵ Tarique Anwar, 'Bail in 3 Cases Shows NIA Laxity, Insufficient Evidence', NewsClick.in, January 11, 2023.

¹¹⁶ Maktoob staff, 'Kashmiri photojournalist gets bail in UAPA case after 438 days', Maktoobmedia.com, July 24, 2023.

before he was taken into detention, thus violating Section 41A of the Criminal Procedure Code (CrPC), 1973.¹¹⁷

In March 2023, the Jammu and Kashmir high court quashed a 2022 PSA detention order against Adil Gafoor, charging him with hate speech against a former BJP spokesperson in June 2022.¹¹⁸ Noting that two detention orders were passed on the same grounds, on 29.6.2022 and 7.7.2022, which was detrimental to Gafoor's rights and a cause for 'unending suffering', the court also found that Gafoor was not supplied with materials such as copies of the FIRs and statements of witnesses.¹¹⁹

Curtailing freedom of movement of the media

In October 2022, Pulitzer prize-winning journalist Sana Irshad Mattoo was stopped from flying to receive her award by immigration authorities in the Delhi airport. She had been similarly prevented in July, from going to Paris as one of 10 winners of the Serendipity Arles grant 2020. The immigration official told her they had received a request to stop her from the Jammu and Kashmir police.¹²⁰

Custodial deaths

In August 2022, 36 years-old Muni Mohammad, a resident of Rampora in Kathua, died in Jammu's Kot Balwal jail while he was offering prayers, apparently of a heart attack.¹²¹ This was the second incident of custodial death at Kot Balwal jail in less than one year.

¹¹⁷ Sparsh Upadhyay, 'Lucknow NIA Court Grants Bail to Abdullah Saud Ansari Accused of Being an Active Member of Banned Outfit PFI', Live Law.in, January 9, 2023.

¹¹⁸ The Conversation, 'Jammu-Kashmir Man Booked Under PSA For Delivering Hate Speech', *Outlook magazine*, July 4, 2022.

¹¹⁹ Adil Gafoor v. UT of J&K and others, WP (CrI) No. 33/2022.

¹²⁰ The Wire Staff, 'Stopped From Flying Out of Country to Collect Pulitzer Prize, Says Kashmiri Journalist', *The Wire*, October 19, 2022.

¹²¹ News Desk, 'Undertrial prisoner from Kathua dies in Kot Bhalwal jail in Jammu', *The Kashmiriyat*, August 19, 2022.

In October 2022, Altaf Ahmad Shah of the dissident Hurriyat (Geelani) faction died in Tihar jail while fighting renal cancer, hypertension and diabetes. He had been in Tihar for the past five years.¹²² While Tihar has the capacity to house 5,200 inmates, it currently holds 13,000 prisoners.¹²³

On October 25, 2022, 37 years-old Mohammad Yousuf Bhat died in Kupwara jail , after ‘falling from a sub-jail building.’ His wife cited a wound on his head as reason to question the cause of death.¹²⁴

On December 27, 2022, 75 years-old Mohammad Maqbool Khan died in Kupwara jail. Jail officers claimed that he was already on medication, was seriously ill and was moved to the sub-district hospital Kupwara, where he died shortly after.¹²⁵

On June 16, 2023, the Jammu and Kashmir high court directed the Jammu and Kashmir administration to pay Rs. 5 lakhs as compensation to the family of an undertrial prisoner killed by a co-prisoner in Srinagar central jail.¹²⁶ The jail authorities had failed to ensure the safety and security of the unfortunate undertrial prisoner, the judge observed. The deplorable state of the prison showed ‘clear negligence and callousness’; they ‘cannot escape their responsibility for the custodial death of the deceased.’¹²⁷

¹²² Aljazeera staff, ‘Kashmir pro-freedom leader Altaf Ahmad Shah dies in India custody’, Aljazeera.com, October 11, 2022.

¹²³ ANI, ‘PIL in Delhi HC against overcrowding of prisoners in Tihar Jail’, *The Times of India*, November 8, 2022.

¹²⁴ Safwat Zargar, ‘What a string of deaths in one jail says about the state of Jammu and Kashmir’s prisons’, Scroll.in, March 2, 2023.

¹²⁵ GK Web Desk, ‘Undertrial, 75, dies in Kupwara district jail’, *Greater Kashmir*, December 28, 2022.

¹²⁶ Basit Amin Makhdoomi, ‘Jammu & Kashmir and Ladakh High Court Orders State to Pay Rs 5 Lakh Compensation to Family of Undertrial Killed in Srinagar Central Jail’, Live Law, June 18, 2023.

¹²⁷ Mst. Jana & Others v. State Of J&K, OWP No.718/2015. Available at: https://www.livelaw.in/pdf_upload/pending-1687616412-display-27-477297.pdf.

Overcrowded prisons

The Forum's 2021 report drew attention to the overcrowding of prisons in Jammu and Kashmir. Jammu and Kashmir has 14 prison complexes, which include two central jails, ten district jails, one special jail and one sub-jail.¹²⁸ Together these complexes have a total capacity to house 3,629 inmates, but they lodged 5,300 as of June 2023.

As of December 2022, the central jail Kot Balwal housed 1,016 though its sanctioned capacity was 902, the central jail Srinagar housed 722 while its capacity was 509, and the district jail Jammu housed 688 while its capacity was 426. Similarly the district jail Kathua housed 83 above capacity, the district jail Udhampur housed 223 above capacity, the district jail Badherwah housed 29 above capacity, the district jail Rajouri housed 35 above capacity, the district jail Poonch housed 40 above capacity, the district jail Baramulla housed 116 above capacity, the district jail Kupwara housed 154 above capacity, the district jail Anantnag housed 51 above capacity, the district jail Kishtwar housed 18 above capacity and the sub-jail Reasi housed 41 above capacity.¹²⁹

Instead of re-evaluating systemic issues such as preventive custody, arrest and detention practices, and the disproportionate number of individuals imprisoned as undertrials, Jammu and Kashmir's Director-General of prisons submitted a proposal to the home department seeking construction of two additional jails in Reasi and Bandipora. 148 kanals of land has also been set aside in Dambra, Tehsil Mahanpur of district Kathua, for construction of high-security jails.¹³⁰

¹²⁸ Prisons Department, Jammu and Kashmir. Available at: <https://jkprisons.in>.

¹²⁹ Syed Rukaya, 'Provide basic facilities to inmates, under trials in jails, HC to Govt', *Rising Kashmir*, December 1, 2022.

¹³⁰ *Ibid.*

ELECTIONS

Under the Indian Constitution, citizens are entitled to vote for their representatives every five years at both state and national levels as provided in Sections 14 and 15 of the Representation of Peoples Act, 1951, read with Articles 325 and 326 of the Indian constitution. Under Article 52 of the Jammu and Kashmir constitution (rendered redundant by the 2019 orders), assembly terms lasted six years. Yet Jammu and Kashmir has not had legislative elections for the past nine years. The last assembly election was in 2014, and the last elected administration fell in June 2018, after the BJP withdrew from its coalition with the PDP. After a year of president's rule, parliament enacted the 2019 Jammu and Kashmir reorganisation act, dividing the state into two union territories administered by lieutenant-governors. Like the National Capital Territory of Delhi and several other union territories, Jammu and Kashmir was entitled to an elected assembly with curtailed powers (for example, law and order remained with the union home ministry and security with the lieutenant-governor), Ladakh was not (see the next section, Focus Ladakh).

Jammu and Kashmir has now completed five years without an elected administration. The last time such a situation occurred was during the high-militancy years of 1990 to 1996, when conditions were too insecure to organise an election, as the poor turnout and tight security for the 1996 election showed. Though militancy continued to increase after the 1996 election, the Vajpayee administration held a largely free and fair election in 2002, which was marred by militant attacks on candidates, party cadre and election booths. Close to two hundred people were killed in the run up to and during the 2002 election. But subsequent elections in 2008 and 2014 were generally peaceful, free and fair. Home Minister Amit Shah, in a political rally in October 2022, himself underscored reduced militant activity since 2019 compared to the period of 2006-2013,¹³¹ raising questions about the rationale behind delaying the elections.

¹³¹ Shakir Mir, 'Amit Shah's Claim of 'less Militancy' Belied by Spate of Violent Incidents, Brewing Resentment,' *The Wire*, October 7, 2022, <https://thewire.in/security/amit-shah-jammu-kashmir-militancy>.

Delimitation, additional seats and expansion of electoral rolls

The ostensible reason for delaying the assembly election due in 2020 was the reorganisation act's requirement of a fresh delimitation of constituencies following expansion in their number to 114 from 107. Jammu and Kashmir's delimitation had earlier been frozen till 2026, along with the bulk of other Indian states. In 2019, however, it was added to four other states to be delimited; the process was later postponed for the four other states, leaving only Jammu and Kashmir. The decision contravened the state legislature's 29th amendment to the state constitution in 2002¹³², as Mohammad Yusuf Tarigami, the spokesman of the People's Alliance for the Gupkar Declaration, pointed out.¹³³

After several extensions, the Delimitation Commission submitted its final report in May 2022.¹³⁴ Its recommendations were discussed in detail in the Forum's 2022 report. In brief, it raised two concerns: First, it recommended expansion of the assembly from 107 members to 114. But of the seven new seats to be added, it gave six to Jammu and only one to the valley. In doing so, it derogated from the fundamental democratic principle of equal representation by diminishing the value of some voters against others, with an apparent impact on different regions and/or religious communities. With 56.15 percent of the erstwhile state's population, the valley was allocated 47 seats as compared to Jammu's 43 with 43.85 percent of the population. Former state finance minister Haseeb Drabu likened the commission's award to weighting the value of Kashmir's voter at 0.8 to Jammu's 1.¹³⁵

Second, the rearrangement of political constituencies concentrated minority voters in fewer districts or spread them across multiple districts, vitiating their vote share. The

¹³² The Constitution of Jammu and Kashmir (Twenty-Ninth Amendment) Act, 2002, April 23, 2002, s.2, amending Section 47 of the constitution to state that fresh delimitation would be conducted after the 2026 census was published.

¹³³ Vineet Bhalla, 'Rationality is missing in delimitation exercise in Jammu and Kashmir: M.Y. Tarigami', *The Leaflet*, May 19, 2022.

¹³⁴ Rouf A Roshangar, 'Uncertainty Looms over Assembly Elections in Jammu and Kashmir', *India Today*, July 31, 2022.

¹³⁵ Haseeb A. Drabu, 'Delimitation Commission Fails People Of J&K, Hurts Democracy', *The Indian Express*, May 7, 2022.

voter in Jammu's Chenab valley, with smaller constituencies, had a higher value than his/her counterpart in Pir Panjal. New Hindu-majority constituencies were created in Jammu, for example, Padder, with a population of just over fifty thousand, while thrice as numerous Muslim regions such as Surankote in Poonch district were not allocated an assembly seat. A similar approach was used to add Jammu's Muslim-majority Poonch and Rajouri to Kashmir's Anantnag Lok Sabha constituency. Former chief minister Mehbooba Mufti called it a 'tactical process of rigging before the elections', whereby the majority was being converted into a minority to achieve political gains. 'We have rejected the delimitation commission from the outset. It does not matter to us what the verdict is,' she added.¹³⁶

Despite these concerns, the supreme court dismissed a constitutional challenge to the delimitation exercise on February 13, 2023¹³⁷, holding that there was no illegality in the establishment of the commission, nor was there any illegality with regards to the delimitation exercise undertaken by it. Many fear that the judgment might further cement the reading down of Article 370 and dissolution of the state of Jammu and Kashmir as *faits accompli*.¹³⁸

Crucially, the ruling on the validity of the delimitation exercise was made prior to adjudication on petitions questioning the validity of the reorganisation act. Hearings on these petitions are due in August 2023. It is unclear how the judgement, when it comes, will impact on the delimitation award. If the petitioners' arguments are upheld and the 'clock is turned back', as Justice Sanjay Kishan Kaul put it in 2020¹³⁹, it might be nullified. On the face of it, the award departs from the delimitation criteria laid down by the 2002 delimitation act and amended in 2019, in which equal apportioning of the state or union territory's population is the baseline.¹⁴⁰

¹³⁶ Express Web Desk, 'We Have Rejected Delimitation Commission, Verdict Doesn't Matter: PDP's Mehbooba Mufti', *The Indian Express*, February 13, 2023.

¹³⁷ Haji Abdul v. Union of India (2023) SCC Online SC 138.

¹³⁸ Ashwin Vardarajan, 'Deepening Fait Accompli: The Supreme Court's J&K Delimitation Judgment – I', Guest Post, *Indian Constitutional Law and Philosophy*, March 5, 2023.

¹³⁹ Shruti Mahajan, 'Turning the Clock Back: How the Supreme Court Has Dealt with Cases Arising out of Last Year's Abrogation of Article 370,' *Bar and Bench*, August 5, 2022.

¹⁴⁰ The Delimitation Act, 2002 (Act 33 of 2002) June 3, 2002, s.8: Readjustment of number of seats, s.9: Delimitation of constituencies.

Changes to voter eligibility

Prior to 2019, voting and property ownership were restricted to permanent residents under Article 35-A of the Indian constitution and Article 140 of the Jammu and Kashmir constitution. People who resided in Jammu and Kashmir but were not permanent residents were only eligible to vote in parliamentary elections and were categorised as non-permanent resident voters.¹⁴¹

Article 35-A disappeared with the reading down of Article 370, and Article 140 of the state's constitution disappeared when the reorganisation act superseded it, after which any person 'ordinarily resident' in Jammu and Kashmir became eligible to enlist as a voter. In March 2020, a new definition of domicile for Jammu and Kashmir was introduced, whereby (a) any person residing in Jammu and Kashmir for more than 15 years, (b) any person who had studied in Jammu and Kashmir for more than 7 years, and (c) any person who was registered as a migrant by the Relief and Rehabilitation Commissioner (Migrants) in the union territory of Jammu and Kashmir, were eligible to be permanent residents.¹⁴² The Forum's 2020 report examined the impact of the new domicile rules on employment prospects, deepening fears regarding already high unemployment rates.

Following delimitation, the electoral rolls were revised twice.¹⁴³ A special summary revision resulted in the addition of a staggering 7.7 lakh new voters (net figures, after accounting for deletion of 4 lakh voters) to the existing voter pool of 78.4 lakh voters.¹⁴⁴ The figure would have been even greater had the Jammu deputy commissioner and

¹⁴¹ Article 35-A, The Constitution of India, 1949; The Constitution of Jammu and Kashmir, 1956, X: Elections, Article 140; PTI, 'Post Article 370 and applicability of RPA, any Indian "ordinarily residing" at a place eligible to vote there: J&K govt', *The Times of India*, August 18, 2022.

¹⁴² Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order, 2020, *The Gazette of India – Extraordinary*, II:3(ii), March 31, 2020.

¹⁴³ Zulfikar Majid, 'Jammu and Kashmir Revision of Electoral Rolls Completed Second Time in a Year,' *Deccan Herald*, May 28, 2023.

¹⁴⁴ Zulfikar Majid, 'Over Seven Lakh Added in Jammu and Kashmir Final Voter List,' *Deccan Herald*, November 25, 2022; Sanjay Khajuria, 'Revised Jammu and Kashmir Poll Rolls May Expand 33% with 25 Lakh New Voters over 3 Years: CEO,' *The Times of India*, August 18, 2022.

election officer's 2022 order been applied across the former state, authorising tehsildars (ground-level revenue officials) to register any person who had resided in Jammu district for more than a year as a voter. The order was withdrawn in a day, after widespread furore.¹⁴⁵

New reservations

The union law ministry has four new bills for introduction in parliament: the Jammu and Kashmir Reorganisation (Amendment) Bill, 2023, which was tabled on July 26, 2023, the Constitution (Jammu and Kashmir) Scheduled Tribes Order (Amendment) Bill, 2023, the Constitution (Jammu and Kashmir) Scheduled Castes Order (Amendment) Bill, 2023 and the Jammu and Kashmir Reservation (Amendment) Bill, 2023.

The Jammu and Kashmir Reorganisation (Amendment) Bill seeks to replace '107 seats' in section 14 of the Act with '114 seats', and insert two new sections, 15A and 15B, which reserve two seats for 'Kashmiri migrants', one of them a woman, and one seat for people displaced from Pakistani-held territories of Jammu and Kashmir. All three would be nominated by the lieutenant-governor.¹⁴⁶

The Scheduled Tribes Order (Amendment) Bill seeks to include the Pahari community and the Paddari, Gadda Braman and Koli tribes to Jammu and Kashmir's list of scheduled tribes who are entitled to reservation in jobs and admission to professional educational institutions, a change which is seen by many in the Gujjar and Bakerwal communities as further reducing their access to opportunity.

The bill also has an electoral impact. Paharis will now be able to contest assembly seats reserved for scheduled tribes, which were previously constituencies of Gujjars and Bakerwals. The most affected area will be the Pir Panchal range, which includes Rajouri and Poonch, where Paharis are in a majority in seven out of eight assembly segments. It has four seats reserved for scheduled tribes.

¹⁴⁵ Sunil Bhat, 'Jammu Official Withdraws Order Allowing Residents of More than 1 Year to Become Voters', *India Today*, October 13, 2022.

¹⁴⁶ Muzammil Jaleel, 'Centre to amend law to reserve Assembly seats for PoK displaced, Kashmiri 'migrants'', *The Indian Express*, July 23, 2023.

The third bill seeks to include the Valmiki community in Jammu and Kashmir's list of scheduled castes. Valmikis were inducted by the state government in 1957 following a strike by *safai karamcharis* (sanitation workers) in Jammu. The fourth bill renames 'weak and under-privileged classes (social castes)' as 'other backward classes' (OBCs), adding 15 more communities to the OBC list, including West Pakistan refugees and Gorkhas.¹⁴⁷

The electoral impact of these two bills will also be mostly in Jammu, which has the largest number of scheduled castes as well as OBCs. Effectively, it will entrench caste- and community-based voter mobilisation. Gujjar organisations warn of a mass agitation should the scheduled tribes amendment bill be tabled. They have consistently advocated alternative provisions for Paharis, who were given 4 percent reservation in the OBC quota in 2020.¹⁴⁸

Election delays impermissible

A series of judgements have made it clear that the holding of time-bound elections cannot be contingent on factors such as delayed delimitation. India's courts have observed that periodic, free and fair elections are the 'substratum' and 'inseparable twin' of democracy¹⁴⁹, which forms part of the basic structure of the constitution.

In 2022, while hearing a petition concerning delay in scheduling Madhya Pradesh's 23,000 local body elections, the supreme court held that '(i)n any case, the ongoing activity of delimitation or formation of ward cannot be a legitimate ground to be set forth by any authority, much less the state election commission – to not discharge its constitutional obligation in notifying the election programme at the opportune time and to ensure that the elected body is installed before the expiry of 5 (five) years term of the outgoing elected body.'¹⁵⁰ The court termed the delay, which had lasted over two years, as 'bordering on (the) breakdown of law'.

¹⁴⁷ Umer Maqbool, 'Are J&K's Reservation Laws Being Changed to Further Marginalise Kashmir?', *The Wire*, March 7, 2023.

¹⁴⁸ Jehangir Ali, "'Manipur-Like': J&K Gujjars, Bakerwals Threaten Protests Over Bill to Grant ST Status to Paharis', *The Wire*, June 30, 2023.

¹⁴⁹ See, for example, *In the Matter of Special Reference No. 1 of 2002 (Gujarat Assembly Election Matter)*, (2002) 8 SCC 237.

¹⁵⁰ *Suresh Mahajan v State of Madhya Pradesh*, (2022) 12 SCC 770.

In 1985, the supreme court held in *Lakshmi Charan Sen* that while the election commission must follow due process of law to prepare electoral rolls, it must also complete the process in time to meet the scheduled date for an election to be held when the term of the administration is due to expire.¹⁵¹ In 2006, the supreme court ruled that elections should not be delayed, since that would cause gross violation of the mandatory provisions of the constitution, unless under exceptional circumstances such as rioting, breakdown of law and order or natural calamities which would prevent their smooth conduct.¹⁵²

The delay in conducting legislative elections is also violative of Article 25(b) of the International Covenant on Civil and Political Rights, which guarantees to every citizen the right to ‘vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.’

Local and national elections but no assembly election

In April 2023, P.K. Pole, Jammu and Kashmir’s chief electoral officer, stated that the panchayat, municipal and Lok Sabha elections would be held this ‘financial year’, but did not indicate a timeframe for the assembly election.¹⁵³ The unwillingness to hold an assembly election while going ahead with local and national elections, when combined with union Home Minister Amit Shah’s repeated attacks on Kashmiri political leaders and repeated assertion that ‘future legislators’ will emerge from the panchayats¹⁵⁴, sends a dangerous signal that the union administration seeks suppliant legislators.

¹⁵¹ *Lakshmi Charan Sen & Ors. Vs. A.K.M. Hassan Uzzaman & Ors.*, (1985) 4 SCC 689.

¹⁵² *Kishansing Tomar Vs. Municipal Corporation of the City of Ahmedabad & Ors*, (2006) 8 SCC 352.

¹⁵³ Zulfikar Majid, “‘J&K to see panchayat, LS, municipal polls next year’ , says Chief Electoral Officer”, *Deccan Herald*, April 23, 2023.

¹⁵⁴ India Today Web Desk, video, ‘New leadership will emerge from panchayat election says Amit Shah’, *Indiatoday.in*, February 14, 2020, <https://www.indiatoday.in/india/video/new-leadership-in-jk-will-emerge-from-panchayat-elections-says-amit-shah-2334518-2023-02-14>; S.P. Vaid, ‘View: Amit Shah engagements, priorities show he means business in J&K’, *The Economic Times*, November 3, 2021; JK News Today, video, “‘Will provide new leadership during Assembly polls in J&K’ – Panchayats”, *YouTube.com*, <https://www.youtube.com/watch?v=od2yH7y4R44>.

In October 2022, Mr. Shah stated that the union administration was ready to conduct the assembly election once a final call was taken by the election commission of India.¹⁵⁵ A delegation of thirteen political parties of Jammu and Kashmir, led by Farooq Abdullah of the National Conference, met election commission officials in March 2023, urging them to announce dates for the assembly election. Any further delay 'would amount to denial of fundamental and democratic rights of the people of Jammu and Kashmir and a breach of constitutional obligations', their memorandum stated.¹⁵⁶ The delegation received a vague assurance that the commission would consider their request.¹⁵⁷ Even parties once supported by the BJP, such as the Apni party, castigate the union administration for election delay.¹⁵⁸

The failure to hold an assembly election has added to the widespread Kashmiri perception that union administrations fear democracy in their region. The history of elections in Jammu and Kashmir is a rocky one. After a free and fair election in 1952, there were questionable elections for the following quarter-century, until 1977 and 1983. Over a decade of armed conflict followed. It was only in 2002 that the next free and fair election was held and it ushered in twelve years of gradual stabilisation, with two further free and fair elections. The August 2019 actions overturned the fragile democratic consensus that was beginning to emerge as the result of a decade of peace-building initiatives. An assembly election now might not restore such a consensus, but it would be a first step away from the confrontational relationship that the union administration currently espouses towards Jammu and Kashmir.

¹⁵⁵ Livemint, "Elections in J-K Will Be Conducted after...": Amit Shah," *Mint*, October 6, 2022.

¹⁵⁶ Jehangir Ali, 'J&K Political Leaders Turn up the Heat on Demand for Assembly Elections', *The Wire*, March 17, 2023.

¹⁵⁷ Peerzada Ashiq, '13 Opposition Parties Urge Election Commission to Conduct Jammu and Kashmir Election', *The Hindu*, March 16, 2023.

¹⁵⁸ Kashmir Images desk, 'BJP not ready to face assembly elections in JK: Apni Party chief', *Kashmir Images*, May 21, 2023.

FOCUS LADAKH

Initially it seemed as if the August 2019 reading down of article 370 and division of the state had little impact on Ladakh relative to Jammu and Kashmir. But simmering discontent over economic, political and social rights came to a head in the region between August 2022-July 2023. Three issues dominated: political representation, constitutional safeguards, and unemployment.

Political representation

The 2019 reorganisation act separated Ladakh from the former state, turning it into a union territory without an assembly. The decision was widely welcomed in Buddhist-majority Leh district; it was opposed in Shia-majority Kargil, which sought restoration of the status quo ante. However, direct rule by union-appointed officials has caused widespread resentment across both districts, resulting in demands for Ladakh to elect its own legislature.¹⁵⁹

As members of a distinct mountain region of two religious, cultural and linguistic communities, the Buddhists of Leh agitated for union territory status in the late 1980s and early 1990s. The formation of a separate administration under the Ladakh Autonomous Hill Development Council Act of 1995, devolving limited governance to both Leh and Kargil districts if they chose, went some way towards settling the union territory demand. Leh opted for an autonomous hill council immediately but Kargil did so only in 2002, when the 1995 act was amended to add further executive powers for the hill councils and expand the proportion of elected to nominated councillors, as well as create a separate council for Kargil in six months. The two hill councils had powers over allotment, use and occupation of land, preparing and presenting district budgets,

¹⁵⁹ Rekha Chowdhary, 'Ladakhi Politics since the Formation of Union Territory', *The Economic & Political Weekly*, 58:18, May 6, 2023.

managing natural resources, education and vocational training, levying taxes and collecting fees, subject to approval by the state administration.¹⁶⁰

The 2002 agreement between the two districts to have separate but coordinated administrations through their hill councils, which was peacefully negotiated between representatives of Leh and Kargil along with the state and union administrations, was a model for dispute settlement, though not without hiccups. The state administration continued to control the allocation and flow of funds, leading the Ministry of Tribal Affairs' high-level committee to recommend in 2014 that the budgets of autonomous councils be covered under the state finance commission, to periodically review 'resource distribution between (the) State and the Autonomous Council.'¹⁶¹

The abolition of an elected state administration in 2019 directly subordinated the hill councils to the office of a union-appointed lieutenant-governor. Despite its limitations, the previous governing structure combined a two-way hierarchy of devolution from the state to the districts while retaining the power of approval with the state administration. Simultaneously, it allowed a horizontal check on the state administration's executive powers through the state's legislative assembly. Though the state cabinet had final authority, the hill council heads had the status of cabinet ministers and council decisions were implemented by the state administrative services.

This structure was replaced in 2019, bringing the hill councils under the sole authority of the central union territory services. In August 2020, members of the hill councils began to complain that bureaucrats had side-lined councillors by taking decisions on matters which used to be the prerogative of the councils, such as budget allocation, without consulting them.¹⁶² Tensions grew when then lieutenant-governor R.K.

¹⁶⁰ The Jammu and Kashmir Ladakh Autonomous Hill Development Councils Act, 1995 (Act 1 of 1995), *The Gazette of India – Extraordinary*, II.1, May 9, 1995; The Ladakh Autonomous Hill Development Council (Amendment) Act, 2002 (Act No. XVII of 2002), *The Jammu and Kashmir Gazette (Extraordinary)*, April 23, 2002, https://prsindia.org/files/bills_acts/acts_states/jammu-and-kashmir/1995/1995J&K1.pdf.

¹⁶¹ Ministry of Tribal Affairs, Report of The High-Level Committee on Socioeconomic, Health and Educational Status of Tribal Communities of India (chaired by Virginius Xaxa), 85-87, Ministry of Tribal Affairs, Government of India, May 2014.

¹⁶² Padma Rigzin, 'More Bureaucracy, Still No Jobs: What's Really Changed since Ladakh Became a UT', *The Wire*, August 5, 2020.

Mathur's administration refused the councils' request for evacuation of Ladakhis from other Indian cities during the first phase of the Covid-19 pandemic-related lockdown.

Constitutional safeguards

In September 2020, the Leh hill council passed a resolution demanding that their land, environment, employment, business, and cultural rights be protected either under Article 371 of the constitution, which grants autonomy to the tribal-majority state of Nagaland along with varied autonomies to nine other states, or the constitution's sixth schedule, which safeguards tribal rights. The powers granted by the Ladakh autonomous hill development council act fell short of those provided to Nagaland or the ten autonomous councils under the sixth schedule (in Assam, Meghalaya, Tripura and Mizoram), insofar as the latter could legislate on land, agriculture, forests, education, public health, judicial and executive powers, and could receive funding from the consolidated fund of India, which the former could not. In September 2019, the tribal affairs ministry had recommended that Ladakh be brought under the sixth schedule. '(T)he Ladakh region has several distinct cultural heritages by communities such as Drokpa, Balti and Changpa, among others, which needs to be preserved and promoted', it said.¹⁶³ But no action was taken.

In the same month, the Leh branches of national and regional parties joined with civil society groups to form the 'Apex Body of the People's Movement for the Sixth Schedule' and announced that they would boycott the forthcoming hill council election until constitutional safeguards under the sixth schedule similar to those agreed with the Bodo Territorial Council were extended to Ladakh and its people.¹⁶⁴ The election was rescheduled after the union home ministry assured the apex body that their concerns would be addressed.

Partly in reaction, the Kargil branches of national and regional parties joined with civil society groups to form the Kargil Democratic Alliance, demanding restoration of

¹⁶³ The Ministry of Tribal Affairs, Government of India, press release, 'NCST Writes to Union Home Minister & Union Tribal Affairs Minister Conveying Its recommendation to Include Union Territory of Ladakh Under 6th Schedule of Constitution of India', Press Information Bureau, Government of India, September 11, 2019.

¹⁶⁴ Rekha Choudhary, 'How Ladakhi Politics Changed – And Drove the Centre into a Corner', *The Wire*, January 29, 2023.

article 370 or statehood for Ladakh rather than application of the sixth schedule. In December, members of the two groups began talks to form a common platform, but in January 2021 the apex body held a separate meeting with union home minister Amit Shah, who assured them that a panel would be formed to look into their demand, headed by a union minister of state.¹⁶⁵

Talks between the apex body and the democratic alliance continued, and by August 2021 they agreed on four demands: statehood for Ladakh, constitutional safeguards, either under the sixth schedule or under Article 371, two lok sabha seats for Ladakh (one Kargil, one Leh) and one rajya sabha seat, along with filling vacant administrative posts, pending since 2019. At August end, a delegation of the two groups met union minister of state for home affairs, Nityanand Rai. The meeting concluded with a promise of further talks.

Another nine months later, in June 2022, Mr. Shah met separately with the apex body's head, Thupstan Chewang, formerly a BJP MP, though the apex body and the democratic alliance had formed a joint committee for talks with the union home ministry. According to Mr. Chewang, the union home minister 'committed that the Central Government is ready to grant Sixth Schedule like status to Ladakh under Article 371. He has promised even much more'.¹⁶⁶

In December 2022, however, the union home ministry told the Rajya Sabha's standing committee on home affairs that the union territory's administration had 'already been taking care of' its overall socio-economic development, which was the aim of the sixth schedule.¹⁶⁷

Pressure in Ladakh continued to mount until, in January 2023, the ministry announced a high-powered committee headed by Nityanand Rai, including lieutenant-governor

¹⁶⁵ Ravi Krishnan Khajuria, 'Amit Shah to form panel to look into Ladakh 6th Schedule demand', *The Hindustan Times*, January 6, 2021.

¹⁶⁶ Sanjeev Pargal, 'Shah assures Sixth Schedule like status to Ladakh but not ready to discuss Statehood', *The Daily Excelsior*, June 17, 2022.

¹⁶⁷ Vijaita Singh, 'Union Home Ministry evades direct reply on Ladakh's inclusion under Sixth Schedule of Constitution', *The Hindu*, December 13, 2022.

Mathur, to ‘discuss measures to protect the region’s unique culture and language taking into consideration its geographical location and its strategic importance.’¹⁶⁸ Ladakhi members of the committee criticised its mandate for failing to mention the demands for statehood and inclusion under the sixth schedule.¹⁶⁹ Sajjad Hussain Kargili, a member of the committee and the democratic alliance, added that the committee was not fully representative as it did not include any Sunni Muslims.

On January 15, the apex body and Kargil democratic alliance held a joint protest march in Jammu where they declared their intention of intensifying their campaign.¹⁷⁰ Eleven days later, on January 26, environmentalist Sonam Wangchuk went on five-day hunger strike to draw attention to the sixth schedule demand and the environmental threats to Ladakh’s ecology due to the China-India conflict as well as unplanned tourism.¹⁷¹ The administration placed Wangchuk under house arrest, coercing him to sign a bond that committed him to refrain from making public speeches or participating in public assemblies.¹⁷²

In February 2023, the two groups travelled to Delhi and held a protest at Jantar Mantar against neglect of their demand for statehood.¹⁷³ ‘In the name of the UT, we have been fooled. We were promised that (the) Ladakh Autonomous Hill Development Councils will be empowered. Instead, they have been rendered powerless’, said Rigzin Jora, former state tourism minister and a leader of the Ladakh Buddhist Association. Sonam

¹⁶⁸ Vijaita Singh, ‘MHA Constitutes High Powered Committee to Ensure Protection of Land and Employment for Ladakh’, *The Hindu*, January 2, 2023.

¹⁶⁹ Naseer Ganai, ‘Ladakh Political Parties Lay Four-Point Conditions for Meeting with MHA, Include Statehood for Ladakh’, *Outlook magazine*, January 7, 2023; Vijaita Singh, ‘Members of High-Powered Committee on Ladakh Say Union Home Ministry Order Is Vague, Avoids Mention of Sixth Schedule’, *The Hindu*, January 7, 2023.

¹⁷⁰ Rekha Chowdhary, ‘How Ladakhi Politics Changed – and Drove the Centre into a Corner’, *The Wire*, January 29, 2023.

¹⁷¹ PTI, ‘Hundreds Join Sonam Wangchuk on Final Day of His 5-Day Hunger Strike on Issues of Ladakh’, *The Indian Express*, January 30, 2023.

¹⁷² Express Web Desk, ‘On Climate Fast, Ladakh’s Sonam Wangchuk Claims Being Put under House Arrest’, *The Indian Express*, January 30, 2023.

¹⁷³ Al Jazeera Staff, ‘Why India’s Ladakh Region Is Now Fighting for Full Statehood’, Al Jazeera.com, February 17, 2023.

Wangchuk added, '(t)he L-G, who is an outsider is sent to govern us. One man decides everything. 90% of the ₹6,000 (crores) allocated to Ladakh is at the dispensation of a non-elected person. We demand full Statehood so that our voices are heard.'¹⁷⁴

In the same month, lieutenant-governor Mathur was removed from his post and replaced with retired Brigadier B.D. Mishra.¹⁷⁵

In June 2023, members of the joint committee met with the union home minister, who promised to revert on their demands.

Unemployment

In March 2023, the centre for monitoring the Indian economy (CMIE) reported that unemployment in Jammu and Kashmir was at 23.1 percent in comparison to the India average of 7.8 percent.¹⁷⁶ No separate figures were given for Ladakh, but it can be safely assumed that the rate would be at least as high as in Jammu and Kashmir, if not higher.

With no private industry and limited tourism capacity, government jobs are a lifeline for families in Ladakh. In 2019, Prime Minister Modi assured that vacancies in central and state government posts in Jammu and Kashmir and Ladakh would be filled 'very soon. It will give local youths adequate employment opportunities', he said in a televised address on August 9.¹⁷⁷ A day later, the Jammu and Kashmir administrative services were terminated by the reorganisation act, shrinking that avenue of employment considerably (see next section on industry and employment).

¹⁷⁴ Vijaita Singh, 'Ladakh L-G R.K. Mathur Removed amid Intensified Stirs by Civil Society Groups', *The Hindu*, February 12, 2023.

¹⁷⁵ Arun Sharma, 'Behind Removal of Ladakh's First L-G Mathur: Raging Unrest, Hill Councils vs Bureaucracy Row', *The Indian Express*, February 14, 2023.

¹⁷⁶ PTI, 'India's unemployment rate rises to 3-month high of 7.8 pc in March: CMIE', *The Economic Times*, April 1, 2023.

¹⁷⁷ PTI, 'Jobs for youth in J-K, Ladakh will be created, says PM Modi in special address', *The Hindustan Times*, August 8, 2019.

In early 2021, after reports that over 5,000 posts, including 1,000 gazetted posts, were vacant in different government departments in Ladakh, student groups, including the All-Ladakh Unemployed Youth Association, mounted a campaign for government jobs in the union territory to be reserved for residents. The demand was partially accepted: lieutenant-governor Mathur announced that all non-gazetted, that is, Group 'B' (non-gazetted) and Group 'C' posts would be reserved for residents. In September 2021, the Ladakh administration issued the Union Territory of Ladakh Resident Certificate Order, 2021, which stated that only those who had or whose parents had had permanent resident certificates would be eligible for the new resident certificates.¹⁷⁸

Recruitment for non-gazetted jobs was, however, slow and the Ladakh administration remained silent on the demand that gazetted jobs too be reserved for residents. Student groups alleged that the staff selection commission examinations were held in 2022 only as a result of three years of intensive protests. One reason for delayed recruitment was Ladakh's lack of a public services commission after the Jammu and Kashmir state public services commission was wound up following the loss of statehood. In July 2022, the union administration clarified that there were no plans to set up a public services commission for Ladakh, despite demands for one.

The rapid growth of tourism over the past two decades has brought prosperity to large parts of Ladakh, but has also impacted its ecology. A massive inflow of almost half a million tourists, twice the population of Ladakh, resulted in increasing scarcity of water and energy for local residents. The burden of vehicular traffic – both tourist and military (see section below) – has added further carbon cost to the already receding glaciers.¹⁷⁹ Environmentalists argue that regulating tourist numbers and/or implementing low-carbon, water and energy regeneration policies is urgent.

Impact of the China-India and India-Pakistan border conflicts

In July 2023, the Chinese People's Liberation Army (PLA) pitched four tents in the Table Top area of Gurung Hills, villagers in Chushul, close to the Line of Actual

¹⁷⁸ Umer Maqbool, 'Ladakh: Unlike in J&K, All Non-Gazetted Jobs Reserved for Natives', *The Wire*, September 5, 2021.

¹⁷⁹ Idrees Bhuktiyar, 'In Ladakh, Unprecedented Tourist Rush Causing Environmental Issues, Water Shortage', *IndiaTimes.com*, October 16, 2022.

Control between China and India, reported to their councillor Konchok Stanzin. The tents were removed after the Indian army objected to their presence.¹⁸⁰

The Table Top area lies in one of the five buffer zones created in eastern Ladakh after the Galwan conflict in 2020, when a PLA incursion was repelled by Indian army troops, leading to the loss of twenty Indian soldiers and an unspecified number of PLA troops. As China continued a massive troops and infrastructure build-up close to the Line of Actual Control in eastern Ladakh, India was forced to do likewise. After several rounds of talks, the PLA and the Indian army agreed to disengage. Five new buffer zones – Galwan, the north and south banks of Pangong Tso, PP-17A and PP-15 – were created in areas that had been regularly patrolled by the Indo-Tibetan Border Police and the Indian army before April 2020. Twenty-six points in eastern Ladakh are no longer patrolled by Indian troops.

Analyses based on satellite imagery claim that the Chinese military altered the course of the Galwan river to build military infrastructure¹⁸¹, causing as yet unmeasured damage to the already fragile ecosystem in the Galwan valley. Scientists have flagged the effects of global warming on the region for over a decade. Herders and farmers in Kulum and Kharnak have been struggling with increasingly arid conditions, which have caused shrinking pastures for livestock and inadequate water supply for agricultural irrigation, leading to significant migration away from affected areas along the line of actual control.¹⁸² Excessive military vehicular traffic and the additional footprint of tens of thousands of soldiers in the region have added further fragility.¹⁸³

Villagers in both Leh and Kargil face the common security threat of highly militarised and yet porous borders across which they face attacks, though in the former case the border is the line of actual control between China and India, and in the latter case it is the line of control between India and Pakistan.

¹⁸⁰ The Hindu Bureau, 'China pitched four tents in 'buffer zone' in Ladakh, says councillor', *The Hindu*, July 12, 2023.

¹⁸¹ Colonel Vinayak Bhat, 'How China channelled Galwan river to claim territory', *India Today*, June 24, 2020.

¹⁸² Simrin Surur, 'Melting Glaciers, Water Scarcity, Exodus', *The Print*, September 12, 2022.

¹⁸³ 'Ladakh Herders Struggle on the Frontier of Climate Crisis', Al Jazeera.com, January 10, 2023.

Kargilis face the additional problem of divided families, mostly Balti-speaking. During the peace process years of 2002-2008, the governments of India and Pakistan agreed to allow family travel for reunion between Jammu and Kashmir and the Pakistan-held territories of the former princely state. Since 2014, with worsening relations between the two countries, they have found it difficult to get visas.

INDUSTRY AND EMPLOYMENT

Presenting the 2023-2024 budget, lieutenant-governor Manoj Sinha stressed that Jammu and Kashmir had witnessed a 14.6 percent growth rate in 2022-2023 due to an ‘improved law and order situation’. He also noted that the union territory had received Rs. 1547.87 crores of external investment in 2022, there was a marginal decrease in unemployment, a rapid increase in the pace of road construction and public works, and record numbers of tourists.¹⁸⁴

The union administration has long claimed that the reading down of Article 370 provided a fillip to external investment in the region, through its supposed integration into the country’s economy. The numbers, however, indicate that Jammu and Kashmir’s recovery from the deleterious impact of Covid-19 lockdowns, frequent internet suspensions, and closure of public spaces continues to be both slow and uneven.¹⁸⁵ Ministry of home affairs data reveals that investments in the region declined by over 50 percent in the past four years. Total investment in 2021-2022 was down to 376.76 crore, from Rs. 840.55 crore in 2017-18.¹⁸⁶ Investors were also largely from the region itself. In 2021, the Jammu and Kashmir administration received only 5-6 external applications out of a total of 2,500 applications for the allotment of land for industrial development.¹⁸⁷ These figures suggest outsiders remain wary of investing in the region

¹⁸⁴ GK New Service, ‘Budget 2023-24: focusing on 9-pronged vision to build Naya J&K’, *Greater Kashmir*, March 30, 2023.

¹⁸⁵ See the section on ‘Industry and Employment’ in the Forum’s third annual report (covering the period between January 2021 and August 2021) at page 46, available at: <https://indianculturalforum.in/2021/08/04/two-years-of-lockdown-human-rights-in-jammu-and-kashmir-2021/>; and the same section in the Forum’s mid-term report (covering the period between August 2020 to January 2021) at page 35, available at: <https://indianculturalforum.in/2021/02/15/human-rights-in-jammu-and-kashmir/>.

¹⁸⁶ Aditya Menon, ‘Investment in J&K fell 55% in 4 years, abrogation year was the worst: MHA data’, *The Quint*, December 20, 2022.

¹⁸⁷ Safwat Zargar, ‘Two years after J&K lost special status, outside investors stay away from Kashmir’, *Scroll.in*, February 3, 2022.

despite the incentives claimed to be offered by the administration, which appear to include illegal seizures of land (see below).

According to its 2022-2023 Economic Survey, Jammu and Kashmir's per capita income (PCI) at constant prices remains significantly lower than the national average, by almost Rs. 31,000. All India PCI at constant prices was Rs. 172,000 whereas it was only Rs. 132,806 in Jammu and Kashmir. Jammu and Kashmir's PCI growth rate is only 13.9, whereas the national growth rate is 15.8.¹⁸⁸

Unemployment

CMIE data cited above showed that unemployment in Jammu and Kashmir was three times greater than the national average, at 23.1 percent in March 2023. It was at 22.4 percent in October 2022, the fourth highest amongst Indian states and union territories.¹⁸⁹ A Right to Information (RTI) query filed before the Directorate of Employment revealed that up to 199,872 graduates remained unemployed in the region as of May 31, 2023. The total number of unemployed youth was 563,984.¹⁹⁰

Even pending government vacancies have not been filled. In 2020, the ministry for home affairs reported 84,005 administrative vacancies in Jammu and Kashmir.¹⁹¹ On July 25, 2023, minister of state for home Nityanand Rai reported to parliament that in the four years since 2019, 29,295 vacancies had been filled, that is, a little over a third.¹⁹²

¹⁸⁸ Directorate of Economics and Statistics, Planning Development and Monitoring Department, Government of Jammu and Kashmir, *Economic Survey 2022-23, J&K*, p. 50-52. Available at: <https://ecostatjk.nic.in/pdf/publications/ecosurvey/Economic%20Survey-2023f.pdf>.

¹⁸⁹ ET Online, 'Unemployment rate rises to 7.77% in October; worst in J&K, Haryana, Rajasthan: Report', *The Economic Times*, November 4, 2022.

¹⁹⁰ KL News Network, 'JK Unemployment nightmare: Eight lakh youth jobless, reveals RTI', *Kashmir Life*, July 14, 2023.

¹⁹¹ Nistula Hebbar & Vijaita Singh, 'Government Jobs to Be Reserved for Domiciles of J&K, Says Centre', *The Hindu*, April 4, 2023.

¹⁹² PTI, '29295 Vacancies Filled in J&K Post Art-370: MoS Home', *The Kashmir Observer*, July 26, 2023.

Recruitment for what employment is available continues to be shadowed by alleged scams. In March 2023, youths protested across Jammu division against the Jammu and Kashmir Selection Board's (JKSSB) decision to allow a blacklisted company, Aptech Limited, to conduct the recruitment process for junior engineers and sub-inspectors. Protestors were concerned that Aptech Limited had previously been involved in the discrepancy-marred recruitment process for the Jal Shakti department in 2020, following which the selection of 1,200 candidates had to be cancelled. The company is also blacklisted in other parts of the country due to alleged malpractices.¹⁹³

The JKSSB has been found involved in a series of tainted examinations over the past year. In July 2022, its officers were alleged to have conspired with a Bengaluru-based firm, MeritTrac Services Private Limited, in paper leaks for police examinations. The examination results had to be canceled and a case was registered against the selection board's errant officers.¹⁹⁴ In September 2022, it was reported that three rounds of recruitment examinations by the JKSSB had had to be cancelled, affecting roughly 100,000 candidates. Six months later, in March 2023, lieutenant-governor Sinha said a transparent recruitment process would be conducted.¹⁹⁵ By this time close to a year had elapsed since the earlier examinations had been cancelled.

Alleged land grabs

On July 25, 2023, the civil subordinate judge in Kishtwar district ordered the Jammu and Kashmir administration to vacate land belonging to Prithvi Raj of Machail Paddar village, which had been occupied by two Delhi-based companies, Himalayan Heli Services Pvt. Ltd. And Aryan Aviation Pvt. Ltd. The two companies planned to run helicopter flights for pilgrims to the Mata Chandi temple in Kishtwar. They had already

¹⁹³ Peerzada Ashiq, 'Aspirants protest over 'blacklisted' company's involvement in selection of JEs, sub-inspectors in J&K', *The Hindu*, March 7, 2023.

¹⁹⁴ PTI, 'CBI conducts searches at 30 locations over irregularities in J-K Police sub-inspector recruitment', *The Indian Express*, August 5, 2022.

¹⁹⁵ Nazir Masoodi, 'Jammu and Kashmir Police Jobs Sold For ₹ 30 Lakh Bribe, CBI Probe Finds', *NDTV.com*, September 14, 2022; Irfan Yattoo, 'Recruitment process will be held in transparent manner: LG to JKSSB aspirants', *Rising Kashmir*, March 14, 2023.

started leveling land for construction of a helipad, allegedly with the support of the administration.¹⁹⁶

Kashmiri Pandit organisations also complain of administrative encroachment on temple properties. In April 2023, the Kashmiri Pandit Sangharsh Samiti and the Jammu and Kashmir Peace Forum protested the appropriation of temple land belonging to the Durga Nag Trust for construction of a multi-specialty Paras Hospital. Citing Jammu and Kashmir high court judgements in 2010 and 2011 ordering protection of the temple's land, the two organisations demanded that the Jammu and Kashmir administration apply the supreme court's 2021 judgement in the State of Madhya Pradesh and *Ors. vs. Pujari Utthan Avam Kalyan Samiti*, ordering that all temple property be put in the name of the deity.¹⁹⁷

Local industry concerns

The recent reduction in import duty on Washington apples from 70 to 50 percent has worried the region's 25 lakh apple-growers, who are already reeling under the pressures of unseasonal snowfall and frequent closures of the Jammu-Srinagar national highway. Horticulturists are concerned that this move will cause a decline in demand for local apples.¹⁹⁸

Local businesses, manufacturing units, and service providers have also raised alarms about recurring power cuts imposed by the power department. Hotels and hospitals have been particularly affected. The Chamber of Commerce and Industries Kashmir (CCI-K) has demanded compensation for these losses.¹⁹⁹

¹⁹⁶ Jehangir Ali, 'J&K Admin Accused of "Forcibly" Occupying Private Land to Make Helipad for Pilgrimage', *The Wire*, July 27, 2023.

¹⁹⁷ CA 4850 of 2021 LL 2021 SC 418.

¹⁹⁸ Editorial Board, 'Apple Industry needs protection', *Kashmir Observer*, 11 July 2023; Safwat Zargar, 'Kashmir saw a bumper apple crop this year. So what's troubling the apple trade', *Scroll.in*, October 23, 2022.

¹⁹⁹ KL News Network, 'CCI-K raises alarm over power cuts' impact on economy and business', *Kashmir Life*, July 5, 2023.

In view of the losses incurred by local businesses, the CCI-K approached the Jammu and Kashmir Bank in March 2023 seeking various protections for defaulters. The CCI-K suggested that the limit for the one-time settlement scheme for defaulters be raised to Rs. 50 crores instead of the present limit of Rs. 10 crores. They also sought a revival of the *Qarz Mukht* (debt-free) scheme and requested the bank to be lenient before initiating recovery proceedings against defaulters.²⁰⁰ In any case, as highlighted in the Forum's third annual report, entrepreneurs in Kashmir continue to struggle to access bank credit in times of recent turmoil.²⁰¹ To bridge this gap, they are forced to turn towards small angel investors, who are also from Kashmir.²⁰²

Ecological costs

Even the development of road and urban infrastructure has come at a cost. Expansion of roadways has unintentionally introduced invasive species of plants such as field thistles and wild clover into the Himalayan region. These can potentially threaten the survival of native species and already fragile ecosystems.²⁰³ Unregulated mining and construction has reduced the expanse of *karewa* flatlands in the valley. These flatlands, packed with fertile soft soil, are slowly being eradicated by road-building. *Karewas* have traditionally been used for saffron cultivation and almond and walnut trees, and locals have already started abandoning their ancestral livelihoods.²⁰⁴ The wanton use of concrete in the ongoing Srinagar Smart Cities project has also destroyed a number of veteran *chinar* trees. The project involves 'beautification' works carried out in areas such as Bund road, Polo View, and Residency road. Concrete, however, is an impervious and

²⁰⁰ GK New Service, 'KCCI team meets J&K Bank CEO, draws his attention to stressful economy', *Greater Kashmir*, March 21, 2023.

²⁰¹ The Forum for Human Rights in Jammu and Kashmir, *Two years of lockdown: Human rights in Jammu and Kashmir*, August 2021. Available at: <https://indianculturalforum.in/2021/08/04/two-years-of-lockdown-human-rights-in-jammu-and-kashmir-2021/>.

²⁰² Safwat Zargar, 'For Kashmir's struggling startups, a reason for hope – angel investors', *Scroll.in*, March 17, 2023.

²⁰³ Sahana Ghosh, 'Road and rail expansion has carried alien invasive species high into the Himalayas in Kashmir', *Scroll.in*, March 9, 2023.

²⁰⁴ Amir Bin Rafi & Shaz Syed, 'In Kashmir, mining and urbanization are devouring the tablelands that sustain its agriculture', *Scroll.in*, 12 February 2023.

eco-unfriendly material, which can potentially cause drainage problems in areas that are already susceptible to flooding.²⁰⁵

The rapid expansion of construction and mining works violate various individual rights and obligations of the state under the Indian constitution and international law. These include the obligation of the state to protect the environment and safeguard forests and wildlife,²⁰⁶ including the right to live in a healthy environment with due regard to ecological balance.²⁰⁷ As per Principle 2 of the Stockholm Declaration on the Human Environment, natural resources and ecosystems must be safeguarded through careful planning and management.²⁰⁸

²⁰⁵ Jaspreet Kaur, 'Unplanned construction and disregard to ecology and heritage puts a question mark over Srinagar smart city mission', *Kashmir Newslines*, November 8, 2022.

²⁰⁶ Article 49-A of the Indian constitution.

²⁰⁷ *Rural Litigation Entitlement Kendra v. State of U.P.*, AIR 1985 SC 682.

²⁰⁸ Report of the United Nations Conference on the Human Environment, Stockholm, June 16, 1972.

LAND AND DEMOGRAPHY

The Forum has repeatedly highlighted local concerns that the union administration's far-reaching land and domicile changes are intended to engineer demographic change in Kashmir.²⁰⁹ These concerns have been reignited by the Jammu and Kashmir administration's 'land for (the) landless' scheme of June 2023. The scheme proposes the provision of 5 *marlas* land (.031 acre) and construction of houses for landless poor under the Pradhan Mantri Awas Yojana – Gramin (PMAY-G). Additionally, the Ministry of Rural Development has allocated a target of 199,550 new houses to the union territory for financial year 2023-24.²¹⁰

Laudable as land for the landless is, the wide discrepancy between figures for the landless and housing allocation raises suspicion. According to official figures, there were 19,047 landless people in the region in 2021; under the first phase of the scheme, 2,711 household have been designated landless. Assuming five people per household, the first phase would cover most of those designated landless, so is there any need for second or third phases? Is there a relation between this scheme and the allocation of 199,550 houses? Unsurprisingly, National Conference vice-president Omar Abdullah asked the administration for details about how landless people have been categorised. People's Conference chairman Sajjad Lone cautioned that proposed beneficiaries of the scheme should only include individuals who held domicile prior to the reading down of Article 370 on August 5, 2019.²¹¹ While welcoming the initiative, Yusuf Tarigami of

²⁰⁹ See the sections on 'targeting of migrant workers' and 'delimitation' in the Forum's 2021-22 Report at page numbers 3 and 8. Available at: <https://indianculturalforum.in/wp-content/uploads/2022/08/Kashmir-Report-2022.pdf>.

²¹⁰ PTI, 'J&K Government to provide land, houses to poor landless; notification soon: L-G Manoj Sinha', *The Hindu*, June 8, 2023; The Hindu Bureau, 'J&K Government approves plan to provide land to the landless people', *The Hindu*, July 4, 2023.

²¹¹ Peerzada Ashiq, 'J&K to implement 'land to the landless' scheme despite local opposition', *The Hindu*, 8 July 2023.

the CPI-M stressed that its planning and implementation should involve panchayat representatives, to ensure genuine beneficiaries.²¹²

Affordable rental housing complexes

A few weeks prior to announcing the land for the landless scheme, Mr. Sinha announced an affordable rental housing policy for 'economically weaker sections' (EWS) and low-income groups. Presumably the allocation of 199,550 new houses is made under this policy (though that is as yet unclear), which will cover urban migrants, including labourers, street vendors and rickshaw pullers. According to the Jammu and Kashmir housing board, however, any citizen of India who migrated temporarily or permanently, for employment, education or 'long-term tourist visit' (sic), would be eligible to apply. If the affordable housing policy is implemented, it would lead to the inclusion of around a million people.²¹³ Permanent residents fear that it might be another route to making a large number of non-residents eligible for domicile under the 2020 domicile law, which permits anyone who has lived in Jammu and Kashmir for 15 years or studied there for seven years to apply for a domicile certificate entitling him/her to apply for land and jobs.²¹⁴

Eviction without due process

Ironically, the Jammu and Kashmir administration has continued evictions while planning new land allocation and housing construction. In February 2023, a four-story commercial building owned by Shuaib Wani in Rampora, Srinagar, was seized, and Junaid Ahmed Bhat's house in Anantnag was demolished, both without prior warning.²¹⁵ Following protests, the eviction drive came to an abrupt halt on February 11, 2023.²¹⁶ The administration has not issued an official order classifying properties to

²¹² Mohammad Yusuf Tarigami to Radha Kumar, July 14, 2023.

²¹³ Naseer Ganai, 'No understanding of PMAY Scheme': Mehbooba vs J&K Govt over land for the homeless', *Outlook magazine*, July 6, 2023.

²¹⁴ Peerzada Ashiq, 'In J&K, land is again the centre of debate', *The Hindu*, July 18, 2023.

²¹⁵ Safwat Zargar, 'Why a demolition drive has sparked panic and anxiety in Jammu and Kashmir', *Scroll.in*, February 9, 2023.

²¹⁶ Nazir Masoodi, 'Jammu and Kashmir's eviction drive put on hold amid row, says official', *NDTV.com*, February 19, 2023.

be removed, other than Mr. Sinha's informal declaration that 'poor and common people' would be exempt.²¹⁷ Eviction drives contravene article 300-A of the Indian constitution, which states that no person shall be deprived of their property save by authority of the law.²¹⁸

The administration is also accused of not granting residents of unauthorised colonies an opportunity to apply for regularisation, as was provided by the Jammu and Kashmir agrarian reforms act, 1976, and the Jammu and Kashmir land revenue act, 1996. The agrarian reforms act provided an option for alleged encroachers to provide alternative land to the government in lieu of the encroached land. Similarly, while the land revenue act granted powers of eviction to authorities, it protected any structure built by an encroacher from demolition.²¹⁹ The union territory of Jammu and Kashmir reorganisation (adaptation of state laws) fifth order, 2020, repealed both state acts.

Uncertainty about property rights has had a radiating effect, disabling agriculturists from accessing channels of credit.²²⁰ This has given rise to a growing belief that the agglomeration of land is for settling outsiders with a view to changing Jammu and Kashmir's demography.²²¹ These moves also represent the erasure of Jammu and Kashmir's rich history of progressive land reforms, such as the 'land to the tiller' movement which granted ownership rights to agriculturalists and contributed significantly to Jammu and Kashmir's relative socio-economic equality.²²²

²¹⁷ Yawar Hussain, 'Landlock', *Kashmir Life*, January 30, 2023.

²¹⁸ Article 300-A of the Constitution of India.

²¹⁹ Safwat Zargar, 'How evictions in Kashmir are linked to the loss of special status', *Scroll.in*, February 20, 2023.

²²⁰ Fahd Khan, 'Anxiety and chaos in Kashmir as land laws make way for the bulldozer', *Milli Gazette*, February 15, 2023.

²²¹ Ashutosh Sharma, 'The great land grab in Jammu and Kashmir', *Frontline*, January 12, 2023.

²²² Maknoon Wani, 'BJP's land reforms and the shifting political landscape in Kashmir', *Himal Southasian*, April 21, 2023.

Sudden change in lease conditions

Local residents were shocked by the Jammu and Kashmir administration's sudden introduction of the land grant rules 2022, replacing the land grant rules 1960, which provided a liberal lease policy of 99 years that could be extended further. According to the Kashmir Traders and Manufacturers Federation, around half of the total businesses in Srinagar, including 2,000 small businesses, operated under these lease conditions, as did all hotels in Gulmarg save one.²²³ However, the new rules laid down that all leases granted under the outgoing rules would not be extended and would stand terminated.²²⁴ The administration now plans to hold a fresh online auction to lease these properties.

The introduction of the new rules has been roundly criticized as arbitrary. Fairness demanded that businesses in operation over multiple decades would be granted first right of renewal. Owners view the new rules as a move to economically disempower their businesses and to open commercial opportunities for outsiders.

Unilateral imposition of property tax

Markets were closed in Jammu in March 2023 due to a strike called by the Jammu Chamber of Commerce and Industries (JCCI), against the proposed levy of property tax from April 2023. The JCCI, which was supported by a number of political parties, such as the National Conference, PDP and the Aam Aadmi Party, claimed that no relevant stakeholder had been consulted prior to the decision. Such a tax on residential and non-residential buildings was levied for the first time in Jammu.²²⁵ Jammu residents fear that the tax will disincentivise local land ownership and pave the way for wealthier outsiders to step in. Such moves are likely to recur, they say, as long as the region lacks an elected administration.

²²³ Tariq Bhat, 'How Kashmir's new land grant rules have put livelihoods in jeopardy', *The Week*, April 16, 2023.

²²⁴ Peerzada Ashiq, 'Jammu and Kashmir new land laws end past property leases, face criticism from political parties', *The Hindu*, December 15, 2022.

²²⁵ Peerzada Ashiq, 'Jammu observes shutdown over L-G Govt.'s move to impose property tax in J&K', *The Hindu*, March 11, 2023.

APPENDIX

Brief Bios of members of The Forum for Human Rights in alphabetical order

Enakshi Ganguly is a human rights activist, writer and researcher. Beginning her career at the Indian Social Institute in 1985, she was Deputy Director of the Multiple Action Research Group (MARG), worked with Mobile Creches and the Population Council and co-founded the HAQ Centre for Child Rights in 1998. She is currently advisor to HAQ and a freelance consultant. She is the President of the Society for Rural, Urban Tribal Initiatives (SRUTI) and on the boards of the Gender Centre of the Lal Bahadur Shastri Academy for Administration (LBSNAA) and National Centre for Advocacy Studies (NCAS). Ms. Ganguly was a member of the Steering Committee of the Planning Commission for the Eleventh and Twelfth Five Year Plans and a technical expert for several UN agencies. In 2003, she was awarded the Ashoka Fellowship and has been profiled in a book entitled *WOMANKIND: Faces of Change Around the World* by Donna Nebenzahl and Nance Ackerman (Raincoast Books: 2003). In 2019, she was awarded the REX Karmaveer Chakra award instituted by iCONGO in Partnership with the United Nations.

Ramachandra Guha is a historian and biographer based in Bengaluru. He has taught at the universities of Yale and Stanford, held the Arné Naess Chair at the University of Oslo, and served as the Philippe Roman Professor of History and International Affairs at the London School of Economics. In 2019-20 he held the Satish Dhawan Chair in the humanities at the Indian Institute of Science. Guha's books include a pioneering environmental history, *The Unquiet Woods* (University of California Press, 1989), an awardwinning social history of cricket, *A Corner of a Foreign Field* (Picador, 2002), and a best-selling history of independent India, *India after Gandhi* (Macmillan/Ecco Press, 2007). His most recent work is a two- volume biography of Mahatma Gandhi: *Gandhi Before India* (2013), and *Gandhi: The Years that Changed the World* (2018).

Colonel (retd) Yoginder Kandhari was born and brought up in Kashmir and remains intensely connected to the region. He regularly contributes articles on it and other strategic and security issues in newspapers and magazines. He served a tenure in Kashmir during the peak of militancy from 1983 to 1987. Presently, he is involved in the preparatory work of a book titled *Revisiting Kashmir – 1989-90: Deconstructing the State Response*.

Air Vice Marshal (retd) Kapil Kak served in the Indian Air Force in the flying branch for over three decades and undertook combat missions in the India-Pakistan War of 1971. For distinguished service of exceptional order', the President of India awarded him the Ati Vishist Seva Medal, as well as the Vishist Seva Medal. A former Deputy Director at the Institute for Defence Studies and Analyses in New Delhi, and Advisor (Strategic Studies) at the University of Jammu, Air Marshal Kapil Kak is the Founding Additional Director of the Centre for Air Power Studies, New Delhi, and is closely associated with the Track II initiatives of multiple public policy think tanks on the India-Pakistan peace process, and conflict resolution and peace building in Jammu and Kashmir. He is on the Board of Directors of the New Delhi-based Healing Minds Foundation.

Radha Kumar (co-chair) is former Director-General of the Delhi Policy Group (2010-2015), specialising on peace and security. Earlier Director of the Mandela Centre for Peace at Jamia Millia Islamia University, Dr. Kumar was also Senior Fellow at the Council on Foreign Relations in New York. She has served on the boards of the UN Institute for Training and Research (UNITAR), the Foundation for Communal Harmony, the United Nations University Council (which she chaired from 2016-19), and is currently a Board member of the Stockholm International Peace Research Institute (SIPRI). She was a member of the three-person Group of Interlocutors for Jammu and Kashmir appointed by the Government of India (2010-11), who prepared the report titled *A New Compact for Jammu and Kashmir*. Her latest book is *Paradise at War: A Political History of Kashmir* (Aleph: 2018).

Justice Madan Lokur graduated in law from Delhi University in 1977 and joined the Bar immediately thereafter. He was appointed Additional Solicitor General of Delhi in 1998 and judge of the Delhi High Court in 1999, and as Chief Justice of the Gauhati High Court in 2009 and of the Andhra Pradesh High Court in 2011. In June 2012, he was appointed judge of the Supreme Court. After his retirement in December 2018, he was

appointed judge of the Supreme Court of Fiji in January 2019 and took the oath of office in August. Justice Lokur's expertise includes alternative dispute resolution mechanisms (such as arbitration and mediation), legal aid, judicial education, child rights and human rights.

Justice Hasnain Masoodi is a former judge of the High Court of Jammu and Kashmir and a Member of Parliament (Lok Sabha, the lower house of the Indian parliament), from the Anantnag constituency of Jammu and Kashmir.

Major General (retd.) Ashok Kumar Mehta retired from the Indian army in 1991. He served in Uri, south of the Pir Panjal in Rajouri, and in the Kargil and Ladakh sectors. He fought in the 1965 and 1971 India-Pakistan wars, both in the eastern and western theatres of the conflict. He also commanded the Indian Peace-Keeping Force in Sri Lanka, fought counter-insurgency operations in Nagaland, and engaged in UN Peacekeeping Operations in 1962-63. He returned to Jammu & Kashmir in 1988 as a member of the Defence Planning Staff, Ministry of Defence. He has subsequently visited Jammu and Kashmir after retirement in 1993 and in mid-2000 as part of Track II assignments. In 2003, he became the convenor of an annual India Pakistan conference which continued almost uninterrupted till 2018.

Justice Bilal Nazki is a former Chief Justice of the High Court of Orissa and has served as judge in the high courts of Jammu and Kashmir, Andhra Pradesh and Bombay, and as Advocate General of Jammu and Kashmir. He was Chairman of the Jammu and Kashmir State Human Rights Commission and the Human Rights Commission of Bihar and headed the committee set up by the Government of India to review the functioning of the Haj Committee of India and its state units. He has been President of the Andhra Pradesh State Judicial Academy, Chancellor of National Academy of Legal Studies & Research University (NALSAR), Hyderabad, and Executive Chairman of the Andhra Pradesh State Legal Services Authority.

Justice Ruma Pal is a former judge of the Supreme Court of India (2000-2006) as well as of the Calcutta High Court. She has served as Chancellor of Sikkim University, Executive Council member of the International Academy of Law, Executive Chairperson of the National Services Authority, Chairperson of the Academic Council of the Indian Law Institute, Executive Council member of the National Judicial Academy and the WB National University of Juridical Sciences. She is a member of the

International Association of Women Judges and advisor to the Asia Pacific Forum on Equality Issues, as well as member of the Committee of experts on the Application of Conventions and Recommendations, International Labour Organization.

Lieutenant General (retd.) H S Panag is former GOC-in-C of the army's Northern Command, Udhampur, and Central Command, Lucknow. He is experienced in both counter-insurgency and high-altitude operations, and has served as an Instructor in the Indian Military Officers' Training Academy, commanded an Infantry brigade, the 31 Armoured Division and the XXI Corps, the strike formation of the Southern Command. Post-retirement he was appointed an Administrative Member of the Armed Forces Tribunal, Chandigarh Bench. His awards include the Param Vishisht Seva Medal and the Ati Vishisht Seva Medal. He is a frequent contributor to the media on strategic and military affairs and an expert on Chinese strategic planning.

Amitabha Pande is a former member of the Punjab Cadre of the Indian Administrative Service who retired in 2008 as the Secretary of the Inter State Council of the Government of India, a constitutional machinery for federal policy coordination, diversity management and consensus building between the Union of India and the states, and among the states. The Council represents India in the Forum of Federations – an international organisation for the promotion of federalism with headquarters in Ottawa, Canada. He has written several articles on the subject of intergovernmental relations in India, with a focus on the dynamics of the interplay between democracy, diversity, identity and the idea of a monolithic 'nation state'. He also had a long stint in the Ministry of Defence involving close interaction with the armed forces. That and his experience in Punjab during its most troubled period has given him insights into security related issues which have a bearing on the current situation in Jammu and Kashmir.

Gopal Pillai (co-chair) is a former member of the Kerala Cadre of the Indian Administrative Service, who retired as Union Home Secretary in June 2011. He has served as Under Secretary/Deputy Secretary in the Defence Ministry, Deputy Secretary Labour, Kerala Special Secretary for Industries, Secretary Health and Family Welfare, Principal Secretary to the Chief Minister of Kerala, Joint Secretary (North East) in the Home Ministry, Additional Secretary in the Department of Commerce, Special Secretary in Commerce, and Secretary in the Department of Commerce, before becoming Union Home Secretary (2009-11). As Union Home Secretary, he dealt closely

with security, political, legal and humanitarian issues relating to Jammu and Kashmir. Along with the then Home Minister, he instituted the Multi-Agency Centre for security and intelligence coordination between the Centre and States (MAC), and floated the National Counter-Terrorism Centre (NCTC) and the Crime and Criminal Tracking Network System (CCTNS).

Justice Anjana Prakash is a former judge of the Patna High Court (2009-2016). She has practiced law since 1982 and is currently a senior advocate based out of Delhi. She is also a frequent contributor of opinion pieces on constitutional issues in journals, such as Live Law, and newspapers, including The Wire. In early 2020 she served as amicus curiae to the Supreme Court on the death penalty for the Nirbhaya rape-murder convicts.

Nirupama Rao was Foreign Secretary in the Government of India (2009-2011) and earlier served as Spokesperson of the Ministry of External Affairs; she was High Commissioner of India in Sri Lanka and Ambassador to the People's Republic of China. She was Ambassador of India to the United States from 2011 to 2013. On retirement, Rao was a Fellow at Brown University and also taught there from 2015-16. She was George Ball Adjunct Professor at Columbia University in Fall 2018. In 2019, she was a Pacific Leadership Fellow at UC San Diego. She is a Global Fellow of The Woodrow Wilson Center, Washington DC and Councillor of the World Refugee Council. She is a frequent contributor of opinion pieces on foreign policy and global affairs to a number of Indian media outlets.

Moosa Raza is a polyglot and a respected scholar of Islam who has been Principal Secretary to the Chief Minister of Gujarat, Chief Secretary in Jammu and Kashmir, Adviser to the Governor of Uttar Pradesh, and Secretary to the Government of India in the Cabinet Secretariat and in the Ministry of Steel. Currently, he is the chairman of the South Indian Educational Trust (SIET), which runs six educational institutions, and of the Executive Committee of Coastal Energen Pvt. Ltd. In 2010, he was honoured with the Padma Bhushan. His latest book is *Kashmir: Land of Regrets* (Context: 2019).

Anand K. Sahay is a columnist who has held senior positions at the Patriot, Times of India, The Hindu, BITV, Hindustan Times and Asian Age and written for the Indian Express, Times of India, Economic Times, The Wire and the Citizen. He reported and commented for the BBC in New Delhi and London and was a Kabul-based advisor to

the Afghanistan Times. He reported the fall of Gorbachev and end of communism out of Moscow, the dismantling of apartheid and the first all-race election in South Africa and the transfer of Hong Kong to China, as well as insurgency and militant politics in Kashmir, Punjab and Assam. He has been visiting professor at the Nehru Centre, Jamia Millia Islamia University and guest lecturer at the National Defence College. He has also been president of the Press Club of India.

Shivani Sanghavi is a lawyer, activist and consultant on matters concerning civilian security in armed conflict, international humanitarian law, and access to justice.

Probir Sen joined the Indian Administrative Service after graduating from Cambridge, and retired as Secretary to the Government of India and Secretary General of the National Human Rights Commission. During the course of his career he headed a large number of organizations, including Indian Airlines and Air India. After retirement he was appointed Director, India International Centre and subsequently served on the Boards of a number of corporations, companies, trusts and NGOs. He possesses wide exposure to issues relating to management, organizational development and leadership.

Justice Ajit Prakash Shah served as a judge of the Bombay High Court and later as Chief Justice of Madras and Delhi High Courts. After retirement, he headed the Twentieth Law Commission of India (2013-2015), which submitted 19 reports, including on the Arbitration and Conciliation Act, commercial courts, electoral reforms and the death penalty. He has been Chairperson of the Broadcasting Content Complaints Council (BCCC), a self-regulatory body appointed by the Indian Broadcasting Foundation, and member of the Governing Council appointed by the Ministry of Law and Justice for judicial reforms. He also served as member of the Expert Committee of the International Labour Organization for implementation of ILO Conventions by member countries and headed a Committee appointed by the Planning Commission for drafting the Privacy and Data Protection Laws. He is nominated as the Commissioner in the International Commission of Jurists (ICJ). He has also acted as ombudsman for sports bodies such as the Board for Cricket Control in India.

