

KASHMIR

A human rights perspective



Kashmir during the partition



- Kashmir initially opted to remain independent
- Facing threats from Pakistani militants, Kashmir's Hindu ruler accedes the territory to India with conditions that it would retain a degree of autonomy, protected by Article 370 of the Indian Constitution, which gave Kashmir the right to make its own laws.
- The sovereignty of Kashmir has been disputed ever since

Kashmir border

- Several wars have broken out between India and Pakistan over Kashmir
- Since 1972 a 460 mile long Line of Control has functioned as an unofficial border
- A cease fire has been in place since 2003
- Clashes have persisted: 86 civilians killed in cross-border firing in 2018
- Pakistan denies arming insurgents but says it supports the people of Kashmir against oppression by Indian security forces
- India blames Pakistan for fuelling separatist tensions, including attacks on security forces

February 2019

- An attack killed 40 police officers in Pulwama, Kashmir
- India and Pakistan exchange airstrike for the first time since 1971
- An Indian aircraft is shot down in Pakistan, and its pilot captured, he was released a few days later

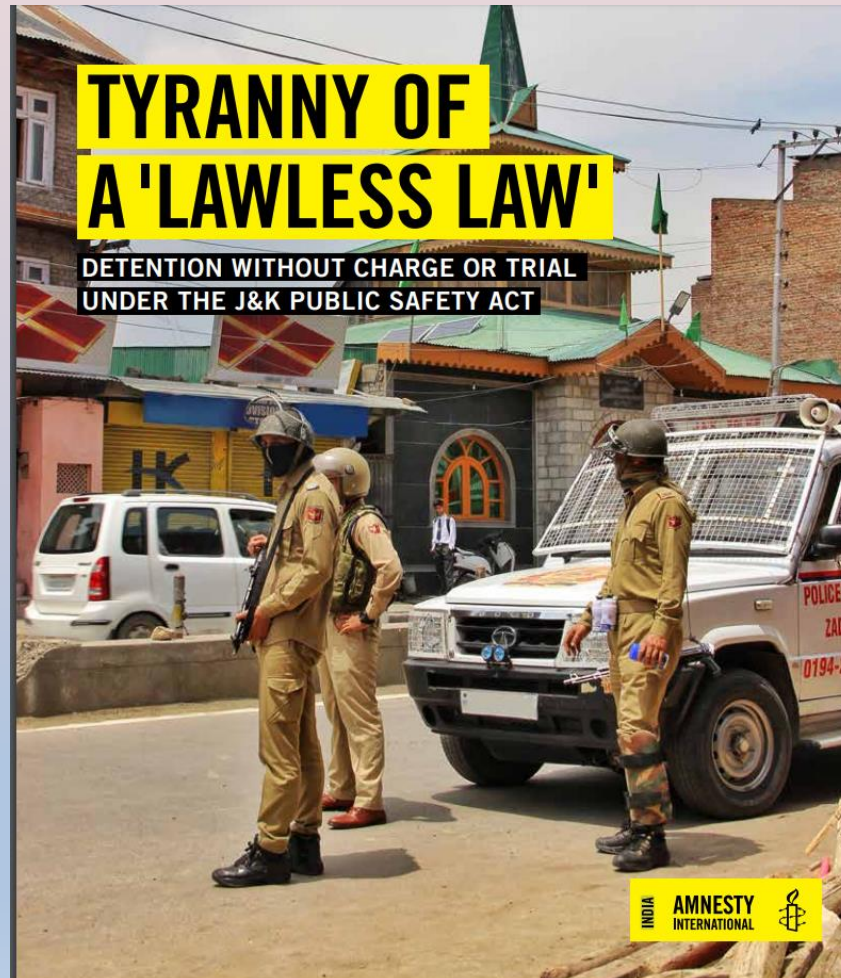
The Indian Forces and the AFSPA

- Armed Forces Special Powers Act
- This grants them effective immunity from prosecution from human rights abuses
- Murder, rape and torture have been alledged
- No serious prosecution of Indian military personnel has ever taken place

The Public Safety Act (PSA)

- The PSA was introduced in 1978 as an exceptional measure to detain people who pose an extreme threat to security
- The law allows for detention of up to 2 years if a person is deemed acting in “any manner prejudicial to the security of the state”
- Since 2008, more than 15,000 Kashmiris have spent some time in prison

Amnesty Briefing on PSA: Tyranny of a lawless law



Amnesty briefing on PSA “Tyranny of a Lawless Law”

- In June 2019, Amnesty launched its briefing analysing 210 cases of detention under PSA between 2012-2018
- Sees it as a breach of international human rights law
- Amnesty India has been prevented from presenting its report in Srinagar due to “law and order” concerns

How the PSA violates international human rights law

- It does not define “security of state” and provides only a vague understanding of “public order”
- It allows detaining authority to not communicate grounds of detention for 10 days of detention and withhold information considered “to be against public interest to disclose”
- No provision for ordinary judicial review of detention. Instead a government Advisory Board reviews all orders, with no opportunity to appeal
- Legal counsel cannot represent a detained person before the Advisory Board.
- The right to appear before a magistrate within 24h and to consult with a lawyer of choice is unavailable for people placed in administrative detention
- It protects officials even in situations where the PSA is abused , gives impunity
- No provision for people to be detained in prisons close to their home

- “The text of the PSA itself violates international human rights law and standards, but even the limited safeguards provided within the law are routinely ignored, and the law misused, by executive detaining authorities and the J&K police”

How the PSA is misused

- Detention of minors
- Non application of mind: detaining authorities take the police's word for it and do not apply their own mind as to whether the person should be detained
- Detention on vague and general grounds
- Detention of people who would otherwise be released on bail or acquitted under normal criminal justice system
- Revolving door detention (authorities keep issuing orders to keep people behind bars)
- Detainees speak of torture and ill treatment
- The only recourse of detainees is to file a habeas corpus petition to the High Court (this requires that the detainee is brought to a court of law so that the legality of the detention may be examined). All India feel the High Court is also failing its duty to defend human rights by quashing petitions, ignoring illegal detention, not holding authorities accountable and not awarding compensation

AI India recommendations

- Repeal the J&K PSA
- Release or charge detainees
- Full reparation to all people detained unlawfully
- Investigate allegations of unlawful detention and ill treatment in custody , bring to justice those responsible

Masrat Alam Bhat

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NEWS 01/01/2019 9:43 AM IST | Updated 02/01/2019 5:25 PM IST

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Why Kashmir Politician Masrat Alam Bhat Can't Walk Free After More Than 23 Years In Jail

Over the years, when the police have run out of excuses to detain Alam, they have named him in 50 different crimes but are yet to obtain a single conviction.

Hilal Mir





TAMAR NAZIR VIA GETTY IMAGES

Masrat Alam Bhat at his home after he was released by the government after 53-month-long captivity on 8 March 2015 in Srinagar.

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Masarat Alam Bhat has been detained for a cumulative period for 23 years since 1990 despite never being charged with a crime.

Each round of imprisonment lasts for between 6-12 months, but just as one term ends, the police apply for another preventive detention order, and then another. He is currently serving his 37th preventive detention order.

5th August 2019

- The Indian Government announces that it is overturning Article 370, as well as another provision that prevents non residents from buying property in Kashmir
- Consequences:
 - Reduces autonomy of Kashmir, limits authority of local government
 - Kashmir can no longer make its residency rules: outsiders who couldn't buy land can now do so (some have seen this as opening the doors to Hindu settlers)

Why did the Indian Government do it?

- Security concerns: to manage cross border terrorism
- Economic reasons: to bring economic development and infrastructure developments to the region
- To bring “legislative efficiency” to a state perceived as lagging behind
- Public opinion fed up with Kashmiri “victimhood”

How did the Indian Government do it?

- Probably planning the revocation for some time
- 35,000 additional troops deployed to Kashmir the week before
- Tourists evacuated, annual Hindu pilgrimage cancelled
- Communication blackout: landlines, mobile and internet suspended – the “information black hole” , limiting access to healthcare and education
- At least 300 local politicians, activists, business leaders held in detention centres or under house arrest

Amnesty news

Farooq Abdullah

Former chief minister of J+K



INDIA

Getty Images

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India: Detention of Kashmiri politician is 'blatant abuse of the law'

17 September 2019, 12:22 UTC

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What was the reaction to the revocation of Article 370?

- Mehbooba Mufti, a former chief minister of J+K: India has become an “occupational force” and called this the “darkest day in Indian democracy” (She has been imprisoned since August 2019)
- Information blackout means people cannot participate in the debate about the future of Kashmir, more difficult for activists and journalists to document and share information about the situation in the region, including human rights abuses

Amnesty campaign

- #letkashmirspeak
- <https://www.amnesty.org/en/get-involved/take-action/let-kashmir-speak/>
- Urging the Indian Governor of J+K to lift the communication lockdown

Let Kashmir Speak

Nearly 8 million people in Kashmir have been living through a communication shut down since August 5. The world needs to know what's happening. Take action and demand that the government let Kashmir speak.

Imagine a world where you can't call home. You pick up your phone to call your family to let them know that you are safe or that you are in danger and need help. But your phone doesn't work – you are stranded.

Right now, there are nearly 8 million people living in Kashmir who, since August 5, have been living through a telecommunications blackout. The government of India is restricting freedoms by shutting down their ability to communicate with each other and the rest of the world, and by imposing curfews or curfew like situations preventing people from leaving their homes.

At a time when reports have been pouring in about raids, arrests, clashes and detentions, communications shut downs not only leave people stranded and add panic and unrest, they also effect the ability of doctors and humanitarian workers to carry out their work effectively. The world can only speculate on what grave human rights violations might be taking place right now in Kashmir.

The government of India has almost total control over what information is coming out of the region. There have been reports of political leaders being detained or are being kept under house arrest. Access to emergency services, education and health care is being affected.

The Indian government needs to put humanity first and let the people of Kashmir speak. Sign the petition now and demand that the Governor of Jammu and Kashmir lift the communications blackout

To Mr. Satya Pal Malik, Governor of Jammu and Kashmir, India:

- Lift the blackout of communications in Jammu and Kashmir and let the voices of the people of Kashmir be

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Kashmir, the Other side of silence


"I am not alone. All over the world, there are thousands of the Kashmiri diaspora feeling the intense stress of helplessness.

It has become a daily ritual for many of us now, checking phones, refreshing social media feeds, **searching for any sign of life** breaking through the siege.

It is utterly heartbreaking."

- Shama Naqushbandi

Excerpt from 'Kashmir, the Other Side of Silence: Apathy, Amnesia and Helplessness'



#LetKashmirSpeak

AMNESTY INTERNATIONAL

Shama Naqushbandi is a British-Kashmiri lawyer and writer based in Toronto and author of The White House, winner of 'Best Novel', Brit Writers Awards

Addendum 3rd Oct 2019

- Lawyers of J&K Bar Association have been boycotting the courts for 50 days over the arrest of their present and former presidents under the PSA
- Lawyers are struggling to run their practices due to communication lockdown
- More than 250 Habeas Corpus petitions have been filed since the 5th August , but only 2 judges have been assigned to hear them (the court is down to 9 judges from the usual 17)
- The HC process should take 15 days , now it could take months/years.

Thank you

- https://mobile.twitter.com/AmnestyUK/status/1169668977196486656?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Etweet

<https://beta.washingtonpost.com/world/2019/08/05/india-revoked-kashmirs-special-status-heres-what-you-need-know-about-contested-province/?outputType=amp>

<https://www.reuters.com/article/us-india-kashmir-law/india-abusing-lawless-detention-act-in-kashmir-rights-group-idUSKCN1TD12T>

<https://www.amnesty.org.uk/press-releases/india-government-must-immediately-release-jammu-and-kashmir-political-leaders>

Masarat Alam Bhat

https://www.huffingtonpost.in/entry/jailed-kashmiri-politician-masarat-alam-bhat_in_5c29ea47e4b08aaf7a92287e

<https://thewire.in/government/shehla-rashid-sedition-tweets-on-kashmir-situation>