

Kashmir Dispute and the Current Siege: FAQs

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Role of Hindutva in the Kashmir Annexation

The annexation of Kashmir has long been a Hindutva priority; the abrogation of Article 370 was a key plank of the Bharatiya Janata Party's election platform as early as 1989.¹ In June 2019, the meeting agenda of the apex decision-making body of the Vishwa Hindu Parishad (VHP) included the abrogation of Article 370.² On August 5, when the Hindu nationalist BJP's announced the nullification of 370 took place, top Rashtriya Swayamsevak Sangh (RSS) and VHP leaders welcomed the decision quickly.³ The annexation has complex political and symbolic ramifications in Hindutva's discursive landscape

Territory

India, Pakistan, and China all control some territory in the region, with India controlling the largest part.⁴ The annexation of Kashmir and deployment of tens of thousands of additional soldiers in the region— can be read as an assertion of the regional dominance of a “Hindu superpower”⁵ against its adversaries.

Energizing the Hindu base

In a time of rising MeToo and anti-caste struggles and precarious economic and ecological conditions in India, Hindutva narratives steer the rising frustrations and discontent toward a manufactured Muslim enemy rather than scrutiny on Brahminical dominance or government corruption. “The organization of [an Indian] national identity requires the creation of internal and external enemies”⁶ and “Hindu majoritarian identitarian discourse has... asserted India as distinct/opposite... in relation to the Muslim ‘other’ in relation, therefore, to Pakistan.”⁷ In Hindutva's narrative, Kashmiri Muslims are conflated with Pakistanis, and the forcible annexation of Kashmir and the history of militarized brutalization of Kashmiris is discoursed as justified violence against Muslims as Pakistanis as enemies. The sexualized violence perpetrated on Kashmiris becomes part of a narrative of Hindu dominance and conquest that energizes certain segments of the Hindu population.

Dividing Kashmiri Hindus from Kashmiri Muslims

¹ India Abroad. "India Goes to the Polls: BJP would Divide Larger States." *India Abroad*, December 1, 1989. ProQuest document 371423407.

² Hindustan Times. 2019. "Ram temple, Article 370 on VHP meet agenda." *Hindustan Times*, June 18.

<https://www.hindustantimes.com/india-news/ram-temple-article-370-on-vhp-meet-agenda/story-ErLO93XTv2gDaFrmG0VU3J.html>

³ ANI. 2019. "RSS, VHP laud scrapping of Article 370." *Asian Age*, August 5. <https://www.asianage.com/india/politics/050819/rss-vhp-laud-scrapping-of-article-370.html>

⁴ Chatterji, Angana, Shashi Buluswar, and Mallika Kaur (eds). 2015. *Conflicted Democracies and Gendered Violence: The Right to Heal*. Berkeley: Armed Conflict Resolution and People's Rights Project. p. 120.

⁵ Chatterji, Angana. 2009. *Violent Gods: Hindu Nationalism in India's Present Narratives from Orissa*. Gurgaon: Three Essays Collective, p. 363.

⁶ Chatterji, Angana. 2009. *Violent Gods: Hindu Nationalism in India's Present Narratives from Orissa*. Gurgaon: Three Essays Collective, p. 73.

⁷ Chatterji, Angana. 2009. *Violent Gods: Hindu Nationalism in India's Present Narratives from Orissa*. Gurgaon: Three Essays Collective, p. 72 fn290.

Kashmiri Pandits Are a Pawn in the Games of Hindutva Forces.”⁸ ⁹ The Hindutva notion of a “Hindu genocide”, used to justify violence against Muslims, is often brought up in relation to the suffering of Kashmiri Hindu Pandits¹⁰ impacted by the militancy,¹¹ though there has been no documented proof of a genocide of Pandits. Estimates state that between 209 and 765 Kashmiri Pandits were killed in the Kashmir conflict.¹² Meanwhile, Kashmiri civil society groups have understood Pandits as part of Kashmir and documented human rights abuses impacting them by government forces, reporting that the “killings of Kashmiri Hindus and other minorities in Jammu & Kashmir have never been fairly and credibly investigated.”¹³

⁸ Kaul, Nitasha. 2016. “Kashmiri Pandits Are a Pawn in the Games of Hindutva Forces.” *The Wire*, January 7.

<https://thewire.in/communalism/kashmiri-pandits-are-a-pawn-in-the-games-of-hindutva-forces>

⁹ “The right wing populism of the BJP and its Sangh parivar affiliates has constructed and legitimated anti-minority resentment to create an idea of Hindus as ‘the people,’” Kaul, Nitasha. 2016. “Kashmiri Pandits Are a Pawn in the Games of Hindutva Forces.” *The Wire*, January 7. <https://thewire.in/communalism/kashmiri-pandits-are-a-pawn-in-the-games-of-hindutva-forces>

¹⁰ Indo-Asian News Service. 2019. “Kashmiri Pandits hail action against Malik, JKLF .” *Business Standard*, March 28.

https://www.business-standard.com/article/news-ians/kashmiri-pandits-hail-action-against-malik-jklf-119032801030_1.html

¹¹ Chatterji, Angana, Shashi Buluswar, and Mallika Kaur (eds). 2015. *Conflicted Democracies and Gendered Violence: The Right to Heal*. Berkeley: Armed Conflict Resolution and People’s Rights Project. p. 124.

¹² Chatterji, Angana, Shashi Buluswar, and Mallika Kaur (eds). 2015. *Conflicted Democracies and Gendered Violence: The Right to Heal*. Berkeley: Armed Conflict Resolution and People’s Rights Project. p. 124.

¹³ International Federation for Human Rights, Association for Parents of Disappeared Persons and Jammu Kashmir Coalition of Civil Society. 2019. “Key human rights issues of concern in Indian-Administered Jammu & Kashmir.”

https://www.fidh.org/IMG/pdf/20190315_kashmir_briefing_note_-_final.pdf. p. 15.

Responses to historical claims made to justify Hindutva in Jammu and Kashmir

Kashmir is considered one of the cradles of Hindu culture and civilization, with the earliest recorded settlements dating back 4600 years. Kashmiri Shaivism is one of the oldest Hindu philosophical schools

Kashmir has indeed been a location of tremendous Hindu religious and philosophical production. It is hotly debated when “Hinduism” emerged or coalesced into what we tend to think of it today, since while certain Vedic texts have been dated to as early as 1500 BCE (~3500 years ago), other scriptures typically considered essential and canonical to Hinduism as we know it were produced later: the Ramayana dated to 700 BCE at the earliest, the Mahabharata 400 BCE at the earliest, and the Puranas between 300-1000 CE. What is significant here is that none of these are more than 3500 years old—meaning that it is difficult to claim that whatever earliest settlements may have existed in Kashmir 4600 years ago were “Hindu”.

The term “Kashmir Shaivism” is obviously English and may have been coined as recently as 1914 with Jagadish Chandra Chatterji’s book *Kashmir Shaivism*. Typically, when the term “Kashmir Shaivism” is used, it refers to Trika Shaivism—a religious sect created by either amazing polymath Abhinavagupta or his teacher’s teacher Somananda in the 9th or 10th century. Trika Shaivism brilliantly synthesized earlier Shaiva traditions found in the Shiva Sutras, Spandakarikas, Pratyabhijna, and Trayambaka—which can be usually dated to the 9th century at the earliest—and these in turn drew upon earlier Shaiva traditions found across other parts of South Asia: Shaiva Siddhanta, Kaula, Kula. The origins of these specific traditions are typically dated back to the 5th century CE at the earliest. Given that there is evidence for certain philosophical schools associated with Hinduism today (e.g., Mimamsa) date back to the 4th or 5th centuries BCE, it is unlikely that “Kashmiri Shaivism” can be considered one of the oldest Hindu philosophical schools. In fact, if by Kashmir Shaivism one means Trika Shaivism, then it dates back to centuries after the time of the Islamic prophet Muhammad and the founding of Islam in the 7th century CE.

Kashmiri Buddhist monk Kumarajiva is considered the father of Chinese Buddhism

It is certainly true that Kumarajiva was a Kashmiri Buddhist monk and his arrival and Buddhist teachings had a tremendous influence on later Chinese Buddhism—marking him as a major figure or even “father” of Chinese Buddhism. However, there were also many other Buddhist monks from Central Asia and South Asia who had major impacts on Chinese Buddhism as it came to be formed in the mid-first millennium. It seems more accurate to describe the Kumarajiva as “one of the” or “a” father of Chinese Buddhism.

Kashmiri Hindus provided safe-haven to Persian Zoroastrians, Hindus of Afghanistan, Punjab and Sindh and Buddhists from Central Asia who fled waves of Islamic invasions/forced conversions between 7th and 12th century (500+ years)

Yes, Kashmir was a refuge for many people fleeing violent political upheaval in Central and South Asia for much of the past. This includes those fleeing Buddhist and Hindu kings/empires conquests in the region throughout the first millennia. In other words, it was not only Muslim kings and empires that resulted in mass migrations of people fleeing violence. Furthermore, many Muslims took refuge in Kashmir during violent political upheaval and imperial expansions in Central and

South Asia at the hands of the Mongols, Chaghatai Turks, the Timurids, and other empires. To call such military/imperial/state violence “Islamic invasions” fails to address that many of these kings, soldiers, and empires considered were diverse and fought each other (Afghans vs Turks vs Uzbeks vs Persians, etc) and the fact that Buddhist and Hindu kingdoms were similarly battling and slaughtering each other and each others’ peoples (leading to forced migrations) across South and Southeast Asia as well during this same time period. The question of if, when, and towards what ends forced conversion to Islam occurred at all in South Asia has been addressed extensively by scholars like Richard Eaton. It is noteworthy that many Muslim communities also first came to Kashmir during this time, first taking refuge and then serving under Kashmir’s Hindu rajas of the time.

Kashmir was eventually conquered by Islamists in 1323 CE and large segments of its population was forced into Islam by the end of the 16th century

In the early 14th century, Kashmir was in the midst of massive political upheaval with many rival Hindu nobles fighting against each other to claim the throne. Due to the focus of Kashmir’s military forces being diverted to these efforts, the Chaghatai Turkish general Zulju (Dulchu) was able to successfully enter Kashmir in 1320 via the Zojila Pass and ransack Kashmir. When he attempted to leave Kashmir later with this spoils of war that year, he and his soldiers died trying to cross the same Pass out of the valley. Several rival nobles sought to take advantage of the political chaos that resulted from this attack occurring during the already-existing upheaval, including a young Ladakhi Buddhist prince named Rinchana, who was able to successfully take the Kashmiri throne for himself. Kashmiri court advisors and ministers cast suspicion on Rinchana’s right to rule due to his genealogy and caste being not entirely known (since he was born into a Buddhist family and thus lost his caste identity long ago). To avoid a coup, Rinchana decided to marry the prior Hindu queen and convert to Islam, beginning the “Kashmiri Sultanate”. However, Shah Mir, who served as a general in the previous Lohara Hindu Rajas’ military, overthrew Rinchana’s son and heir and took the Kashmiri throne for himself in 1323.

In short, Kashmir was not conquered by Islamists in 1323. The first Muslim rulers of Kashmir were either a local Ladakhi Buddhist convert to Islam in 1320 or a local general in the Kashmiri military who served the Hindu Rajas since he came to the Valley from what is now Western Pakistan or Eastern Afghanistan during the rule of the Hindu Raja Suhadeva (r. 1301-1320).

Large segments of the Kashmiri population did convert or otherwise come to participate in Islamic traditions in Kashmir during the Kashmiri Sultanate (1320-1586). However, most of these conversions appear to have been voluntary or opportunistic (e.g., to seek employment in the court or avoid taxes). Yes, violent, fanatical actions against Kashmiris Hindus by Muslims did occur during this time as well, especially under Sultan Sikandar and his Brahmin prime minister Suha Bhatt who converted to Islam, took the name Saif al-Din, and advocated that the Sultan oppress and sometime slaughter his prior Hindu community. However, many Hindus continued to be part of the Kashmiri Sultanate court—loyal nobles and soldiers, ministers, and scribes. Three of the four *Rajataranginis* were written during the Kashmiri Sultanate with patronage from the sultans. Furthermore, many Hindu religious groups were heavily patronized by the sultans and previously destroyed or abandoned temples were rebuilt and maintained through the patronage of the sultans. This was also the period in which both Lalla and Nund Rishi (aka Sahazanand) lived, both of

whom railed against corrupt religious authorities of both Hindu and Muslim persuasion. In short, the period of the Kashmiri Sultanate cannot and should not be portrayed as a time typified by Hindu oppression at the hands of a zealous Islamic rulers. While some of this did occur at times, quite the opposite occurred as well.

Further Reading:

Eaton, R.M. The Rise of Islam and the Bengal Frontier, 1204-1760, Berkeley, University of California Press, 1993.

Chatterji, J.C. Kashmir Shaivism, NY, SUNY, 1986

Indigenous Kashmiris

Kashmiris are an Indigenous people whose relations with the mountains and valley land has existed since time immemorial. Over the course of several centuries, different races, nations, religions, and cultures have come into contact with Kashmir.

Kashmiris are a multi-faith population consisting of Muslims, Sikhs, Pandits-Hindus, Buddhists, and Christians. They have experienced waves of religious influences and have had a fluid changes in religious identities.

Claims of Kashmiri Indigeneity are embroiled in who can be considered Kashmiri and who has the right to continue to have relational and membership rights to the land. Whereas the United Nations recognizes Kashmir as an international territorial dispute that must be resolved through a free and fair plebiscite, it further stipulated all those who reside in the disputed territory, and their descendants until two generations - no matter where they reside, are eligible for voting in a future plebiscite.

Those who are able to establish residency or descent/lineage to the disputed territory can be identified as Kashmiri. Until Aug 5 2019, the lineage was verified through an extensive process by Kashmiri membership governing authorities who ruled over whether an individual may be granted a Kashmiri *State Subject* status. Without question, all those who have State Subject status are considered 'Kashmiri'.

Article 370: self-determination and international law

The actions taken by the Government of India (GoI) on August 5 and 6, 2019 include an amendment to India's Constitution to revoke the substantive provisions of Article 370 and the passage of a bill (with an effective date of October 31, 2019) pursuant to which the Indian State of Jammu and Kashmir (the State) will be dissolved into two separate territories directly governed by the Government of India (the J&K (Reorganisation) Bill). Pursuant to Article 370, India had defined its "special status" relationship with the constitutionally separate, autonomous State. On August 5 and 6, GoI fundamentally altered Article 370 without the agreement of the authorized representatives of the State as contemplated by Article 370. Instead, GoI acted unilaterally pursuant to executive orders to which only GoI's representatives assented. Accordingly, GoI used Article 370 by acting in contravention of Article 370 to implement the inverse of what was intended by Article 370, namely to turn a privileged, constitutionally separate, autonomous state with territorial integrity into a subservient region lacking meaningful local governance and territorial integrity. GoI's self-dealing and unilateral evisceration of Article 370 prompts a re-examination of longstanding questions regarding the legalities of the State's relationship with India.

India's constitutional convention included Article 370 in its Constitution of November 1949. The text of Article 370 reflected a political compromise borne of a drawn-out negotiation between a non-representative, non-democratic government in the State propped up by GoI and GoI. Article 370 is often understood as a "memorialization" of the Instrument of Accession (the IoA), the legal instrument that India claims as the basis of the accession of the State to India's dominion. The substance of Article 370 did reflect the concepts of broad State autonomy and limited GoI power in relation to the State as set forth in the IoA. However, Article 370 went beyond the terms of the IoA, including by describing a process pursuant to which broader GoI powers could be extended to the State if the then-to-be-constituted constitutional convention of the State (the Constituent Assembly) approved. In negotiating and agreeing Article 370, neither the Government of the State nor GoI intended to confer the extraordinary powers granted to the Constituent Assembly to any other body. The Constituent Assembly was convened on October 31, 1951 and formally dissolved in January 1957. The Constituent Assembly did not approve of GoI's August 2019 evisceration of Article 370. It should also be noted that United Nations Security Council (UNSC) resolutions starting with Resolution 91 of March 3, 1951 affirmed that the convening of the Constituent Assembly and any action that assembly might attempt to take to determine the future shape and affiliation of the Princely State of Jammu and Kashmir (the Princely State)¹⁴ or any party thereof would not constitute a disposition in accordance with the will of the people or existing UNSC resolutions.

Prior to the adoption of India's Constitution, UNSC had issued resolutions in the matter of GoI's dispute with the Government of Pakistan (GoP) over the accession of the Princely State¹⁵. UNSC resolutions starting with Resolution 47 of April 12, 1948 stated that the political future of the Princely State should be decided through the democratic method of a free and impartial plebiscite. UNSC Resolution 47 memorialized that both GoI and GoP accepted and desired the same.

Although GoI remained publicly committed to a popular referendum on the political future of the State at the time of the adoption of its Constitution, there was international concern regarding the

¹⁴ The Princely State was a "princely state" affiliated with British India prior to British India's transfer of power to the new dominions of India and Pakistan on August 15, 1947 when the Princely State became a fully sovereign, independent state.

¹⁵ Submitted by GoI to UNSC on December 31, 1947 under Article 35 (Pacific Settlement of Disputes) of the United Nations Charter.

inclusion of the State in India's Constitution (including through Article 370). Accordingly, official communications from GoI's external affairs ministry just days before the adoption of its Constitution represented that the inclusion of the State-related provision in India's Constitution was only a matter of fairness under the circumstance (*i.e.*, it was unfair to deny the State's government and people the opportunity to participate in a process that could impact their future) and explicitly stated that GoI's initiative "was not intended and does not, in fact, alter the Government of India's determination to abide, in the matter of accession, by the freely declared will of the people of the Jammu & Kashmir." GoI was clear that if that freely declared will of the people was not in India's favor, J&K's relationship with India (including its constitutional relationship) would "automatically cease."

The international legal validity of the State-related provision in India's Constitution, including Article 370, was questionable. GoI's evisceration of Article 370 is in direct contravention of longstanding UNSC resolutions regarding the Princely State and GoI's international commitments regarding the political future of the Princely State.

As noted above, the IoA is the legal instrument that India claims as the basis of the accession of the State to India's dominion. The former king of the Princely State (the Maharaja) signed the IoA on either October 26 or 27, 1947 (the date is disputed). The IoA provided for the broad sovereignty of the Maharaja (and his heirs and successors). It is conditional on the Maharaja (or his heirs or successors) retaining executive and administrative authority over the Princely State and granted the Indian Parliament only limited authority -- to make laws applicable to the Princely State only in respect of the following discrete, enumerated matters: defense, external affairs and communications. By its terms, the IoA cannot be varied except by a supplementary instrument executed by the Maharaja (or his heir or successor). There are no amendments or supplements to the IoA. The IoA explicitly does not commit the Maharaja (or his heirs or successors) to accept any future constitution of India and reserves an unfettered right to negotiate the terms of a potential arrangement with GoI in respect of a future Indian constitution.

The Maharaja did not accept the Indian Constitution. It is not clear whether the Maharaja had a legal heir or successor who had the capacity or authority to accept the Indian Constitution. The Maharaja abdicated his throne in June 1949 in favor of his son who became the State's *Sardar-i-Riyasat* (or "Head of State"). The Constituent Assembly eliminated a hereditary head-of-state and in the Jammu and Kashmir Constitution made the *Sardar-i-Riyasat* an executive position elected by the Jammu and Kashmir Legislative Assembly. Claiming authority through Article 370 of the Indian Constitution, GoI eliminated the *Sardar-i-Riyasat* entirely in 1966, replacing that position with a GoI-appointed Governor¹⁶. Also, the Maharaja claim to rulership in the IoA is in respect of the entire Princely State. There is no actual successor (or heir) to that position (no government has controlled the territory of the Princely State since August 1947). Accordingly, GoI's inclusion of State-related provisions in India's Constitution appears to contravene the IoA. Additionally, GoI's course of conduct regarding those provisions of its Constitution (popularly described as the "erosion of Article 370," a historical process not described here) exceeded the authority purportedly granted to it under, and directly contravened, the IoA. GoI's evisceration of Article 370 is in direct contravention of the IoA.

¹⁶ In negotiating and agreeing Article 370, neither the Government of the State nor GoI intended to grant the Indian Parliament the power to modify the State's Constitution.

Arguments on whether GoI has been an occupying power in the State since October 1947 turn on the validity of the IoA. Substantive concerns regarding the Maharaja's legal authority to execute the IoA include:

- The Maharaja was not a representative authority of his subjects; his claim to power derived from (1) a then century-old sales deed entered into between two parties whose authority to enter into such instrument is unclear pursuant to which an entire state, its population and its property were sold for minimal consideration and (2) long-standing suppression and state violence culminating in crimes against humanity (including an "ethnic cleansing" campaign conducted in Jammu province in 1947)
- The Maharaja was not considered a legitimate ruler by a significant portion of his subjects who had long demanded democratic self-governance and there were longstanding, widespread, open calls for his ouster or abdication
- The Maharaja faced and was losing an armed revolt of Princely State subjects. If he had not already abdicated his throne, he was fleeing a popular, indigenous uprising when he signed the IoA.
- Princely State subjects in revolt had established a new state that controlled a substantial, expanding portion of the territory of the Princely State at the time the IoA was executed before GoI intervened on the Maharaja's behalf. The Maharaja did not actually possess or control the territory he claimed to possess or control at the execution of the IoA.

Substantive concerns regarding the validity and enforceability of the IoA as a legal instrument include:

- The Maharaja purportedly signed the IoA while fleeing an armed, popular uprising of Princely State subjects resisting exploitation and state violence and seeking democratic self-governance and his ouster (as an unpopular, brutal autocrat)
- The Maharaja only signed the IoA because GoI refused to provide military support to prop up the Maharaja's regime unless he first signed the IoA (which, by his own prior conduct, he did not want to do). GoI, unlike GoP, also refused to sign a standstill agreement with the Maharaja in August 1947. In addition, GoI had engaged in a campaign of intimidation prior to the execution of the IoA and there is evidence that the Maharaja was pressured by GoI representatives even at the time of the apparent execution.
- The Maharaja offered the IoA to GoI on the basis of false representations regarding the ground realities (*e.g.*, that the armed, popular uprising was that of foreign agents rather than Princely State subjects)
- GoI's military intervention in the Princely State appears pre-meditated and was at the behest of an unpopular, deposed or fleeing autocrat and against the only clear expression of popular will among the subjects of the Princely State (who had established the Provisional Free (Azad) Government in a portion of the Princely State's former territory)
- The Maharaja and his government were permitting, aiding and abetting or sponsoring and directing crimes against humanity in Jammu at the time of offering the IoA
- The Maharaja executed the IoA in violation of the Princely State's standstill agreement executed with GoP
- The Maharaja did not actually possess or control the territory he claimed to possess or control at the execution of the IoA

- GoI's acceptance of the IoA was conditioned on accession being settled by reference to the people of the Princely State (which has never occurred) and which GoI actively prevented from being held

According to the 1949 legal opinion of Sir Gerald Fitzmaurice, legal advisor to the British Foreign Office (whose opinion was concurred with by the United Kingdom's Attorney General, Sir Hartley Shawcross, and considered authoritative), the IoA is invalid or null and void (and not competent to settle the status of the Princely State) because: (1) at the time of the IoA's execution, the Maharaja did not have legal authority to execute the IoA as a result of the delegation of authority over external affairs to GoP pursuant to its standstill agreement (it is also noted that the standstill agreement and the IoA both purport to cover the same subject matter, including external affairs, but that the standstill agreement was prior and did not automatically terminate), (2) the Maharaja did not control the Princely State -- there were uprisings against his rule -- and he could not (contrary to his undertaking in the IoA) deliver the accession of the Princely State and (3) because a condition to its effectiveness (*i.e.*, ratification by a democratic referendum) was never satisfied (and GoI was further estopped from asserting otherwise due to its practice and precedent in the case of the accession of the princely state of Junagadh).

If the IoA was not a duly executed and a valid legal instrument, then GoI has been an occupying power in the State since October 1947. If the IoA was duly executed and a valid legal instrument when executed, GoI nonetheless appears to be an occupying power in the State. Note in this regard that:

- the Provisional Free (Azad) Government, many of the subjects of the former Princely State (and their descendants), GoP and the UNSC have always maintained that the Princely State is a disputed territory and do not recognize IoA as valid and enforceable
- As noted above, pursuant to the "erosion of Article 370," GoI violated material terms of the IoA
- Pursuant to the J&K (Reorganisation) Bill, GoI has directly contravened the IoA by mandating the dissolution of the State and authorizing itself to exercise all executive and administrative authority over the State

The duties of occupying powers are enumerated in, among other things, the 1907 Hague Regulations (Arts. 42-56) and the Fourth Geneva Convention (Arts. 27-34 and 47-78) which are recognized as customary international law. Pursuant thereto, a territory is occupied when it is under the authority of an army not authorized to exercise that authority under international law (whether or not the territory in question belonged to a foreign state prior to the occupation). A territory may be occupied if the status of the territory is contested. Occupying powers are obligated to respect the existing laws and institutions of the occupied territory subject to that which is necessary to ensure their own security and to uphold their duties under occupation law. Occupying powers cannot annex or obtain sovereignty over occupied territories; their role is simply that of an administrator.

The main laws applicable in case of occupation provide¹⁷:

¹⁷ International Committee of the Red Cross, *Occupation and International Humanitarian Law: Questions and Answers*, April 8, 200, <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>.

- The occupying power does not acquire sovereignty over the occupied territory
- Occupation is temporary and the occupying power's rights are limited to the period of occupation
- The occupying power must respect the laws in force in the occupied territory unless they constitute a threat to its security or an obstacle to the application of the international law of occupation
- The occupying power must take measures to restore and ensure public order and safety
- The occupying power must ensure sufficient hygiene and public health standards, as well as the provision of food and medical care to the population under occupation
- The population in occupied territory cannot be forced to enlist in the occupier's armed forces
- Collective or individual forcible transfers of population from and within the occupied territory are prohibited
- Forcible or voluntary transfers of the civilian population of the occupying power into the occupied territory are prohibited
- Collective punishment is prohibited
- The taking of hostages is prohibited
- Reprisals against protected persons or their property are prohibited
- The confiscation of private property by the occupying power is prohibited
- The destruction or seizure of enemy property is prohibited, unless absolutely required by military necessity during the conduct of hostilities
- Cultural property must be respected
- People accused of criminal offences must be provided with proceedings respecting internationally recognized judicial guarantees (for example, they must be informed of the reason for their arrest, charged with a specific offence and given a fair trial as quickly as possible)
- Personnel of the International Red Cross/Red Crescent Movement must be allowed to carry out their humanitarian activities. The ICRC, in particular, must be given access to all protected persons, wherever they are, whether or not they are deprived of their liberty.
- Private property cannot be confiscated by the occupier
- Food and medical supplies may be requisitioned exclusively for the use of the occupation forces and administration personnel themselves (*i.e.*, not for purposes of export outside of the occupied territory and not for the benefit of anyone beyond the occupying personnel, unless necessary for the benefit of the population under occupation itself) and only if the needs of the civilian population have been taken into account
- The occupying power may seize any movable property, belonging to the state, which may be used for military operations
- The occupying power does not acquire ownership of immovable public property in the occupied territory, since it is only a temporary administrator. Subject to restrictions regarding their exploitation and use, it can nevertheless make use of public property, including natural resources, but it must safeguard their capital value, in accordance with the law of usufruct.

While a description of such violations is beyond the scope of the present work, GoI has violated many of the above in the State. GoI's evisceration of Article 370 and the J&K (Reorganisation)

Bill are in direct contravention of the law of occupation and appear to constitute an illegal annexation.

Note also that GoI has other applicable treaty obligations, including pursuant to the 1972 Simla Agreement entered into with GoP. Among other things, GoI and GoP agreed that:

- The principles and purposes of the United Nations Charter will govern relations between India and Pakistan; and
- The two countries would settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them.

The political future of the Princely State remains a substantive and significant disagreement between GoI and GoP. GoI's evisceration of Article 370 and the J&K (Reorganisation) Bill are in direct contravention of the GoI's obligations pursuant to the Simla Agreement.

Destruction has a new name in Kashmir: Development

The region of Jammu and Kashmir, called Kashmir in this report, is home to about 12.5 million people with extraordinarily rich natural/ecological resources. Roughly the size of Idaho, the state has a diverse geography, ranging from widespread forests and mountainous areas. Despite more than 70+ years of military occupation by the government of India, indigenous Kashmiris have worked extraordinarily hard to ensure wellbeing of their communities. A few examples are noted:

1. Kashmir is home to a thriving local agriculture and local food system. Kashmir led the sub-continent in the land reform movement, allocating farmland in equitable ways to farmworkers who worked the land (disrupting monopolistic concentration of landholding among a few, very wealthy). This early land reform movement has allowed the sustenance of smallholder (family) farming in the region. Today about 70 percent of the state's population makes its living directly or indirectly from agriculture and allied value-added sectors.¹⁸ Agriculture remains important even though only about 8% of land is cultivable in the state due to the mountainous/forested terrain.¹⁹ Additionally, the local food system is key to its export economy. Agricultural exports include apples, barley, cherries, corn, millet, oranges, rice, peaches, pears, saffron, sorghum, vegetables, and wheat. Therefore, thoughtful stewardship of indigenous lands is crucial not only for the region's economy but also for its ecology.
2. The region's artisanal sector is central to its economy as well. The region has high-end exports of woven fabrics (cashmere) and carpets that have a global following despite limited infrastructure/marketing support.
3. A growing information technology (IT) industry was emerging in the region with about 51 software companies in the capital city of Srinagar employing 1,500 men and women.²⁰
4. Kashmiris sustain indigenous food systems by growing, bartering, sharing, and eating indigenous (and healthful) foods. Even in the state's most urbanized area, the capital city of Srinagar, urban agriculture for self-sustenance is commonplace. Not surprisingly, food security rates in Kashmir are *higher*, not lower, than most states of India.
5. Poverty in Kashmir is significantly lower than that in India. Only about 10 percent of residents in Kashmir earn wages that place them below the poverty line compared to 21.92% in India. The idea that India will usher in a period of development in the region is naïve given that Kashmir has managed to do well *despite* difficult circumstances.

Long-term Extractive Impact of India

The Indian occupation has had an extractive relationship with the Kashmiri economy well *before August 05*. Policies of the Indian state (especially in the past few months) presume that land resources available in the mountainous Kashmir region can be controlled in the guise of industrial growth. There are multiple examples of such extractive moves.

The government of India has exercised militaristic control over the region for more than half a century. Such militaristic control includes illegal occupation of often fertile and ecologically fragile land for military uses, pulling such land away from productive and economic use. In 2006, government officials reported that about 250,000 acres of state land was encroached upon by

¹⁸ Directorate of Economics and Statistics 2014

¹⁹ Dar, Tanveer. 2015. Food Security in Kashmir. *Social Change*.

²⁰ IndiaSpend

military forces, which includes agricultural lands. In its highly urbanized capital city of Srinagar, for example, the official master plan notes that such military use:

“is spread over an area of **23.0 sq. km.** including many military and paramilitary establishments. The widespread existence of military and paramilitary establishments across Srinagar has actually surpassed its [land] area under public infrastructure.²¹” In other words, area dedicated to schools, hospital, etc., is smaller than the area in militaristic uses.

If all Kashmiri lands under direct military land use were to be coalesced the area would be larger than the entire city of Dallas, Texas. In reality, military encampments are spread throughout the state, exercising control over life and business. Additionally, troops patrol road networks limiting mobility of indigenous Kashmiris going about their daily lives, and impeding flow of business travel (transportation of agricultural goods to markets, for example).

Another key area through which India has extracted resources is through water. Kashmir is rich in water resources, but the benefits of these resources accrue to other regions and countries, not to indigenous Kashmiris. For example, sixty-five percent of 3,593 megawatts of energy generated from water resources in Jammu and Kashmir flows out of the state (into the Indian northern grid; only 12% of royalty from this power generation was returned to Kashmir). Ironically, the region of Kashmir often suffers from power shortage during the winters, and this past summer (2019), the capital city of Srinagar was unable to provide municipal water to all areas of the city through its public water system.

Recent Abrogation of Article 370 and 35A Threatens Economy and Ecology of Kashmir

The abrogation of Article 360 A and 35A opens the pathway for non-indigenous Kashmiris to own land in Kashmir. Under the new laws pushed by the Government of India, which now apply to the state following central (federal) government of India’s decision to scrap Article 370, the land literally now belongs to the government of India (as its Union Territory). Within days of announcing the abrogation, the federal government announced that it had prepared a ‘development plan’ that would facilitate private investment and industry that would be possible due to industries’ ability to buy land in Kashmir.²² Note that the development plan was announced with *zero* participation of indigenous Kashmiris – to be clear, indigenous Kashmiris were under a lockdown with the government restricting free movement within Kashmir, and no communication with the outside world.

This move is going to accelerate conversion of indigenous and ecological fragile lands to other land uses, with detriment to the local ecology and local economy. Major real estate companies from India are already speculating about buying/owning land in the fragile region, and others are beginning to speculate about possibilities of land grabs, as reported by Forbes.²³

²¹ Srinagar Metropolitan Region-2035; Draft Master Plan.

²² <https://www.indiatoday.in/india/story/article-370-gone-investor-summit-planned-j-k-boost-industry-healthcare-1578042-2019-08-07>

²³ <http://www.forbesindia.com/article/special/what-opportunities-do-jammu-kashmirs-property-markets-hold/54741/1>

Recent news from *Down to Earth*, a prominent environmental magazine in India, reports that since August 05 (to now), the Forest Advisory Committee of the state, responding to federal dictates, has given the green signal for moving forward with 125 development projects that involve pristine forest lands in Kashmir. Projects include laying of transmission lines, drilling of tube wells, etc. Note that the sheer number of project approvals in the last two months (August, Sep, and October) is higher than the 97 projects approved in the entire 2018 calendar year. In other words, the federal government of India is moving fast and stealthily in wreaking the ecology and environment *before* global powers take heed.

Data collected in Kashmir from a high-ranking (Kashmiri) government officials *after August 05* estimates that at least 125,000 acres of land (equivalent to local one million Kanals) has been identified by the government in various districts of Kashmir for what the government calls “land-banks” for construction of so-called ‘infrastructure.’

Indigenous Kashmiris are apprehensive that the government of India intends to develop subdivisions (called ‘housing colonies’ locally) under the guise of providing housing facilities for employees/workers who are expected to come to Kashmir as part of the program whereas India (actually) wants to change the demographic composition of the region. Already, as noted earlier, land suitable for housing and recreation across the Kashmir region is under the occupation of Indian army and paramilitary forces. Security camps are built next to (or within) residential areas in Kashmir, and have occupied large swaths of land in major cities and towns with limited open land (like Srinagar, Baramulla and Anantnag). This militaristic-driven displacement is going to worsen given that India is now in full control of the land in Kashmir and indigenous Kashmiris having no means of dissenting.

Kashmir’s fledgling information technology (IT) industry, which held the promise of becoming one of the greatest employment-generating industries in future, has stopped functioning since August 5, 2019 when the Government of India shut down the internet in the region. Owner of one of 51 IT companies noted that “It took [them] five years to understand business, five more to hire the right people and in the last five years [to grow].²⁴ His company, which employed 174 people, provided financial software products to healthcare and educational institutions globally, including in the United Arab Emirates, Canada, and the United States. There are about 12 other similar companies in Rangreth, an IT hub in Srinagar, providing world-class software services, but currently none of them are functioning. Software companies tried to salvage the situation by sending employees to Delhi to contact clients but it is an expensive exercise.

The telecommunication inequity will also have a long-term impact that remains to be determined. Scientists, researchers, and students have been unable to conduct internet-based research for 70+ days.²⁵ In recent years, [frequent internet shutdowns](#)²⁶ have already taken a toll on the studies and research of these students and researchers. The ongoing shutdown has been the longest.

In summary, the moves by federal government mask the extractive policies in the name of ‘development’ and ‘civilization.’ If allowed to continue unchecked, not only is the life and

²⁴ [India Spend](#)

²⁵ [Reports](#) in the media

²⁶ <https://www.aa.com.tr/en/asia-pacific/kashmir-most-internet-shutdown-prone-region-study/1429439>

livelihood of 12 million Kashmiris under threat, but the world will also lose an ecologically biodiverse region.

Additional Readings

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The Question of Minorities

Changes to Article 370 impact all indigenous residents of the state of Jammu and Kashmir, including majority and minority ethnic/religious groups living in Kashmir and those who have migrated to other parts of India. Kashmir's 12 million population includes multiple religious (Islam, Hinduism, Buddhism, Sikhism), ethnic (Kashmiris, Dogras, etc.), and linguistic (Kashmiri, Dogra, Ladakhi, Shina, etc.) groups. People from all groups have expressed concern about the abrogation.

The actions taken by the Government of India (GoI) on August 5 and 6, 2019 include:

- the elimination of fundamental Indian constitutional rights granted especially to the residents of the Indian State of Jammu and Kashmir (the State);
- the elimination of separate State constitutional rights that benefitted the subjects of the historic Princely State of Jammu and Kashmir (the Princely State);
- the amendment of land-related laws to eliminate historic protections fundamental to the economic welfare of residents of the State;
- the passage of a bill that dissolves the State into two separate territories directly governed by GoI; and
- extension of new GoI laws to those territories, including laws that deprive the subjects of the Princely State their right of return.

These changes impact all residents of the State, including members of all minority groups living in the State and those who have migrated to elsewhere. GoI claims that all members of minority communities (i.e., all groups other than ethnic Kashmiri Muslims) welcome these changes. However, there is widespread displeasure in the State both with these changes and the manner in which they have been undemocratically and brutally imposed on the population, including among various minority groups. For example, a group of prominent ethnic Kashmiri Hindus (Pandits), Sikhs (a religious minority), and Dogras (an ethnic minority) in a [statement](#)²⁷ condemned the unilateral and unconstitutional abrogation of Article 370.

In the Kashmir province of the State (Kashmir), the most significant religious minority groups are Pandits, Sikhs and Christians. Kashmir has witnessed three decades of extreme violence and significant human rights violations. That violence is the result of a lack of fundamental civil and political freedoms in Kashmir and is primarily state violence intended to suppress the pro-self-determination movement in Kashmir. According to extensive human rights documentation work conducted by credible organizations in Kashmir, GoI and its instrumentalities are responsible for the vast majority of those human rights violations.

During the last three decades, members of the majority Muslim community and minority Pandit community left Kashmir in large numbers, many escaping the violence and insecurity. Members of other religious minority groups including Sikhs and Christians, whose numbers are smaller than the Pandits, have largely remained in Kashmir and have not experienced religious persecution. As recent [ethnographic research](#)²⁸ on Kashmiri Sikhs indicates, “harm from violence is a general concern”—this affects everyone in Kashmir and is primarily state-sponsored violence against

²⁷ <https://www.telegraphindia.com/india/pandits-dogras-sikhs-underline-diversity-in-call-to-end-lockdown/cid/1696984>

²⁸ <https://www.thehindubusinessline.com/opinion/the-case-of-the-kashmiri-sikhs/article28984332.ece>

civilians—"religious persecution is categorically stated as a non-issue." Throughout the decades of political turmoil and violence in Kashmir, Sikhs, Christians and significant number of Pandits have continued to live in Kashmir together with their Muslim friends and neighbors.

While not all Pandits left Kashmir after an armed campaign for self-determination began in late 1989, an estimated 24,202 families migrated in the spring of 1990. At that time there were 38,119 registered Pandit families in Kashmir or approximately 150,000 individuals total. Some of those who left lived in difficult conditions after leaving Kashmir. As per the [official Government numbers](#)²⁹, a total of 219 Pandits were killed by militants in Kashmir from 1989 to 2013. The suffering of Pandit victims of the violence in Kashmir has been and is a cause of concern for Kashmiris which both the pro-self-determination leadership of Kashmir and pro-India politicians in Kashmir have sought to address.

While there has never been a full and impartial accounting of what actually caused many Pandits to leave Kashmir, those that left Kashmir primarily did so in the spring of 1990. An indigenous, non-sectarian armed movement for democratic self-determination began in December 1989 (this was sparked by the blatant rigging of elections in 1987 after a concerted grassroots effort to motivate voter participation after decades of political repression and vote-rigging). In response, the Indian government unleashed hundreds of thousands of military and paramilitary personnel in a campaign of mass, indiscriminate brutality. The first major massacre of this era, the Gaw Kadal Massacre, occurred on January 21, 1990. An Indian paramilitary police unit opened fire on a gathering of unarmed Kashmiri civilians publicly calling for their democratic rights. At least 50 and possibly 280 civilians were killed in that single incident.

While armed pro-self-determination fighters from different groups focused on attacking Indian military and police personnel stationed in Kashmir, at least one group in the initial months of the armed movement appears to have also targeted state actors who were especially responsible for administering state repression of the democratic movement in Kashmir. The targets of this campaign were not from a specific religious community -- the commonality among targets (regardless of religion) was their direct involvement in state repression. Most of those killed in this campaign were Muslims; however, some Pandits were among those targeted and killed.

The Wandhama Massacre was a major massacre of Pandits in Kashmir (the number killed in this single incident represent over 10% of the official total number of Pandits killed in the last three decades of violence). It is one of several politicized tragedies where "unidentified gunmen" were responsible for sensational (but unclaimed) acts of brutality at a moment of increased scrutiny of India's policies in Kashmir. Where popular protest has succeeded in pressuring authorities into conducting an investigation (e.g., in the case of the Pathribal Fake Encounter / Chittisinghpura Massacre case), conflicted and partial official investigators clearly established state responsibility for civilian killings that the Government sought to attribute to the armed Kashmiri resistance. In January 1998, the Jammu & Kashmir Government announced a 28 billion Rupee rehabilitation program for Pandits who migrated from Kashmir in 1990. The program included a financial incentive for each family, a grant for housing, an employment allowance, an employment incentive program, a loan waiver program and a transition settlement program. On January 25, 1998, a

²⁹ <https://theprint.in/pageturner/excerpt/right-wing-exaggerates-number-of-kashmiri-pandits-killed-militants-targeted-muslims-more/271666/>

delegation of migrant Pandits arrived in Srinagar to explore returning to Kashmir. That night (the Muslim holy night of *Laylatul Qadr*), 23 of the 24 Pandit residents of the village of Wandhama, Ganderbal, Kashmir were killed while the local Muslim population was participating in night prayers. The official investigation into the incident closed in 2008 for lack of evidence. The authorities have not pursued this case (and others like it) despite Kashmiri demands for a full and impartial investigation.

The reasons for Pandits' migration from Kashmir range from feeling threatened by the atmosphere of violence to government-[orchestrated](#) design to move the Pandits out of Kashmir for political reasons. While not officially recognized, according to many witnesses, the Indian government arranged for and encouraged (some say threatened) Pandits to leave and facilitated their resettlement (coordinated through *Hindutva* groups), especially in Jammu. It was widely understood at the time that this policy was intended to allow India's military and paramilitary forces a "free hand" to suppress the pro-democracy self-determination movement in Kashmir (i.e., with diminished concern regarding the accidental killing of Pandits who are a politically sensitive group for the Indian Government). Several other rationales are apparent, including the Indian Government's desire to paint the Kashmiri self-determination movement as a sectarian, anti-Hindu, Muslim movement inspired by Pakistan and thereby deny the legitimacy of the pro-democracy movement in Kashmir.

Hindutva groups' claims of forced conversions, demolition of places of worship and discrimination and claims of mass killings and gang rapes in 1990 while widely promoted in India are not substantiated by the historical record. These claims have been called into question by serious researchers including by [new research](#)³⁰. The [documented](#)³¹ experiences of the thousands of Pandits who remained in Kashmir [refute claims](#)³² that the Hindus of Kashmir were ethnically cleansed. While some factions of the Pandit community have advocated for a [separate homeland](#)³³ within Kashmir, other Pandits have [rejected](#)³⁴ the [communalization](#)³⁵ of the Kashmir dispute.

The lack of fundamental civil and political freedoms in Kashmir, state obstruction, militarization, information suppression, long-standing and ongoing conflict and a total lack of transparency (including as a result of the ban on international monitors, journalists and human rights agencies) make a complete and accurate reporting of violations impossible. State obstruction and legalized impunity through statutes like the Armed Forces (Jammu and Kashmir) Special Powers Act 1990 have practically obviated any means of obtaining accountability. There has not been a single credible prosecution of a perpetrator of human rights violations in Kashmir. Despite consistent efforts by Kashmiri organizations to call for full and impartial investigations of violations, the Indian Government's institutions, including the Indian Supreme Court, have not permitted such investigations to take place.

³⁰ https://www.amazon.in/Kashmir-Exposing-Myth-behind-Narrative-ebook/dp/B073CSFLFQ?encoding=UTF8&btkr=1&portal-device-attributes=desktop&ref_dp-kindle-redirect

³¹ https://www.tandfonline.com/doi/abs/10.1300/J500v05n03_06

³² <https://www.aljazeera.com/indepth/spotlight/kashmirtheforgottenconflict/2011/07/201176134818984961.html>

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³⁴ <https://www.aljazeera.com/indepth/opinion/2017/07/kashmir-communalisation-political-dispute-170725082030871.html>

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The Kashmiri cause for democratic self-determination is and has been non-sectarian. Since before the creation of the States of India and Pakistan, that movement has always focused on the upliftment of all downtrodden communities in the territory and included representatives of different communities, including the different religious communities, of the territory. While most Pandits opposed democratic movements in Kashmir and viewed all Kashmiri attempts to uplift the downtrodden as a threat to the privileged position the Pandit community historically enjoyed, those Pandits who embraced democratic principles were pro-self-determination activists.

All major Kashmiri civic and political leaders with a constituency have (from across the political spectrum) consistently called for all claims of human rights violations to be fully, impartially and transparently investigated and perpetrators held responsible. This, of course, includes all incidents involving Pandits (and every other religious community) in Kashmir.

Kashmiris across the political spectrum consistently requested Pandits to remain in Kashmir and, after many left, to return to Kashmir. They pledged their support, with armed pro-self-determination groups openly offering their protection. It is unclear how many Pandits who left Kashmir since 1989 want to return to Kashmir. Overwhelmingly, Kashmiris remain supportive of the return of Pandits who desire to return to Kashmir and their respectful, dignified re-integration into Kashmir society. Kashmiris are not supportive of Pandits (or anyone else) coming to Kashmir as colonial [settlers](#)³⁶.

Regardless of varied narratives, the displacement of Kashmiri Pandits from their homeland needs resolution. This tragedy of displacement of a whole people is real, and the deplorable conditions, which some of financially less stable families have had to endure in migrant camps, has caused a great deal of anguish for many members of the Pandit community. Resettlement of these migrants in their own homeland without creating separate colonies and larger reconciliation between the Muslims and Hindus must be a priority in the resolution of the Kashmir dispute

Indian governments, particularly the BJP government, has successfully [weaponized](#)³⁷ the exodus of the Kashmiri Pandit, Kashmir's Hindu minority, from the valley in 1989. The Hindu departure from the Valley in 1989 is attributed to existential Islamic barbarism, and Pakistani machination. Instead of requesting judicial inquiries into violence, rapes, massacres, and losses of both Kashmiri Muslims and Kashmiri Pandits, or addressing the conflict in order to move toward a just peace that would enable Kashmiri Pandits to return to their homes and Kashmiri Muslims to find justice, they want Kashmir to be a rallying point for a Hindu nation. Kashmiri Pandits historically benefited from their high caste status as Brahmins, especially under the Dogras, where they occupied high offices unlike their Muslim counterparts who were forced into bonded labor. Neither Kashmiri Pandits nor Indians will be served by the abrogation of 370. It will only result in further uprising, violence, and deaths, hurt India's international credibility, and put another nail in the coffin of the idea of India as a secular democracy.

Any vision of return must respect the *multiple* histories, identities, and sufferings that have constituted a place and its people for over 70 years. It must also include a willingness to let go of

³⁶ <https://religionunplugged.com/news/2019/7/23/indias-plan-to-resettle-hindus-in-muslim-majority-kashmir>

³⁷ <https://www.aljazeera.com/indepth/opinion/2017/07/kashmir-communalisation-political-dispute-170725082030871.html>

the dominant narratives of exclusive vulnerability that have allowed Kashmiri Pandits to be used as a pawn to endorse India's slide into Hindu majoritarianism. Finally, such a vision of home must necessarily be anchored to an imagination of collective social and political justice for all in Kashmir. If Kashmiri Pandits cite the fear of engulfment by Kashmiri Muslims as a reason for a segregated security state, they might also ask why Kashmiri Muslims should be expected to assimilate into a Hindu state that has persistently killed, tortured, and imprisoned them for seeking their UN-sanctioned right of self-determination.

It is clear that the BJP government is intent on changing the local demographics and opening up Hindu places of worship to give a boost to religious tourism. For example, in a controversial statement, the Union minister G. Kishan Reddy said the government of India [will restore and reopen 50,000 closed temples in the Kashmir Valley](#)³⁸ when according to Sanjay Tickoo, a prominent Kashmir Pandit leader, who has been fighting for preservation of temples in the Valley since 1989, 50,000 temples never existed in the state. The total number of temples in the state were 4000 and the exaggerated number is to reinforce the government's unfounded allegations that almost all Hindu places of worship were destroyed during Kashmir's armed movement.

Among other issues, the rhetoric of sexual violence has played a key role in sharpening divides between Pandits and Muslims. The details and scale of sexual violence experienced by Kashmiri Pandit women **remain to be extensively researched and documented**, even as claims about the rapes of large numbers of Pandit women circulate freely. In the meantime, Pandit organizations such as Panun Kashmir have used exaggerated narratives of genocide and gang rape to frame Muslim sexuality as predatory.

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³⁸ <https://www.thehindu.com/news/national/karnataka/temples-shut-in-jk-will-be-reopened-kishan-reddy/article29494076.ece>

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Normalcy in Kashmir

The Indian state, including recently, Foreign Minister Jaishankar's statement to the Council of Foreign Relations on September 25, 2019, as well as members of the Jammu and Kashmir state government, have repeatedly stated that the situation in Jammu and Kashmir is "normal" and that there have been "[zero deaths](#)³⁹" in Kashmir. These claims are in obvious contradiction to media reports of more than [five civilians](#)⁴⁰ killed in the region as of September 4, 2019.

Despite state claims that the health sector has been unaffected by the extended curfew and communications blackout, news reports have shown that hospitals and health personnel have been directly targeted by security forces in contravention of international humanitarian norms to protect clinics and medical professionals. The effects of the siege on healthcare are innumerable, and yet they are deliberately invisibilized and concealed through specific practices, such as denials by state officials as to injury and casualty numbers and the refusal of hospital administrators to admit injured patients for fear of creating media attention.

As [The New York Times](#)⁴¹ reported, "cancer patients who buy medicine online have been unable to place orders. Without cell phone service, doctors can't talk to each other, find specialists or get critical information to help them in life-or-death situations. And because most Kashmiris don't have landlines in their homes, they can't call for help." At least a dozen patients have died because they could not call an ambulance or reach the hospital on time. Further, Kashmiri doctors have also been targeted and intimidated, with at least [one doctor being arrested](#)⁴² for discussing the effects of the siege and shortage of medicines.

Despite the Indian state's claims of reducing civilian casualties in Kashmir and exercising "maximal restraint," since 2010, pellet guns have reportedly killed 14 people in Kashmir, [according to Amnesty International](#)⁴³. "The Indian forces call it a pellet gun, but it is a pump action shotgun," says a spokesman from the Omega Research Foundation, a U.K. based charity that monitors military technologies. The only difference is the type of ammunition: a cartridge with up to 500 tiny lead pellets, which disperse in all directions when fired. They are commonly used by hunters. Since 2016, over 6,000 people were injured by pellet guns, including 782 who suffered eye injuries, according to Amnesty.

Ongoing Genocide of Kashmiris

A 'Genocide Alert' has been issued for Kashmir by Genocide Watch. This is a far advancing genocide that the international community has the responsibility to prevent.

"Genocide Watch calls upon the United Nations and its members to warn India not to commit genocide in Kashmir." Given the evidence of high scale atrocities against Kashmiris by Indian

³⁹ <https://thewire.in/rights/watch-zero-deaths-in-kashmir-peoples-testimonies-belie-official-claims>

⁴⁰ <https://www.theguardian.com/world/2019/sep/04/civilians-killed-kashmir-crackdown-army-india>

⁴¹ <https://www.nytimes.com/2019/10/07/world/asia/kashmir-doctors-phone.html>

⁴² <https://www.telegraph.co.uk/news/2019/08/27/kashmiri-doctor-arrested-warning-blackout-could-cause-deaths/>

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armed forces, the approximately one million Indian armed troops in Kashmir are a threat to the safety and security of Kashmiri people. Kashmir needs to be demilitarized immediately.

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Article 35A and women's rights, property acquisition, etc.

In 2015, a case was filed in the India Supreme Court by a Kashmiri-Hindu woman Charu Wali Khanna, claiming Article 35A disenfranchises women, especially if they marry a non-resident man. The petitioner Khanna was a lawyer and former member of the National Commission for Women, who reports described as a “Kashmiri Pandit woman by ancestry” who “desires to build a home in Jammu and Kashmir...in order to rediscover her roots” complained that she was not able to purchase property due to the “peculiar discriminatory laws” (Article 370) which rendered her non-permanent resident. Khanna's petition refers to a 2002 judgment by the Jammu and Kashmir High Court, which noted that the state legislature had not enacted any law defining permanent residents. Her petition argues “under the guise of Article 370 and Article 35A, the men and women state subjects are subjected to different treatments.” Her petition does not mention that 2002 Kashmir High Court judgment that ruled women who married outside the state would not lose their status as permanent residents under any condition.

In the old monarchical law or the new state subject law of 1929, there has never been any gender discrimination. But these facts were sidelined in a politically motivated case for the removal of article 35A. However, in the 1960s, Kashmir's Revenue Ministry began issuing residency certificates to women that were valid only until marriage. The ministry refused to renew the residency status of Kashmiri women who had married non-residents. But legal experts say this unjust proclamation had no basis in the Constitution and should not have been upheld. As mentioned above the 2002 High court verdict made Kashmiri women's residency rights clear. The only lacunae in the High Court judgment was concerning the rights of children born to Kashmiri women who are married to non-resident men and these rights were being adjudicated case by case basis.

The Jammu and Kashmir High Court struck down this provision in *State and others versus Dr Susheela Sawhney and others*. Kashmiri women married to non-Kashmiri men retained full equality under the law since this decision. Subsequent attempts to reinstate this provision in J&K's legislative assembly were summarily defeated. The only challenge remains whether this property could be passed on to the children of such unions; again, this issue could have been adjudicated through the JK court system. The state did not have to place the entire region under a communication clampdown and torture children as young as 11, for this to take place. Furthermore, if there was no occupation, and once Kashmiris are given their right to self-determination, they can, on their own accord, and not under the auspices of a colonial state, put forth progressive legislation.

In 2012, the Jammu and Kashmir High Court in the case of *Mohammed Naseem Bhat vs. Bilquees Akhter* ruled that a husband does not have “absolute and unqualified power to pronounce divorce” on his wife. While there has been some question as to whether the High Court's decision in 2014 of *Masrat Begum vs. Abdul Rashid Khan* may have reinstated that right, there is no indication that instant divorce even occurs in Kashmir, or that if it does that it is even mildly prevalent. Additionally, revoking Article 370 to address marital issues in the state stands in direct contrast to the will of Kashmiri women. No Kashmiri women were consulted prior to this action, and Kashmiri women, alongside men, have repeatedly been protesting in favor of the rights of Kashmiris to have self-determination, and an end to the Indian army's abuses in Kashmir.

The socioeconomic roles of men and women in Kashmir were predetermined by the working-class. Within the trader and artisan classes, a complementary economic relationship between men and women existed while plying their family trade. It can be safely said that in the last 70 years of the modern era Kashmir's patriarchal structures became flexible enough to allow women's education and their entry into mainstream professions. However in the environment of increasing militarization, Kashmiri masculinity itself has become coerced and repressed. Women in public protests or acting as chaperones of men become telling of the onslaught that Kashmiri patriarchy has faced under the militaristic governance of the Indian state. As far as statistics are concerned, according to a 2011 census, the literacy in J&K was 68.74 per cent; literacy among women was 58.01 per cent. Drop out rates amongst women are also high.

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Dalits in Jammu and Kashmir

Righteously silent about its own dismal anti-minority report card the Indian government claims that Kashmir's autonomy has been discriminatory to its minorities. It exemplifies the Valmikis who are Hindus belonging to the repressed Dalit caste. In the 1950s when the municipality workers had gone on a strike, the Kashmiri government had imported 200 Valmiki families from Punjab to work as safai karamcharis (sweepers). After relaxing the rules the Valmikis were employed by the government and given residential land. Twenty percent of all the people from Jammu and Kashmir who received land in 1950s in the land to tillers program included Dalits from Jammu. While retaining their rights as Indian citizens, they did get the status of permanent residents of Kashmir. As a result the younger generation of Valmikis who are educated lack access to local political or professional opportunities. Kashmir had passed the manual scavenging prohibition act in 2010 but its implementation has been slow. Other laws safeguarding the scheduled castes and scheduled tribes have been passed but the historical contentions around demography have put the hapless Valmikis at a disadvantage. Another minority that the BJP exemplifies as being suppressed in Kashmir is the 4,000 families, which migrated from West Pakistan in 1947. They established communities in the frontiers of Jammu province and received Indian citizenship and franchise for the Parliamentary elections. Even though the successive Kashmiri governments tried to ameliorate their situation in various ways, but they are not considered permanent residents of Kashmir.

By appropriating it as an assault upon minority rights generated solely by the policies of Kashmir's autonomous constitution, the BJP has weaponized the genuinely dire situation of the Valmikis and West Pakistan refugees. On the other hand, the BJP government did not think twice about repealing a minority act that enabled the transfer of ownership rights of state land to its occupants against a set remuneration. These occupants were often from the indigenous community of Gujjars and Bakerwal a pastoral nomadic people who are dominantly Muslim and live between the provinces of Kashmir and Jammu seeking warmer climes. The last one-decade had seen increasing strife between the Muslim Gujjar and Bakerwals and the local Hindus in Jammu. This came to a head when in 2018 an 8-year-old Gujjar and Bakerwal girl was gang-raped and murdered. All those accused are from the Hindu community and who came out in favor of the perpetrators with the BJP openly supporting them. The brutal murder-gang rape of a young child brought the war of demography into open adding to the fears of Muslims in the region bringing back memories of the massacre of Muslims of Jammu in 1947. The Hindu right-wing extremists did not even allow the dead child's body to be buried in the village. The pastoralist community now fears to return to the grazing grounds.

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LGBTQ Rights

Linking government of India's move of revocation of Article 370 as a progressive action for LGBTQ rights has been called [pinkwashing](#)⁴⁴ by gay rights activists. The phenomenon of associating nationalist ideology and rights of the LGBTQ community follows the pattern of homonationalisms and Islamophobic narratives around the world

As in rest of India, homosexuality was decriminalized in Kashmir after section 377 of Indian Penal Code was decriminalized since Ranbir Penal Code 377 is in *pari materia* with IPC 37. As with all Kashmiris, LGBTQ community also wants an end to the military occupation of Kashmir.

As countless [legal scholars](#)⁴⁵ have explained, the Court's decision in 2018 to legalize homosexuality extends to all state High Courts, including the High Court of Jammu and Kashmir. There is no special law under Jammu and Kashmir's Constitution which otherwise criminalizes homosexuality. As a result, Article 370's revocation does absolutely nothing legally to benefit LGBTQ+ Kashmiris.

Until August 5, 2019, before amending Article 370, laws made by Parliament of India did not directly apply to J & K. However, even before this amendment was passed, an order of the Supreme Court of India would be binding on courts in J & K. Article 141 of the Constitution of India envisages that the law declared by the Supreme Court of India shall be binding on all courts within the territory of India, including J & K. Legal experts have already opined that the Supreme Court Judgment applies to J & K also. Former chief justice of J & K High Court Bashir Ahmad Khan is on record stating that the Supreme Court judgment on section 377 will have deemed application in Jammu and Kashmir. Former J & K high court judge Justice Hasnain Masoodi is also on record stating that the Supreme Court judgment on section 377 is implementable in J & K. Even Advocate Saurav Kirpal, who was part of the legal team that fought for legal rights of the LGBT community in the Supreme Court of India accepted this position and referred to the 1995 J&K High Court judgment in the case of Jankar Singh vs State And Ors. In this case, the question before Justice Rizvi was whether Section 303 of Ranbir Penal Code was unconstitutional, since Section 303 of the Indian Penal Code had already been held violative of Articles 14 and 21 of the Constitution of India by the Supreme Court of India. Section 303 of India Penal Code was in *pari-materia* with Section 303 of the Ranbir Penal Code. Commenting on the retrospective effect of the judgement of the Supreme Court, the Justice Rizvi observed that- "When the highest court in the land gives an exposition of law, it has to be taken as if that was always the position of law. All pending matters whether at trial stage or in appeals have to be disposed of accordingly." Similarly, section 377 Ranbir Penal Code is also in *pari material* with section 377 Indian Penal Code. The Supreme Court of India has already struck down 377 IPC, naturally this law is now binding on all courts.

⁴⁴ <https://thewire.in/lgbtqia/all-you-need-to-know-about-the-false-link-between-article-370-and-queer-rights>

⁴⁵ <https://www.dnaindia.com/india/report-top-court-order-on-section-377-applicable-in-jk-too-state-2660965>

On the other hand, members of the LGBTQ community have complained about how the [siege has impacted](#)⁴⁶ their [inter-communal ties](#)⁴⁷ (they are not able to get in touch with or support each other) and their livelihood.

⁴⁶ <https://timesofindia.indiatimes.com/home/sunday-times/all-that-matters/377-anniversary-this-week-but-for-queers-in-kashmir-there-is-no-gay-liberation/articleshow/70927730.cms>

⁴⁷ <https://www.scmp.com/week-asia/article/3030655/india-kashmirs-transgender-community-struggles-survive-under-shadow>

Terrorism and Islamophobia

When the Indian government uses the singular lens of terrorism--expansively defined as everything from armed conflict to stone pelting to civil disobedience--to conceal the reality of Indian occupation, erase more than 100 years of struggle for sovereignty led by the people of Kashmir, and delegitimize and depoliticize demands for political self-determination. Terrorism, as a discursive, analytical and policy lens, must be contextualized within broader conversations on settler-colonialism, Islamophobia, racism and majoritarian nationalism sweeping India and the world.

Kashmiri indigenous struggle for self-determination predates 1947. In 1846 the British signed into force the 'Treaty of Amritsar' - an entirely unlawful agreement, with the non-Kashmiri Dogra family. In lieu of services rendered to the British Crown, the Dogras were gifted Kashmir – the land, people and livestock for a paltry sum and annual tribute. Since then, the indigenous struggle for Kashmiri self-determination emerges. As a response to the Kashmiri civil disobedience, the Dogra rulers enacted a two-pronged vicious strategy: 1). Mischaracterize resistance to them as fundamentalist; 2). Erase Kashmiri Muslim identity through falsification of Kashmiri history, culture and monuments; 3) Violently suppress dissent. Up until now, Kashmiri society has been existing through various structures of violence. This struggle has been a nonviolent resistance, except for a short period of armed resistance in the early nineties. The state response to Kashmiri resistance though, has always been violent⁴⁸.

Indian government's spurious excuse of "fighting terrorism" and ushering an era of gender equity in property rights, provides cover for the ongoing human rights violations⁴⁹ which include illegal detentions, torture, sexual violence, expropriation of land, murder, collective punishment, censorship, closure of educational institutions, and preventing access to essential services. Amidst the current lockdown and suspension of all means of protest, the Kashmiri populace has once again resorted to nonviolent civil disobedience⁵⁰.

While framing Kashmir as a national security threat, the Indian government has succeeded in deflecting the scrutiny of its internal and external policies, and mobilize public opinion in favour of policies which under normal circumstances would seem very undemocratic, or plain repressive. While India used "terrorism" as a cover for the current siege, based on its own claims⁵¹, there were estimated 200 militants in Kashmir days before the current siege. In spite of this fact, militarization of the world's highest militarized zone, continues.

"Terrorism" is a term that has acquired a life of its own in today's geopolitics as well as in everyday public discourse. Terrorism, as commonly represented by various nation states, and then promoted by the state friendly uncritical media, is always associated with the other, especially, the Muslim Other. The issue of terrorism is closely linked with the false representation of the Kashmir issue as a 'Muslim threat' that fits in with the Islamophobic pattern of emphasizing a civilizational divide of the civilized vs. the uncivilized. Since the rise of the Bharatiya Janta Party (BJP), there have

⁴⁸ <https://ikccs.files.wordpress.com/2017/05/structures-of-violence-e28093-main-report.pdf>

⁴⁹ <https://indianculturalforum.in/2019/08/14/kashmir-caged-a-fact-finding-report/>

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been numerous media reports of the [violent toll of Hindu nationalism](#)⁵², home to one hundred eighty million Muslims. For the first time we also have depth [scholarly](#)⁵³ research from the Berkeley Islamophobia Studies Center on the status of Islamophobia in India. Other studies of the [Indian media](#)⁵⁴ expose and deconstruct the work of stereotypical media representation of Indian Muslims.

Violence against the minorities in India is being normalized and any voice [of dissent](#)⁵⁵ against the policies of the ruling BJP is silenced, and labelled seditious.

In addition, the Indian media's portrayal, characterization, and instant and dramatic analysis devoid of facts, is a classic in ensuring the status of Muslims as the "other", and Islam as the enemy. These are tired, misleading tropes intended to obfuscate from the reality of military occupation. Kashmiris, even with all the violence directed against them, have not resorted to violence. That, is testament to their humane, tolerant and compassionate way of life.

⁵² <https://www.newyorker.com/news/on-religion/the-violent-toll-of-hindu-nationalism-in-india>

⁵³ <http://www.cerisnet.org/resource/islamophobia-in-india-stoking-biqotry>

⁵⁴ <https://www.mdpi.com/2077-1444/9/9/283>

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Human rights in Pakistan Administered Kashmir and Gilgit Baltistan

In a recent report released on July 08, 2019 ([second UN report](#)) by the Office of the United Nations High Commissioner of Human rights (OHCHR) has updated the situation of human rights in Indian-administered and Pakistan-Administered Kashmir.

There are 19 recommendations for India and 12 recommendations for Pakistan. The common recommendation made to India and Pakistan is:

‘Fully respect the right to self-determination of the people of Kashmir as protected under international law.’

Notwithstanding the powerlessness of Pakistan Administered Kashmir, and in view of the overwhelming majority of Azad Kashmiris who feel politically, constitutionally, and economically disempowered by Islamabad, the territory remains relatively conflict free and the people of this territory feel emotionally connected to the people of Pakistan. This is unlike the situation in the valley of Kashmir, where the residents are antipathetic and bitter over Indian control. The presence and application of laws that grant impunity to Indian armed forces, such as Armed Forces (Jammu and Kashmir) Special Powers Act 1990 and Jammu and Kashmir Public Safety Act 1978, have resulted in gross human rights violations by the Indian security forces, which have been widely reported by the international media and other organizations.

It is important that both Indian and Pakistan allow international human rights organizations and international media to investigate human rights violations on both sides of the Line of Control.

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