

# **Guidance for the Resolution of the Kashmir issue**

**A research-based guide to the conflict and steps to a just and peaceful resolution in accordance with the Kashmiri right to self-determination**

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**Report prepared by: Kashmir Scholars Consultative and Action Network**

The Kashmir Scholars Consultative and Advocacy Network is an interdisciplinary group of scholars of various nationalities engaged in research on the region of Kashmir. Our research on the Kashmir conflict addresses its history, its consequences for the region and beyond, and its possible resolution. It examines the implications for an internationally mediated political solution, and is of relevance to policy makers.

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## **Contents**

[The current crisis.](#)

[Historical background](#)

[The status of Kashmir in international law](#)

[Human rights abuses in the Kashmir conflict](#)

[A vision for the future](#)

[Short and long term goals for steps for a peaceful and just resolution](#)

[Further reading and resources.](#)

[References](#)

## The current crisis

On August 5, 2019, India unilaterally [revoked](#) Kashmir's special status under Article 370 of the Indian Constitution. The reorganized state of Jammu and Kashmir is now divided into two union territories, ruled directly from New Delhi. This announcement by the Indian Government, led by the ruling Bharatiya Janata Party (BJP), implementing the agenda of the right wing Hindu majoritarian nationalist [ideology](#), opens up Kashmir to settlement by outsiders, who were previously restricted from purchasing land in the region. This raises fears of a rush of Indian settlers into Kashmir and corporate buyouts of land, leading to intentional [demographic changes](#) in the region.

However, this unilateral Indian action does not change the status of Kashmir as a disputed territory, to be resolved in accordance with UN Security Council resolutions [47](#) and [39](#) on the basis of the principle of [self-determination](#).

The revocation of Article 370 was preceded by a massive [buildup of troops](#) in the region. As many as 40,000 additional Indian troops from military and paramilitary units have joined the approximately 750,000 troops already stationed in the region. Laws such as the [Public Safety Act \(PSA,1978\)](#) and [Armed Forces Special Powers Act \(AFSPA\) \(1990\)](#) give Indian security forces permission to shoot, arrest, or raid the home of anyone who is seen as a potential security threat, without a court decision. AFSPA gives army personnel [impunity](#); not one army personnel has been prosecuted in Kashmir since 1989.

Indian actions and a military blockade has created a humanitarian and human rights crisis of catastrophic proportions, one that poses a grave threat to international peace and security in the region. As of September 1, 2019, the 29th day of the Indian military siege of Kashmir, all communications including internet and phone lines remain suspended, [hospitals](#) and [emergency services](#) continue to struggle with lack of personnel and adequate supplies, thousands of [people](#), including [minors](#), have been detained without charges, and there are reports of [torture](#) involving youth and children. The stringent curfew has severely restricted the free movement of the civilian population, including [doctors](#) and [patients](#) trying to reach hospitals.

## Historical background

Kashmir has been a unique region one with its own sense of identity and history. It was an independent kingdom until the early modern period.

The modern history of Kashmir can be divided into three periods: 1846-1947; 1947-1988; and 1998 to the present.

**1846-1947:** The state of Jammu and Kashmir emerged as a result of the 'Treaty of Amritsar' between Maharaja Gulab Singh and the British Government. Under this infamous treaty, etched in the minds of the people of Jammu and Kashmir, the land and the people of Kashmir was sold to Gulab Singh for a meagre sum of equivalent of US \$150,000. The Maharaja expressed his subordination by presenting annually to the British government one horse, twelve shawl goats of

approved breed (six male and six female) and three pairs of cashmere shawls, in exchange for receiving British protection for his territories from external enemies. The Dogra regime disenfranchised the Muslims majority, barring them from official positions in administration, military, police and education, reserving these positions for the Hindu minority. The Dogra rulers violently suppressed the Kashmiri movement for political rights and justice, including the mass imprisonment and torture of movement leaders, and the massacre of 21 protestors on [July 13, 1931](#). The stories of exploitation and untold miseries inflicted upon Kashmir's population by the Hindu Maharaja ruling a Muslim-majority region are deeply rooted in Kashmiri psyche. Scholars and legal experts have emphasized that the Kashmiri struggle for democratic rights and accountable government dates back to the 1920s and the opposition to the autocratic Dogra regime.

**1947-1988:** In 1947, one third of the British Empire in India was made up of more than 560 Princely States, including the state of Jammu and Kashmir, that recognized that the British monarchy had supreme power, so called "paramountcy." In June 1947, Lord Mountbatten, the last Viceroy of India, stated that "those who recognized British Paramountcy had to all intents and purposes been abandoned by their liege lord to the mercies of the successor regimes of India and Pakistan" (Mattu, 2002, p.7). The British devised a plan for the Princely States to join either India or Pakistan on the basis of geographical contiguity and religious majority of the state. As a Muslim-majority region with a Hindu ruler, Kashmir was an anomaly. Maharaja Hari Singh, the Dogra ruler at that time, equivocated for the longest time over which country to join, while leaning strongly toward declaring independence from both. The Maharaja signed a standstill agreement with Pakistan in August 1947 and tried to do the same with India but did not receive a clear response (Lamb, 1993). Within days, the Maharaja was faced with an indigenous armed revolt in Poonch in western part of Jammu due to high taxes imposed after its annexation in 1936 ([Snedden](#)). By September 1947, Jammu, like many other parts of North India was engulfed in religious violence. It is estimated that two thirds of the Muslim population of Jammu was either killed or forced to flee to Pakistan. The genocide was conducted by the Rashtriya Swayamsevak Sangh (RSS), right wing Hindi nationalist paramilitary volunteer organization, widely regarded as the parent organization of the current ruling BJP party of India, in conjunction with the Maharaja's forces (Bhasin 2013, Lamb 1993; Snedden 2013). It is remarkable to note that there were no retaliatory attacks against the Hindus of Kashmir, unlike what was happening in other parts of Northern India. By August 1947, most of the Poonch region was free and renamed as Azad Kashmir, or, (Free Kashmir). In October of 1947, tribal raiders from the northwest frontier province of Pakistan tried to move towards Srinagar, the summer capital of Kashmir. Facing a revolt, the Maharaja fled to Jammu and sought help from the Indian government, which agreed to his request only after he signed an [Instrument of Accession](#) in October 1947, which Pakistan contested and deemed fraudulent. Research (Lamb 1994) also demonstrates that the Indian troops may have landed in Kashmir even prior to the signing of the Instrument of Accession. The Instrument of Accession was a conditional document to be ratified by the people of Jammu and Kashmir through a referendum, a pact that India in spite of promises by the leadership at that time has to date failed to honour. Instead it has used the instrument of Accession as what Alasdair Lamb calls, "the most powerful public justification for the Indian decision to retain at all costs those parts of the Jammu and Kashmir which it now holds; Kashmir is an internal matter." (Lamb Birth of a tragedy, p.12). The result was the first war between India and Pakistan which ended with a UN negotiated ceasefire in 1948. The ceasefire line divided the territory between Indian controlled and Pakistani controlled areas. Under Indian control is Jammu, Ladakh and Kashmir Valley, and under Pakistan, Azad Kashmir, Gilgit and Baltistan. This unnatural division changed the geography of

the State and the natural connections to the outside world that linked Kashmir valley to the plains and the traditional silk route in Central Asia.

The Indian-held area covers three regions all very diverse in their culture, geography and demographics. Jammu in the southwest has a slight Hindu majority, Ladakh to the northeast is evenly divided between Muslims and Buddhists, and the Valley of Kashmir, has a Muslim majority (95%) with small Hindu and Sikh minorities.

Under the Constitution of India, adopted in 1950, Jammu and Kashmir was guaranteed an autonomous status. Kashmir ceded to India control over defense, foreign affairs, and communications. This status has changed with the recent abrogation of Article 370 of the Indian constitution, which has been deemed [unconstitutional](#) and [illegal](#) by experts. Over the years India has attempted in various ways to back out of the promised plebiscite and erode the autonomy of the region with the help of Indian loyalists, a corrupt political class of Kashmiris. India lays claim to Kashmir as its integral part while United Nations recognizes Kashmir as a disputed territory and maintains military observers on both sides of the Line of control.

**1988-to the present:** Since 1947 India and Pakistan have fought three wars over Kashmir and held numerous rounds of talks to resolve this dispute. All these bilateral efforts have not moved the issue of Kashmir to any resolution.

Exacerbated by open rigging of state assembly elections by the Indian administration in 1987, resentment culminated in a mass insurrection in early 1989, initially taking India by surprise. The year 1987 was a watershed moment when many notable Kashmiri figures, who wanted to raise the question of Kashmir as a political dispute and solve it under the UN mandate, decided to stand for elections under the banner of the Muslim United Front (MUF). The MUF candidates would campaign wearing shrouds hence called *Kafan Posh* (shroud wearers) to indicate their do or die stance in resolving the Kashmir dispute. Despite popular local support, MUF lost after a massive and concerted rigging effort by the ruling party that favored India. People initiated protests and stone pelting; the general mood in the Valley was one of despondency. Four people were killed during these protests, and the government began arresting the MUF cadre. The armed struggle began roughly two years after this, in 1989.

In 1991, India implemented an emergency law known as the Armed Forces Special Powers Act (AFSPA), which gives the military supreme control over the region (Amnesty 2011). AFSPA has enabled arbitrary arrests and detention, rapes, enforced disappearances, fake encounters, and extrajudicial executions, thus reinforcing the impunity of the Indian forces. Currently, in Indian-occupied Kashmir there are approximately 700,000 Indian troops and with a Kashmiri population of approximately 5.5 million, that is one soldier for every eight Kashmiris, making Kashmir one of the world's most militarized regions. More than 70,000 people have been reported killed in counterinsurgency operations, 8,000-plus forcibly disappeared, and more than 60,000 subjected to custodial torture.

Since the year 2008, Kashmiri resistance began to notably change from an armed one to civilian resistance with street fighting at its center. And since civilian uprisings in Kashmir against the Indian rule have broken out with a marked predictability. The most recent uprising began in the year 2016 after Burhan Wani, a popular 22-year-old militant from the Hizbul Mujahidin an armed

group, was killed by the Indian forces. The entire Kashmir valley plunged into protest and mourning. As the news of the killing broke, a massive crowd joined Wani's funeral at Tral, his home district. Every city, town, and village in Kashmir came together to offer funeral prayers in-absentia for the militant commander. The mosque pulpits rang with Azadi (freedom) songs; demonstrations and street fighting flared up. In the protests that followed Wani's killing more than 98 persons were killed and over 11,000 were wounded (OHCHR 2018) by the retaliatory actions of the Indian troops.

The current siege of Kashmir began at 6am on August 5 2019. The government imposed a curfew on citizens and banned the assembly of more than four people. Soon after, the internet and phone lines were also shut down. Home Minister Amit Shah told Parliament that the president had signed a decree abolishing Article 370 of the Constitution. "The entire Constitution will be applicable to Jammu and Kashmir state," Shah said. Kashmiris have since been curfewed with minimal news coming out from the region. Foreign journalists who managed to get some news out pointing to a deep unrest and protests, have been banned from going in. Indian media is trying to peddle a narrative of normalcy but the siege continues. The communication blackout, and the level of humanitarian crisis unfolding is unprecedented.

## **The status of Kashmir in international law**

The August 5, 2019 decision of the Indian Parliament to dismantle Jammu and Kashmir's "special status" under Article 370 and Article 35A of the Indian Constitution is an act of aggression amounting to an illegal annexation of the UN-recognized internationally disputed territory. This act represents a unilateral attempt to change the legal, constitutional, and political status and rights of residents of the disputed territory. These rights arise from State Subject laws enacted by the erstwhile Princely State of Jammu and Kashmir, which extend to and are shared by all subjects of the territory presently divided between China, Pakistan, and India.

The [unconstitutional changes](#) announced by the Indian government have been accompanied by legal maneuvers including the official dissolution of Jammu and Kashmir State, which demonstrates an intention to carry out far-reaching changes to [demographic](#) and [land-holding patterns, threatening](#) the future existence of the people of Jammu and Kashmir. These actions jeopardize the rights of all Kashmiris, especially a large number of refugees and displaced persons, including the minority Kashmiri Pandit (Hindu) population who either continue to live in the region or desire to return to their homes in the Kashmir Valley. Such a wide-ranging decision affecting the internationally recognized rights of parties in a multilateral dispute, cannot be glossed over as an "internal matter" for India.

Furthermore, the Indian government's decision is in violation of United Nations Security Council resolutions. UNSC Resolution [No. 91](#) of March 3, 1951 specifically affirmed that the convening of a constituent assembly for the Indian-held territory was in violation of the terms of the UN resolutions to resolve the dispute in accordance with the will of the people of Jammu and Kashmir and in violation of the principle of self-determination. The abrogation of Article 370 erases the limited legal recognition and protection of self-governance, legal autonomy, and citizenship rights for Kashmiris within the territory under Indian control.

The unilateral abrogation of Article 370 and Article 35A is also a violation of the 1972 Shimla Agreement between India and Pakistan which resolved to use peaceful and bilateral means in keeping with principles of the UN Charter to settle differences. The language of the Indian President's declaration through Constitutional [Order \(CO 273\)](#) issued on August 6, 2019 overrules the application of any "instrument, treaty or agreement as envisaged under Article 363 (of the Indian Constitution) or otherwise," demonstrating a flagrant disregard for the binding nature of its international obligations and respect for international human rights and humanitarian laws.

## **Human rights abuses in the Kashmir conflict**

While the attention of the world is focused on the current situation and the complete abrogation by India of all democratic and civil rights in Kashmir, the record of Indian human rights abuses dates back at least [30 years](#). The central human rights challenges in Jammu and Kashmir involves impunity for human rights violations and lack of access to justice. Draconian laws, such as the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (AFSPA) and the Jammu and Kashmir Public Safety Act, 1978 (PSA), have served to suspend and violate civil liberties and rights, and given military personnel impunity in relation to their actions.

The continuing human rights abuses have been extensively documented by the UN's own agencies and mandate holders, as well as Kashmiri and international human rights organizations.

Arbitrary arrests of protesters, political dissidents and other civil society actors, as well as minors, have been conducted under PSA, which gives authorities the power to incarcerate an individual without charge or trial. International human rights bodies such as OHCHR ([2018](#) and [2019](#)) and Amnesty International ([2019](#)) have emphasized that the PSA is violating international human rights law. In July 2018, the Government of Jammu and Kashmir amended section 10 of the PSA, making it possible to detain permanent residents of Jammu and Kashmir outside the state.

AFSPA gives armed forces extended powers, such as an officer of the armed forces can fire upon an individual who is deemed to act against the law or order, enter into someone's house, and stop and search a suspect without a warrant. Furthermore, it presents a central obstacle to accountability as section 7 of the AFSPA prohibits the prosecution of security forces personnel unless the Government of India grants a prior permission or "sanction" to prosecute. As a result, not a single prosecution of armed forces personnel has been granted by the central government since 1990.

The militarization of Kashmir and the implementation of PSA and AFSPA have resulted in a large number of killings and injuries, disappearances, torture, and sexual violence. According to JKCCS, 1,081 civilians were killed by security forces in extrajudicial killings between 2008 and 2018 (OHCHR, 2018). In addition, militant armed groups have been responsible for attacks on civilians and political activists. According to JKCCS, [in 2018](#) 18 civilians, six political party activists, and one separatist leader were killed by armed group members and another 25 civilians by unknown gunmen.

Since 2016, Indian military has used [pellet-firing shotguns](#) in the Kashmir Valley in response to protests and demonstrations. This has caused large-scale civilian deaths and injuries. It has been

reported from the Shri Maharaja Hari Singh Hospital in Srinagar that 1,253 people have been blinded by the metal pellets used by security forces from mid-2016 to the end of 2018.

During the last 30 years, the Indian military has used “cordon and search operations” to crack down on the local population in urban and rural Kashmir. Cordon and search operations “enable a range of human rights violations, including physical intimidation and assault, invasion of privacy, arbitrary and unlawful detention, collective punishment and destruction of private property” (OHCHR 2018).

Wide-spread use of torture has been reported by local civil society organizations and international organizations. While the majority of cases of torture goes unreported and no precise numbers can be confirmed, the most [detailed report](#), produced by JKCCS in February 2019, investigated 432 cases of torture in Kashmir from the last 30 years. The report states that torture has been used by Indian armed forces and police without any distinction of political affiliation, gender, or age. The vast majority (301 out of 432 torture victims) were civilians, 119 were militants, 5 ex-militants (essentially civilians at the time of being tortured) and 2 from the Jammu & Kashmir Police. (Affiliations were unverified in 5 cases). Importantly, 27 were minors when tortured. Professionals like doctors, paramedics and journalists have also been regularly targeted and assaulted since the early 1990s.

Sexual violence against women has been frequent, although rarely reported. There are few systematic mappings of sexual violence. One [report](#) conducted in 1992, only three years after the start of the insurrection, listed 15 cases of rape (Asia Watch and Physicians for Human Rights 1993, p. 3). The report describes that rape and sexual abuse are carried out by the Indian army units, the Central Reserve Police Force and militants. Mass rapes have been carried out; one of the most infamous instances is the rapes in Kunan and Poshpora: during one night in January 1991, women of all ages, in the two neighbouring villages in Kupwara District, were raped by Indian army men (Kazi 2009). The Indian state and military have both failed to properly investigate the incident and no one has been indicted.

Since 1989, a large number of people have been disappeared, rendering thousands of women as [half-widows](#), and many of which still have not been located or returned home. It is [estimated](#) by JKCCS and the Association of Parents of Disappeared Persons that over 8,000 people have disappeared, while the state and central governments state that the figure is closer to 4,000. A number of reports on human rights violations produced by the Jammu and Kashmir Civil Society, a federation of human rights organizations, can be found [here](#).

## **A vision for the future**

Every ordinary citizen of the world, and world leaders concerned with peace and stability, should actively work towards the resolution of the Kashmir conflict. The danger of a [nuclear war](#), with consequences for the whole world, makes the Kashmir conflict an international issue, not a bilateral issue between India and Pakistan. Scientists [predict](#) even a limited nuclear war between

Indian and Pakistan can wreak havoc on Earth's climate and trigger a global famine. The stakes are high as India's Defense Minister has indicated [recently](#) that India may no longer adhere to "no first use" nuclear doctrine.

*It is the responsibility of the leaders of the world to work with the United Nations to seek a just a peaceful resolution of Kashmir by involving all three parties to the dispute - India, Pakistan and above all, the Kashmiri people. Only when the people of Kashmir have a chance to express their political will without coercion and disruption of demography, geography, and natural resources, can there be a lasting solution to this conflict.*

While the conflict is often framed as an intractable one, in fact many ideas and plans for a solution have been made over the years. **A solution must recognize the fundamental right of Kashmiri self-determination.** The common elements of the numerous proposals are remarkably consistent and include:

1. immediate and unconditional release of all political prisoners
2. full freedom of movement of people across the Line of Control to enable political discussion and action
3. a ceasefire to be observed by all sides,
4. demilitarization overseen by international observers
5. accountability and justice for all human rights abuses

These elements could be used to lead international political and human rights efforts toward resolving the Kashmir issue. A settlement would have to take into account the different aspirations of the regions and sub-regions, as well as their historical and contemporary economic and social connections. The UN Security Council resolution of a plebiscite, with the additional option of independence, would be the most just way to allow the people of Kashmir to determine their own future. Professor Noor Ahmed Baba, a noted Kashmiri political scientist, offers a uniquely Kashmiri solution: "We need to work for conditions which make the discourse of violence completely irrelevant so that Kashmir as a zone of peace assumes the status of Asia's Switzerland in a political sense as well" (Baba, 1994).

## **Short and long term steps to a peaceful and just resolution**

1) As an immediate measure, we ask that the United Nations declare Kashmir as a zone of humanitarian crisis. UN bodies including the UN Security Council, the UN General Assembly alongside UN Human Rights bodies must call for an immediate cessation of Indian violence against Kashmiri civilians and restoration of all civil and political rights, importantly including ending the communications blockade and restoring freedom of expression. The call must also include the following conditions:

- a. Demilitarize the state of Jammu and Kashmir as well as both sides of the Line of Control between India and Pakistan. This demilitarization would necessarily mean revocation of India's emergency laws such as the Armed Forces Special Powers Act (1990) and the Public Safety Act (1978).



- b. Ensure the protection of land, forests, and all other natural resources, especially during the current siege.
- c. Halt the process of any demographic change until the final settlement of the dispute according to the will of the people.
- d. Ensure protection of rights of all minorities in Jammu and Kashmir and establish a process of truth and reconciliation without fear and intimidation

In the longer term, the relevant UN bodies need to create mechanisms and procedures for the following steps:

- a. Allow Kashmiris on both sides of the Line of Control to meet freely and discuss their political futures.
- b. Create a Special Rapporteur with a mandate to investigate and report on crimes against humanity in Kashmir. This would be the first step in setting up credible mechanisms for documentation, accountability, and justice for human rights abuses in Kashmir over the past three decades, including extrajudicial executions, torture, gendered and sexualized violence, enforced disappearances, and unknown, unmarked, and mass graves.
- c. Create a UN Commission of Inquiry as recommended by the UN Kashmir reports of 2018 and 2019 with the mandate to investigate all instances of human rights violations, which will be the first step in seeking accountability and justice for these crimes.

All of the above short and long term recommended steps must be situated with the aim of international mediation for a just settlement of Kashmir. **This just settlement must be mediated within the framework of the rights of all Kashmiri peoples to determine their own political future, i.e., the principle of *ergo omnes* or right to self-determination.** In this process, international monitors must ensure that there is no government reprisal or intimidation against the people of Kashmir as they discuss future arrangements and express their political aspirations.

## Further reading and resources

[The Kashmir Syllabus](#) A list of sources for teaching and learning about Kashmir. It foregrounds voice, histories, and aspirations of people from within Kashmir, and moves beyond prior scholarship that often took security studies approaches and thereby privileged the statist perspectives of India and Pakistan. This critical body of work on Kashmir allows for a lens into the broader study of the modern state, occupation, nationalism, sovereignty, militarization, social movements, resistance, human rights, international law, and self-determination.

[Recent Human Rights reports](#)

[Regular updates can be found on KashmirScholarsNetwork.org.](#)

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