



# 120 Days

**5th August to 5th December**

The background of the entire page is a close-up, slightly out-of-focus image of several strands of rusty, dark brown barbed wire. The wire is twisted and has sharp points, creating a somber and restrictive visual theme.

# Table of Contents

About APDP 2

Acknowledgements 3

Executive Summary 5

Introduction 6

Abrogation of 370 9

Detentions and Torture 15

Media, Journalism and Communication 23

Access to Healthcare 32

Education and Children 42

Essential Commodities and Barrier to Trade 53

Impact on Religious Freedom 58

Access to Justice 65

Annexure 83

## **Association of Parents of Disappeared Persons (APDP)**

Association of Parents of Disappeared Persons (APDP) is a collective of relatives of victims of enforced and involuntary disappearances in Kashmir. The APDP was formed in 1994 to organize efforts to seek justice and get information on the whereabouts of missing family members. It presently consists of family members of about one thousand victims.

APDP actively campaigns for an end to the practice and crime of involuntary and enforced disappearances at local, national and international platforms. Members of the APDP have been engaged in documenting enforced disappearances in Kashmir since 1989 and have collected information on over one thousand such cases, so far. On the 10th of each month families of the disappeared come together under the aegis of APDP to hold a public protest in Srinagar to commemorate the disappearance of their loved ones and to seek answers from the state about the whereabouts of the missing persons.

In light of the recent human rights violation APDP has taken the decision to come forward and bring notice to the current situation.

## Acknowledgement

This report is a result of tireless and bold efforts put in by people from various backgrounds. The report was edited by Shahid Malik, and compiled by Sukriti Khurana and Aarash.

We would like recognize the efforts of the following team who assiduously & arduously worked together to shape this report

*Habeel Tang*

*Mohammed Saqib*

*Ishtiyaz Ahmed*

*Anam*

*Sabia Dar*

*Nayeem Rather*

*Adil*

*Bhavneet*

*Hasnain*

*Kavya*

*Subhajit*

And lastly we would like to acknowledge the constant support we receive from Goldie Osuri, Dibyesh Anand, Shubh Mathur, Amjad Majid, Imaad Nazeer, Sabika Abbas, Karen, Parvaaz Lamba and Shivangi.

## Executive Summary

This report is a narrative of the situation that arose in Kashmir valley, after the events of August 5<sup>th</sup> 2019. The report sheds light on the impact of the abrogation of Article 370 in the Indian Administered State of Jammu of Kashmir. The report highlights the political history of the state of Jammu and Kashmir and outlines its accession to the Union of India. Further, it looks into the history of Article 370 and its incorporation into the Indian Constitution. It also makes a detailed study into its constant erosion by the Indian State, from time to time.

Post abrogation of Article 370 by the Indian Parliament, the State of Jammu and Kashmir has been in a state of siege and lockdown; the lockdown has egregiously affected the daily lives of the people living in the valley. Since the lockdown, there is a clampdown on the communication and internet services have been barred since 4 months now, with no respite in sight<sup>1</sup>. The lockdown has directly impacted all facets of life, including access to the health services, education access to justice and business and employment. Schools have been closed for 4 months now, yet board exams have been held in these difficult circumstances. The health sector has taken a massive hit and has been over burdened with the lack of professionals and essential medical supplies. The Jama Masjid, the biggest congressional mosque in Srinagar, has been off limits for prayers 17 weeks in a row now. The courts and other judicial mechanisms operating in the Valley are largely inaccessible to the common Kashmiri, thereby denying them access to justice. This report presents a detailed picture of life under lockdown in the Kashmir valley.

This Report will be followed by a more detailed report about the human rights violations in the Kashmir valley since August 5<sup>th</sup>, 2019.

---

<sup>1</sup> After a period of 70 days, the cellular services have been restored but only for postpaid connections. Furthermore the government has allowed internet access to the public from media centers and for businesses dependent on internet, it is being made available after signing a contract which allows the government to snoop on the activities of the user.

## Introduction.

Association of Parents of Disappeared Persons or APDP is a collective of victims of Enforced Disappearances, led by Parveena Ahangar . The group documents and records the human right violations in a broader context with a victim centric approach. APDP is engaged in seeking accountability for human rights violations from the State, including answers about the status and whereabouts of their loved ones disappeared by the state.

On 5<sup>th</sup> August 2019, the Government of India under the leadership of Prime Minister Narendra Modi and Home Minister Amit Shah revoked Article 370 of the Indian Constitution. With this the state of Jammu and Kashmir ceased to have an autonomous status in relation to the India Union that had been maintained since 1947. Alongside, the Indian government also passed an amendment with which Jammu and Kashmir no longer remains a State and stood bifurcated and reduced to two Union Territories, one constituting Jammu and Kashmir valley, and the other the Ladakh region, effective from 31<sup>st</sup> October 2019.

The abrogation of Article 370 has changed the political and power discourse in Kashmir. The Indian Government shortly after the abrogation of Article 370 placed the entire valley of Kashmir under an indefinite curfew prohibiting all movement and assembly. The Government enforced an indefinite communication blackout, with no possibility of using internet or telecommunications. Moreover, there were severe restrictions and infringement of all basic fundamental rights and freedoms as well as civil, political economic, social and cultural rights. <sup>2</sup>

The militaristic engagement with the conflict in the region over the past two decades provides us with enough evidence to fortify the fact that Kashmir is

---

<sup>2</sup> Jefferson Gettleman, Suhasini Raj, *India Revokes Kashmir's Special Status, Raising Fears of Unrest*, (New York Times, August 5, 2019) <https://www.nytimes.com/2019/08/05/world/asia/india-pakistan-kashmir-jammu.html>

perhaps the world's highest militarized region<sup>3</sup>. What is happening in Kashmir post August 2019<sup>4</sup> is nothing new. In the past as well the Valley has witnessed coercive measures that have caused killings, debilitating pellet injuries, unlawful detention and torture, sexual violence, enforced disappearance, etc. Members of civil society and international humanitarian agencies have documented, and campaigned around some of the gravest form of human rights violation in Kashmir<sup>5</sup>. A recent such instance being the UN Report of July 2019 which the government of India rejected as baseless allegations instead of making a reasoned intervention<sup>6</sup>.

The last three decades of military occupation in Kashmir was a normalization of the de-facto state of emergency in Kashmir, which has a history of oppressive measures and grave human rights abuses inflicted with complete impunity.<sup>7</sup> The indefinite curfew imposed in Kashmir in the aftermath of Article 370 is the extension of a de-facto State of Emergency, with the consequence of placing more restrictions and shackles on Kashmiri people's human rights, and the Indian Government's actions and orders seek to 'normalize' the status quo.

This report examines how the abrogation of Article 370 and the actions of the Indian state since then have impacted human rights in Kashmir. These include violations of the rights to health, education, religious freedom, as well as instances

---

<sup>3</sup><https://www.moneycontrol.com/news/india/boxed-inside-kashmir-valley-with-130-security-civilian-ratio-4303011.html>

<sup>4</sup> It is to be noted that in addition to the largest security forces stationed in Kashmir, the government of India sent more than 30,000 security troops before the abrogation of Article 370 on August 5th, 2019. Read: <https://www.indiatoday.in/news-analysis/story/-if-situation-has-improved-then-why-send-38-000-troops-to-j-k-1576436-2019-08-02>

<sup>5</sup> The Civil societies in Kashmir, work hand in hand with many International Humanitarian agencies documenting human rights violations and coming out with periodic reports  
<[https://www.ohchr.org/Documents/Countries/PK/KashmirUpdateReport\\_8July2019.pdf](https://www.ohchr.org/Documents/Countries/PK/KashmirUpdateReport_8July2019.pdf)>

<sup>6</sup> MEA Spokesperson Raveesh Kumar said that the assertion of report violates India's sovereignty and territorial integrity and ignores the core issue of cross-border terrorism.' [https://www.mea.gov.in/response-to-queries.htm?dtl/31557/Official\\_Spokespersons\\_response\\_to\\_media\\_queries\\_on\\_an\\_update\\_of\\_the\\_Report\\_by\\_the\\_Office\\_of\\_the\\_United\\_Nations\\_High\\_Commissioner\\_for\\_Human\\_Rights\\_OHC](https://www.mea.gov.in/response-to-queries.htm?dtl/31557/Official_Spokespersons_response_to_media_queries_on_an_update_of_the_Report_by_the_Office_of_the_United_Nations_High_Commissioner_for_Human_Rights_OHC)

<sup>7</sup> Amnesty International, *Impunity must end in Jammu and Kashmir* (April 2001)

of torture, arbitrary detentions, and crippling restrictions on the freedom of expression, movement and assembly.



## **CHAPTER: 1**

### **Article 370**

This chapter examines the history of Article 370 of the Indian Constitution and successive steps taken by the Government of India, over decades, to corrode its contents and dilute the autonomy of the State of Jammu and Kashmir.

### **Constant Abrogation**

The current events surrounding Article 370 are consistent with how Indian government has approached the provision, over the past decades. Since its origin in 1950, the Indian government has consistently tried to weaken Article 370 through amendments. The abuse started right from when Article 370 first came into force, under the garb of integrating it more with the other Indian states and improving the claim of India over Kashmir in contestation against Pakistan. The first steps taken towards its dilution were taken in 1954, when the Indian government applied various provisions of the Indian Constitution to the State without popular consent<sup>8</sup>. The period from 1956 to 1986 is marked by 42 such Presidential Orders which were passed with respect to subjects, other than those agreed in the Instrument of Accession, and which were detrimental to the procedure provided for by the Constitution in letter and in spirit. For example, in 1986 a Presidential order extended the application of Article 249 of the Indian Constitution to the J&K State by completely flouting the amendment norms laid down in the Constitution. Instead, they just relied on a Rajya Sabha Resolution and obtained the assent of the Governor of the State, substituting the same for the consensus of the Legislative Assembly.<sup>9</sup>

---

<sup>8</sup> A.G Noorani, Post Delhi Agreement, Article 370: A Constitutional History of Jammu and Kashmir, Oxford India, 2014

<sup>9</sup> Article 249 deals with the power of parliament to legislate with respect to a matter in the State List in the national interest.

Over the years the passing of Presidential Orders has eroded away the State's autonomy and has reduced its status when compared to other states. For example, in order to establish President's rule in Punjab, a total of 4 Constitutional Amendments were needed. However, in order to establish the same President's rule in Kashmir from 1990 to 1996, only Executive Orders were deployed. These Executive Orders have been used over the years to dilute the State's autonomy and increase the Union's power in Jammu and Kashmir under the garb of "integration". Using these executive orders, the government has applied different financial provisions, introduced the All India Services and the CBI, and applied provisions relating to states of emergency, and the judiciary<sup>10</sup>.

In addition to the dilution of Kashmir's autonomy through subsequent Executive Orders, the major amendments made to Article 370 leaving it a hollow shell are:

1. The Constitutional Order of 1954
2. The Constitutional Order of 1986
3. The Constitutional Order of 2019

### **The Constitutional Order of 1954**

The state of Jammu and Kashmir had initially acceded in 1947 to the Dominion of India through the Instrument of Accession. As a result, the power of the Indian Parliament in the state of Jammu and Kashmir was restricted to only three spheres i.e. defense, communications, and foreign relations. In 1949, further negotiations were carried out between the Centre and State for framing the Constitution of the state, and regarding which subjects which were to be legislated by the Centre. It was agreed that a Constituent Assembly would be formed which would draft the

---

<sup>10</sup>An Unpleasant Autonomy: Revisiting the Special Status for Jammu and Kashmir ,Gazala Peer And Javedur Rahman , Economic and Political Weekly, Vol. 47, No. 23 (JUNE 9, 2012), pp. 72-75

Constitution of the State and would decide upon these matters.<sup>11</sup> The Constituent Assembly was subsequently convened in October 1951<sup>12</sup>.

Before starting the work of defining the future relationship between the Centre and State, it was felt necessary that a set of minimum principles for working out future relations between the Centre and state should be agreed. Consequently these principles were discussed and deliberated in what came to be known as Delhi Agreement of 1952<sup>13</sup> between Sheikh Abdullah and Jawaharlal Nehru.

The Delhi Agreement focused on 10 subject matters. Most importantly, these included the residuary powers of the state, the issue of citizenship, jurisdiction of Supreme Court, the question of fundamental rights, national flag of the state, powers of President and the issue of emergency powers. It was decided that all these would fall within the jurisdiction of the state government. The relation of Jammu and Kashmir with the Dominion of India was to be based upon the principle of “asymmetrical federalism” which in turn was based on the principle of “autonomy, popular consent and negotiability”<sup>14</sup>.

In 1953 after the Delhi Agreement, due to fall out between the Centre and the State, Sheikh Abdullah was detained and taken out of power thus hampering the idea of asymmetrical federal relationship with the State. With the popular leader in detention, the element of negotiability vanished from the Center-State relations and the new government which was formed, found itself totally dependent upon Centre for its legitimacy, thus defeating the idea of an asymmetrical federal relation. This problem was further aggravated by the ‘integration’ and nationalistic narrative set

---

<sup>11</sup>A.G Noorani, Kashmir Union Negotiation on Article 370, Article 370: A Constitutional History of Jammu and Kashmir, Oxford India, 2014

<sup>12</sup> A.G Noorani, Jammu and Kashmir Constituent Assembly, Article 370: A Constitutional History of Jammu and Kashmir, Oxford India, 2014

<sup>13</sup> Rekha Chowdhary, Federal Logic, nationalism and Kashmir Conflict, Politics of Identity and Separatism, Routledge 2016

<sup>14</sup> Supra

in motion by the Rashtriya Swayamsevak Sangh and Bhartiya Jana Sangh, which created hurdles for the autonomy of the state. After the arrest of Sheikh Abdullah, efforts were made by the Indian Government to remove the constitutional differences between the State of Jammu and Kashmir and other states, and bring it on par with other States.

The first step taken towards the dilution of Article 370 was done through the Constitutional Order of 1954. By passing this Order, the power of the Parliament was extended to make laws on almost all the matters mentioned in Union List-1 of the Constitution, which was a very different arrangement from what was agreed upon in the Delhi Agreement. Among the provisions were the subject matters of the Delhi Agreement, as well as other matters which had not been discussed and decided upon, such as the application of Article 3 of the Indian Constitution, that is, the question of fundamental rights. The passing of this Constitutional Order marked a significant change from the Constitutional Order of 1950 which had limited the power of Indian Parliament to only 3 subject matters mentioned in the IOA.

### **The Constitutional Order of 1986**

The year 1984 again saw the dismissal of an elected government in Kashmir and the installation of a new coalition government, which worked closely with the Central Government. However immediately after its formation, the newly installed government became riddled with corruption and malpractices<sup>15</sup> and subsequently was dismissed on March 7, 1986. A new government was again installed in November of the same year. During the period of the suspension of the government and the installation of a new one, the state was put under Governor's rule.

---

<sup>15</sup> Supra

On July 30<sup>th</sup> of the same year, the President of India issued an order under Article 370 extending Article 249 of the Indian Constitution to Jammu and Kashmir. This allowed the Central government to legislate on matters mentioned in the State list as well. The Presidential Order was passed without the concurrence of the elected state government, without the aid of Council of Ministers. This was inconsistent with the process laid down in Article 370. Article 370 provides for the passing of a Presidential Order, but it requires the consensus of the State Legislature as well. In passing the Order of 1986, the Indian Parliament did not seek consensus of the State Legislature, and completely flouted the terms and conditions in Article 370, thus further weakening it.

### **The Constitutional Order of 2019**

On 5<sup>th</sup> August 2019, the Indian Parliament abrogated Article 370,<sup>16</sup> completely disregarding its own Constitution and the safeguards in Article 370 against any arbitrary decisions by the Union Government.

In order to undermine Article 370, the Indian Parliament first amended its own Constitution (Article 367) in order to change the interpretation of Article 370. Article 367 of the Indian Constitution acts as a guide, in matters of interpretation of the constitution. The Government modified Article 367, such that Clause 3 of Article 370 was changed and the term ‘constituent assembly’ was replaced with ‘legislative assembly’.

Clause 3 of the Article 370 provides the provision of abrogation of Article 370 by a Presidential Order, with the consensus of the Constituent Assembly. It is pertinent to mention here that the Constituent Assembly was dissolved in 1956 itself after the enactment of the constitution. At the time of passing this order, the state of Jammu and Kashmir did not have a legislature. The State legislature was dissolved

---

<sup>16</sup> The Constitution (Application to Jammu and Kashmir) Order, 2019 C.O. 272

in 2018, when the state was put under Governor's rule and later President's rule. It is also key to note that this amendment of the Indian constitution is at odds with the Jammu and Kashmir Constitution. Article 147 of the Jammu and Kashmir Constitution bars the Legislative Assembly from excising the powers of the Constituent Assembly with respect to the provisions of the Indian Constitution relating to the state of Jammu and Kashmir<sup>17</sup>.

The Indian Parliament building upon its own earlier act of the imposition of the President's Rule and the absence of the legislative assembly in the state of Jammu and Kashmir, it abrogated Article 370 relying on the circuitous and malafide reasoning that since the State was under President's rule, and there was no legislative assembly, the power to make laws rested with the Indian Parliament, thus substituting the concurrence of the State (as mandated in the constitution) with that of the Centre.

- Article 370 protected the cultural and political integrity of Jammu and Kashmir
- Over the years it was eroded through Presidential Order almost 56 times
- The orders for abrogation are completely against the letter and spirit of the Constitution of India
- Abrogation of Article 370 paves the way for altering the demographic character of the Valley

---

<sup>17</sup> Jammu and Kashmir Constitution, Article 147

## CHAPTER: 2

### DETENTION AND TORTURE

With the abrogation of Article 370, there have been reports of human rights violations, including arbitrary detention and torture. The main brunt of this violence has been borne by the youth, politicians<sup>18</sup>, civilians<sup>19</sup> and religious organizations<sup>20</sup>. People are being detained under the mechanisms of a plethora of existing laws as well as many are held outside the purview of law, in order to suppress any form of political expression by the Kashmiri people. The situation has worsened with the complete blocking of internet and all phone services. After almost 70 days, of absolute communication shutdown landline and voice calls on post paid mobiles however were restored.

#### The Aftermath: Detentions and Torture

##### Detentions under Public Safety Act

There have been numerous reports of the Indian administration detaining people in a widespread manner, whether it is politicians, civilians or even children. Almost everyone who has been detained and subsequently released has complained of being tortured<sup>21</sup>, or experienced cruel, inhumane, or degrading treatment in detention. People have been detained, under legal provisions that allow for preventive detention, and also outside the scope of any laws. For administrative detention the weapon of choice for the Indian administration has been the notorious Jammu and Kashmir Public Safety Act, 1978 (PSA). The PSA allows for administrative detention of up to two years “*in the case of persons acting in any*

---

<sup>18</sup><[https://www.business-standard.com/article/current-affairs/j-k-crisis-over-500-political-workers-and-leaders-in-detention-in-kashmir-119080701825\\_1.html](https://www.business-standard.com/article/current-affairs/j-k-crisis-over-500-political-workers-and-leaders-in-detention-in-kashmir-119080701825_1.html)> , last accessed 3<sup>rd</sup> December 2019

<sup>19</sup><<https://foreignpolicy.com/2019/09/09/detained-in-kashmir/>> , last accessed 3<sup>rd</sup> December 2019

<sup>20</sup><<https://www.businesstoday.in/current/economy-politics/govt-imposes-ban-on-kashmir-based-jamaat-e-islami-party-for-5-years/story/323533.html>> last accessed 3<sup>rd</sup> December 2019

<sup>21</sup> Tyranny of a Lawless Law , Amnesty International ,2019

*manner prejudicial to the security of the State,” and for administrative detention of up to one year where “any person is acting in any manner prejudicial to the maintenance of public order”.*<sup>22</sup>

The origins of P.S.A lie in the aftermath of the ‘Quit Kashmir movement 1946’ during the Dogra Regime .It was brought in to quell the political activity in the State and to suppress any dissent. In 1978 it was used again to prevent timber smuggling and keep smugglers in prison.<sup>23</sup> Since then it has been used by successive regimes to quash any dissenting political expression, be it from a rival political party or a civil society body, journalist or a lawyer, or the youth and even children. By definition, the detention under this law is purely preventive and not punitive<sup>24</sup> which is purely at the behest of administration and not at the complaint on the public.

Under the PSA, the police make a dossier which contains details about the person and the grounds on which the detention is being done. The dossier is then communicated by the police to the administrative officials i.e. the Divisional Commissioner or the District Magistrate for the approval of his detention. The administration, with little or no application of mind, decides on the detention. Once a person is detained, the reasons for detention must be communicated to him within 5 days or a maximum of 10 days. If the grounds of detention are in “public or national interest”, the grounds need not be communicated at all<sup>25</sup>. The authorities are required to place on record all the detentions in front of an Advisory Committee within a period of four weeks from the date of such detention. It is the Advisory Committee’s responsibility to review the detention orders and to

---

<sup>22</sup> Public Safety Act 1978, Section 18

<sup>23</sup> Sruthi Radhakrishnan , Explained : The Jammu and Kashmir Public Safety Act

<<https://www.thehindu.com/news/national/explained-the-jammu-kashmir-public-safety-act/article29438694.ece>

> accessed 29<sup>th</sup> October 2019

<sup>24</sup> Supra

<sup>25</sup> Public Safety Act 1978 , Section 13



scrutinize them and their validity. Upon scrutiny, the Advisory Committee may either uphold the Detention Order or quash it. The decision of the Advisory Committee is binding on the administration.

The only legal remedy against detention under the PSA is to file a writ of Habeas Corpus before the High Court or Supreme Court.

After the developments of August 5<sup>th</sup> several people including politicians, businessmen, lawyers and many civilians have been detained under PSA. According to a report by Reuters<sup>26</sup> more than 3000 people have been detained under this law. While politicians have been either placed in house arrest or were initially detained in luxurious make-shift jails, the same courtesy was not been extended to the locals who have been detained by the thousands, tortured in some cases, and many have even have been shifted to prisons outside J&K. While the politicians - including three previous Chief Ministers and party workers - are just being detained under the PSA, the ordinary Kashmiri, apart from the slapping of this Act, have a number of other sections of law imposed arbitrarily upon them, such as rioting and attempt to murder offences.

Farooq Abdullah, an ex Union Minister and Chief Minister of the state was taken into preventive detention<sup>27</sup> on August 5<sup>th</sup>, and later slapped with Public Safety Act on 14<sup>th</sup> September 2019, when he sought his release before the Supreme Court of India. His dossier consists of 27 charges which include 16 police reports, three First Information Reports and 13 “volatile” statements made by him in the past. The dossier also accuses him of “supporting the separatists” and “speaking against the state and its actions and inactions”<sup>28</sup>. At the time of writing this report he is

---

<sup>26</sup> Ibid. 1

<sup>27</sup> Preventive Detention Act 1950 enables the authorities, to detain someone who is a threat to the public order

<sup>28</sup> Scroll Staff ,Government lists 27 charges to book Farooq Abdullah under PSA, cites statements from 2016: Reports<<https://scroll.in/latest/938307/government-lists-27-charges-to-book-farooq-abdullah-under-psa-cites-statements-from-2016-reports>> Last Accessed 28<sup>th</sup> October 2019

still detained in his home and the PSA detention has been further extended by 3 months<sup>29</sup>.

Similarly, another young leader, Shah Faesal, was detained under PSA while he was on his way to Istanbul. Shah was detained in New Delhi, flown back to Kashmir, and then shifted to Hotel Centaur, the makeshift jail for politicians.<sup>30</sup> He has remained in detention since.

18-year-old Mamur Rasul<sup>31</sup> was picked up around 2 am on August 9<sup>th</sup>, 2019. When his father enquired at the local Police Station, he was told that Mamur Rasul had been booked under the Public Safety Act and had been taken outside J&K and was being held in detention in Agra. Even though PSA categorically forbids detention of children, minor boys have not been spared the wrath of PSA detentions. Reports have documented instances where children as young as 9 years old have been detained<sup>32</sup>.

The State Police itself has admitted to detaining 144 children since August 5, but also claims that most of them were released on the same day.<sup>33</sup> But the number cited by the police cannot be treated as authoritative, as reports indicate that there have been many occasions where the police have treated children as adults and detained them accordingly, using the PSA.

---

<sup>29</sup>Vijita Singh , Farooq Abdullah to be in PSA detention for 3 more months <https://www.thehindu.com/news/national/farooq-abdullah-to-be-in-psa-detention-for-3-more-months/article29834924.ece> Last Accessed 28<sup>th</sup> October 2019

<sup>30</sup>Former IAS officer Shah Faesal detained at Delhi airport, placed under house arrest in Kashmir <<https://www.indiatoday.in/india/story/shah-faesal-detained-kashmir-unrest-delhi-airport-house-arrest-1580770-2019-08-14>> Last Accessed 29<sup>th</sup> October 2019

<sup>31</sup>Akash Bishit , Kashmir lockdown: Stories of torture and arbitrary arrests <<https://www.aljazeera.com/news/2019/09/kashmir-lockdown-stories-torture-arbitrary-arrests-190904122016072.html> , Last Accessed 1<sup>st</sup> November 2019

<sup>32</sup>Devjot Ghoshal and Alasdair Pal , Thousands detained in Indian Kashmir crackdown, official data reveals <https://in.reuters.com/article/india-kashmir-children/nine-year-old-among-nearly-150-children-briefly-held-in-kashmir-court-probe-idINKBN1WG472> Last Accessed 1<sup>st</sup> November

<sup>33</sup>AdilAkzher and Anathakrishna G, 144 minors were detained, Jammu and Kashmir admits to top court <<https://indianexpress.com/article/india/144-minors-were-detained-jk-admits-to-top-court-6046447/> . , Last Accessed 1<sup>st</sup> November 2019

This was the case of fourteen-year-old Aftaab, who was taken on August 8<sup>th</sup> from his house in Shopian and kept in the local police station, after which he was booked under PSA and moved to Srinagar Central Jail<sup>34</sup>. Aftaab is currently lodged in a jail in Varanasi, in the state of Uttar Pradesh

Similarly, Ahmad,<sup>35</sup> aged 16 years was detained on the grounds that he was an “over ground worker” on August 3<sup>rd</sup>. 2019. He was detained under the PSA, and charged with several offences and eventually moved out of Kashmir to Uttar Pradesh. Ahmad’s family however filed a Petition arguing he was a minor. As proof of age they enclosed a school mark sheet noting his date of birth along with the petition. Although they were able to secure his release under PSA, he continues to be in detention as he still requires bail for the other criminal offences slapped on him such as rioting and damaging public property

There have also been numerous instances where the security forces - i.e. the army, Central Armed Police Forces (CAPF) or paramilitary and the police - have been arbitrarily detaining people and torturing them, either by raiding their homes, or summoning them to camps or police stations. People are picked up from their homes in nocturnal raids carried out regularly by these forces.<sup>36</sup> The forces are also summoning people to the police station or army camps, usually by confiscating their mobiles or identity cards, and asking them to collect it from the camps or police stations. Once the person reports to the camp, the authorities either detain them indefinitely, torture them or treat them in a manner that constitutes cruel, inhumane or degrading treatment.

---

<sup>34</sup>SafwatZargar, In Kashmir, boys aged 14 and 16 held under dreaded Public Safety Act and sent to Uttar Pradesh jails, <<https://scroll.in/article/939516/in-kashmir-boys-aged-14-and-16-held-under-dreaded-public-safety-act-and-sent-to-uttar-pradesh-jails>> Last Accessed 31<sup>st</sup> October 2019

<sup>35</sup> Supra

<sup>36</sup>Sabia Varma and Sana IrshaadMatoo, Night raids, arrests amid Kashmir lockdown, <<https://www.aljazeera.com/indepth/inpictures/pictures-night-raids-arrests-kashmir-lockdown-190919153536231.html>> Last Accessed 1<sup>st</sup> November 2019

Mohammed Yasin Bhat, was dragged out at midnight by the army, made to stand in line naked with 11 other men and thrashed with gun butts and kicks. When Yasin fell unconscious due to the beating, the army administered electrical shocks to him, and the whole ordeal was started again. Yasin said that when someone requested for water, they were made to drink water from the drain<sup>37</sup>.

Similarly, a raid was conducted at the place of Idris Malik and he was accused of assisting his ‘militant neighbor’. Idris was beaten all night and hung upside down from a bar. He even stated that he was water boarded a. In the morning, dogs were brought out to intimidate and scare him into making a confession.<sup>38</sup>

In Guglooru village in district Shopian, the father of Obaid Ashraf recalls the night when his house was raided on August 26<sup>th</sup> and his son’s identity card was snatched away. He was asked to collect it from the army camp the next day. When he reached the camp, Obaid was taken into a dark room and beaten severely and given electric shocks.<sup>39</sup>

### **Systemic and Systematic violation of Human Right Obligations by PSA and Arbitrary Detentions**

India has ratified the ICCPR in 1979, and several provisions of the PSA are inconsistent with the Indian government’s obligations under this Treaty. According to Article 9(1) of the ICCPR “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” By not defining what “security of the state” means, and providing only a vague and over-broad understanding of what “public order” is, the PSA’s provisions suffer

---

<sup>37</sup> Zubair Sofi, With meticulous planning then mass arrests and ‘torture’, Kashmir’s autonomy was lost<<https://www.independent.co.uk/news/world/asia/kashmir-crisis-latest-india-article-370-autonomy-torture-claims-planning-a9086611.html>> Last Accessed 1<sup>st</sup> November 2019

<sup>38</sup> Hilal Mir, Mohammed Rafi, India’s torture methods: new claims emerge from disputed Kashmir<<https://www.trtworld.com/magazine/india-s-torture-methods-new-claims-emerge-from-disputed-kashmir-29879>> Last Accessed 1<sup>st</sup> November 2019

<sup>39</sup> Supra

from being indeterminate and unclear, and therefore inconsistent with the principle of legality. According to Article 9(2) of the ICCPR “[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.” However, Section 13 of the PSA allows the detaining authority to not communicate grounds of detention for up to 10 days of detention, and also to withhold any information that it considers “to be against the public interest to disclose”. Section 16(5) of the PSA states that legal counsel cannot represent a detained person before the Advisory Board, in opposition to the ICCPR, which provides for the right to communicate with and be represented by counsel of one’s choice. Furthermore, by prescribing a complete bar on criminal, civil or “any other legal proceedings...against any person for anything done or intended to be done in good faith in pursuance of the provisions of this Act”, the PSA also emboldens impunity and undermines the right to remedy.

International law also contains a general prohibition against arbitrary detention, which is applicable to situations where detentions are carried out without the authorization of any laws. Article 9 of the ICCPR states that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

### **Prohibition against Torture**

Even though India has yet to ratify the Convention against Torture (CAT), even 22 years after signing it in 1997, India has signed and ratified several other international law instruments that impose a binding prohibition against torture and cruel, inhuman or degrading treatment or punishment. For example, Article 7 of the ICCPR states that no one shall be subjected to torture or to cruel, inhuman or

degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. Article 1 of the Convention against Torture defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. The Convention requires state parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction.

However, India is yet to ratify the UN Convention against Torture, and no domestic anti torture law is in place, which provides impunity and reduces accountability for acts of torture.

- Pre and post abrogation there have been widespread detentions in Kashmir Valley.
- Detainees include cross section of people
- People are being detained administratively as well as arbitrarily
- Systematic torture is used to induce fear and terrorise in the local populace in order to quell protests
- Minors have been detained as well
- There are many incidents of night raids and revolving door detentions

## CHAPTER: 3

### Media Blackout

#### *History of challenges in reporting the truth from Kashmir*

After the Indian government unilaterally undermined Kashmir's autonomy, the freedom of press has been severely restricted and violated. Voices of dissent in the field of journalism have been repressed in all forms. This is evident when one compares the coverage of the issue from the ground by the international media and Indian national media. However, this elimination of truth and suppression of the freedom of expression through the systematic silencing of local media had been set in motion ever since the 1990s. This chapter highlights how local journalists in Kashmir (and their stories from the ground) have repeatedly been throttled; a constant feature of Kashmiri media and journalists' decades of oppression and challenges.

Since the 1990s, with a surge in the militancy in Kashmir along with the rising resistance of people, successive Indian governments have tried to control Kashmir through different ways. However, none of them have factored in the possibility of self-determination. Governments have relied on silencing the media to suppress the truth of military oppression. There has been a visible absence of news from Kashmir in the Indian media barring few over the past few years. Where these exist, they were usually concocted stories in line with the majoritarian and communal propaganda ( Moreover, historically, journalists who tried to report on the truth have either been silenced or heckled through the central policing agencies, harassed and imprisoned at time even without trials<sup>40</sup>.

For example, the fake encounter of Junaid Ahmed Khuroo, in 2001, was reported

---

<sup>40</sup> Why is Asif Sultan in Detention <<https://www.newsclick.in/life-journalist-kashmir-why-asif-sultan-detention>>

in *The Hindu* as “a militant committing suicide inside a mosque.”<sup>41</sup> It failed to show the truth, later, proceedings of the SHRC (State Human Rights Commission), found the case to be “cold blooded murder”<sup>42</sup>. Other national newspapers did not even feature a story on this. This type of misreporting and untrue stories create an impression in the minds of the readers, which in the long run becomes their dominant understand of Kashmir. Although *Greater Kashmir* followed up the story, a Kashmir based paper, it has hardly any readership in Indian mainland. Whereas this year on 26<sup>th</sup> July, 2019, the SHRC on the same case ordered further probe into the ‘fake encounter’ under CBI (the news links copies that covered the incident unfortunately has been removed both from the site of *GK and Kashmir Observer*).

In another incident, in Dhoodhipora (in Kupwara) in 2006, the Indian Army, without any provocation, killed four civilians including two minors. The dreadful incident happened in course of a CASO (Cordon And Search Operation). The media had been silent on this issue, and there was no reporting of this incident. Only a report was carried by PTI and republished by *Times of India*.<sup>43</sup> A magisterial probe was ordered by the then C.M. of J&K, but it bore no fruit, and the families of the victims are still fighting the case in SHRC.

The murder of a renowned journalist Sujhat Bukhari, who was a regular contributor to *The Hindu* and the Editor of *Rising Kashmir* in 2018, did not lead to extensive coverage by the Indian media. They did not raise the issue, and his murder remains unresolved, like many other killings in Kashmir. While reporting for BBC, in 2016 Bukhari said, “Threats to life, intimidation, assault, arrest, and

---

<sup>41</sup><https://www.thehindu.com/news/national/other-states/militant-commits-suicide-inside-mosque-in-north-kashmir/article2144855.ece>

<sup>42</sup><https://www.greaterkashmir.com/news/kashmir/sopore-boys-killing-shrc-says-junaids-murder-was-planned/>

<sup>43</sup><https://timesofindia.indiatimes.com/india/Kupwara-killings-Azad-orders-magisterial-probe/articleshow/1425350.cms>



censorship have been part of the life of a typical local journalist.”<sup>44</sup>The harassment of reporters by security forces, police and agencies has been a common practice in Kashmir.

### ***Harassment of Journalists: Between 2016 and August 05 2019***

Since the change of government in 2014, the use of law enforcement for going after Kashmiri journalists increased many folds. Aasif Sultan, a journalist in the *Kashmir Narrator*, has now been jailed for over one year at the time of writing this piece. He has not been charged for any crime or tried by a court. The police only said that his laptop contained ‘incriminating’ evidence. The local journalist association protested against Aasif’s arrest and his editor went on record that the crackdown was because of a well-reported article he wrote on slain militant commander Burhan Wani.<sup>45</sup> The report traced the life story of Burhan Wani and some of his fellow mates; it was published on his death anniversary.

Recently Aasif Sultan also won the John Aubuchon Press Freedom Award 2019.<sup>46</sup> However, according to reports, he and his family might not even be aware of this because of the clamp down in Kashmir for the last 100 days (at the time of writing this report). In the press release of this award, the National Press Club wrote, “*Sultan’s case reflects worsening conditions for the press and citizenry in Kashmir, a region in northern India that is partly controlled by India and partly by Pakistan. The Indian-controlled section has been semi-autonomous for decades.*

*But the current Indian government, led by Prime Minister Narendra Modi, moved earlier this month to bring the region fully under the central government’s control. Modi’s government has instituted a crackdown and a*

---

<sup>44</sup>[https://www.cjr.org/special\\_report/shujaat-bukhari-kashmir-journalist.php](https://www.cjr.org/special_report/shujaat-bukhari-kashmir-journalist.php)

<sup>45</sup>[https://www.huffingtonpost.in/entry/kashmir-press-aasif-sultan\\_in\\_5cfe3c66e4b04e90f1cc637d](https://www.huffingtonpost.in/entry/kashmir-press-aasif-sultan_in_5cfe3c66e4b04e90f1cc637d)

<sup>46</sup><https://www.press.org/newsroom/national-press-club-announces-2019-press-freedom-honorees>

*communications blackout that has left journalists struggling to report the news and many have been incarcerated or beaten.”*<sup>47</sup>

Another such case which has been reported is that of the harassment of Aquib Javed, a reporter for Kashmir Observer. Initially in 2018, he was called from a police station in Kashmir and there he met the officials of National Investigation Agency, who summoned him to New Delhi the day after.<sup>48</sup> There he was questioned for interviewing separatist leaders. Even his family members were harassed. The International Federation of Journalists (IFJ) along with its affiliate, the Indian Journalists Union (IJU), after the incident has also condemned the actions of the Indian government.<sup>49</sup>

Earlier in September 2017, photojournalist Kamran Yousuf was arrested later on in January 2018 he was accused as ‘stone-pelter’.<sup>50</sup> He returned six months later on bail, when the judge of the special court in his bail order said, “NIA has not placed on record any single photo/video showing that the applicant/accused was indulging in stone pelting activities at any site.”<sup>51</sup> This unprovoked harassment by the Indian authorities has always been present. For criticism of the government’s action newspapers have also faced funds crunch at different points of time. After the Pulwama attack and the Balakot air strike, in March 2019, major newspapers in both Urdu and English kept their first page blank as a mark of protest. Also, the DAVP (Directorate of Advertising and Visual Publicity) stopped its advertisement in *Greater Kashmir* and *Kashmir Observer*.<sup>52</sup> As per reports of *Al Jazeera*, in a statement, the Asia-Pacific head of Reporters Sans Frontiers, Daniel Bastard said, “Targeting the two newspapers in this completely arbitrary manner

---

<sup>47</sup><https://www.press.org/newsroom/national-press-club-announces-2019-press-freedom-honorees>

<sup>48</sup><http://risingkashmir.com/news/journalist-bodies-term-summoning-of-aqib-javed-intimidation-harassment>

<sup>49</sup><https://www.greaterkashmir.com/news/kashmir/ifj-iju-condemn-nias-harassment-of-kashmiri-journalists/>

<sup>50</sup><https://thewire.in/media/kamran-yousuf-arrest-nia-kashmir-photo-journalist>

<sup>51</sup><https://www.newsclick.in/kamran-yousuf-bonafide-journalist-nia-failed-provide-credible-evidence-judge>

<sup>52</sup>[https://twitter.com/Kashmir\\_Reader/status/1104661020759478272](https://twitter.com/Kashmir_Reader/status/1104661020759478272)

clearly constitutes an act of crude intimidation.”<sup>53</sup> Even after the criticism and protests, the advertisements have not been restored on the DAVP website until date.<sup>54</sup>

### ***Harassment Post August 05<sup>th</sup> 2019***

While this harassment has been common for Kashmiri media, in late July panic crept in, when Indian authorities started sending in more forces and troops into the valley. The BJP government unprecedentedly stopped a Hindu pilgrimage in south Kashmir-*Amarnath Yatra*, and asked all tourists in the valley to return on the pretext of an unsubstantiated intelligence report of an imminent terror attack. Finally, on August 4th the government placed pro-India politicians and separatist leaders under house arrest. By midnight, they had placed the valley under a virtual curfew. The communication clampdown that was placed in the valley since the midnight of August 05 is largely still in place. The next morning, the majoritarian BJP regime, unilaterally stripped Kashmir of the remnants of its left-over autonomy, and most importantly of its identity, as it revoked Article 370 and further reduced the State of Jammu & Kashmir into two Union Territories, bringing it under the ambit of its direct control.

Ever since then, international and national media (of India) has produced contradictory stories. The mainstream media in India, which has been accused several times of not being independent, and being supportive of the current government and its policies, were united in praise for the government for bringing Kashmir into the Indian Union.<sup>55</sup> The newspapers portrayed this move as "*history made in one stroke*", and some regional language newspapers even termed it as a '*saffron revolution*'. Barring some voices of dissent from the alternate national

---

<sup>53</sup><https://www.aljazeera.com/news/2019/03/kashmir-dailies-print-blank-front-pages-protest-gov-ad-ban-190310123729248.html>

<sup>54</sup>[http://www.davp.nic.in/upload/\(S\(i21zgq551g5govidhjyiu55\)\)/advtg\\_report.aspx](http://www.davp.nic.in/upload/(S(i21zgq551g5govidhjyiu55))/advtg_report.aspx) (on October 18, 2019)

<sup>55</sup><http://epaper.indianexpress.com/2273567/Delhi/August-06-2019#page/1/1>

digital media houses (which do not have as much reach as the mainstream print and broadcast media), there was an appalling scarcity of news especially on how these changes impacted people living in Kashmir. The next barrage of news came from the television media, when they described the curfew-ridden grimly empty road in Srinagar, as an exemplary scene of ‘*normalcy*’. Staged celebrations by BJP party-workers were reported as proof of a festive atmosphere in the valley.

On the same date, the international media reports in Kashmir were entirely different. Various news channels across the spectrum expressed caution over this move.<sup>56</sup> From calling it a ‘disturbing turn’ in “India’s settler colonial project”<sup>57</sup> to explaining why article 370 mattered<sup>58</sup> CNN, NYT, The Washington Post, BBC, RT News and Al Jazeera, all expressed concern for Kashmiris. However, during this time, not a single news piece from Kashmiri newspapers could be seen, as all major newspapers’ online sites were down due to the internet shutdown.

What went on after that between the Indian and international media was perhaps the biggest contradiction of the last decade. The contradictions were such that, it was virtually impossible to acknowledge they were being reported from the same region.

On the one hand the Indian media boasted<sup>59</sup> of “normalcy in Kashmir”, by publishing photographs of the Indian National Security Adviser enjoying Biryani lunch with some local Kashmiris. At the time, the BBC reported a video of the first large protest in Soura, Srinagar.<sup>60</sup> Both the government and certain sections of Indian media denied this video, and made all efforts to project it as fake. However

---

<sup>56</sup><https://edition.cnn.com/2019/08/06/asia/kashmir-india-modi-analysis-intl-hnk/index.html>

<sup>57</sup><https://www.washingtonpost.com/opinions/2019/08/05/indias-settler-colonial-project-kashmir-takes-disturbing-turn/>

<sup>58</sup><https://www.bbc.com/news/world-asia-india-49234708>

<sup>59</sup><https://timesofindia.indiatimes.com/india/nsa-doval-breaks-breads-with-people-in-shopian-takes-stock-of-situation/articleshow/70572782.cms>

<sup>60</sup><https://www.bbc.com/news/av/49306816/article-370-tear-gas-at-kashmir-rally-india-denies-happened>

later the Indian government reluctantly accepted that the BBC report on the Soura protests was accurate.

### ***Intimidation of Kashmir based newspapers continues***

During this time, the attack on Kashmir based newspaper and magazines increased, exponentially. Litigation was filed in the apex court of the country against the press gag in Kashmir. Meanwhile, the newspapers' circulation was paralyzed by the restrictions. Journalists were not allowed access to different areas and curfew passes were not issued to many local journalists. The procurement of newsprint was stopped as curfews were in place. Constant intimidation of the journalists continued as per various reports. Anuradha Bhasin the Executive Editor of *Kashmir Times* termed this move by the government as '*a virtual siege*' leading to an information vacuum,' while filing a petition in the Supreme Court challenging the communication shutdown and information blackout.

While measures were draconian, the consequences are grim and dark. Even the registration of the newspapers is at risk at the moment. Due to the low circulation, their RNI (Registrar of Newspaper for India) registration could be cancelled, thereby forcing them to shut down.

The government has continued to harass and intimidate reporters, getting them arrested for frivolous reasons. The first reports of a journalist detained related to this move was Qazi Shibli on July 25th when he reported unusual movement of troops inside the valley.<sup>61</sup> The reason for his arrest according to reports was 'waging war against the Union of India', which is yet to be proved. Reports until 27 August suggested that he was in custody but his family was not aware of his whereabouts. Next, *Greater Kashmir* journalist Irfan Malik was detained as per

---

<sup>61</sup><https://thekashmirwalla.com/2019/08/qazi-shibli-journalist-from-south-kashmir-arrested/>

reports and was in custody for a day.<sup>62</sup> Even Haziq Qadri, a reporter of *Brut India* who hails from Kashmir was detained for twelve hours as per a report by CPJ.<sup>63</sup>

***Press Freedom and its importance: a must for Kashmir and any functional democracy***

As a conflict zone over the years Kashmir has witnessed a constant deterioration of human rights in the region. The Indian government's increasing turn towards a settler colonial project in Kashmir has made the role of press all the more important, as it has become the only medium to forward the grievances of the oppressed. It is the only way left to reach out to the world about the atrocities faced by the people. A land torn by conflict has only few options to reach out to combat military excesses. If local stories from Kashmir are suppressed and not allowed to reach the world, then this could be the worst human rights violation, as even the right to information and right to share pain is gagged.

**Freedom of expression**

International human rights law guarantees the freedom of expression. Article 19 of the ICCPR states that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. In its General Comment on this issue, the UN Human Rights Committee reinforced how "A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. This implies a free press and other media able to comment on public issues without censorship or restraint

---

<sup>62</sup><https://www.reuters.com/article/us-india-kashmir-srinagar-journo/indian-troops-detain-kashmiri-journalist-idUSKCN1V51XF>

<sup>63</sup><https://cpj.org/2019/08/two-journalists-detained-jammu-kashmir-india.php>

and to inform public opinion. The public also has a corresponding right to receive media output”.<sup>64</sup>

- The state has created circumstances which will lead to local /non-conformist newspapers going out of business
- The government is withholding advertisements which is the only form of revenue in Kashmir for newspapers . This has affected printing and distribution of newspapers in the valley
- The state has been arbitrarily detaining and harassing journalists
- The state has been using newspapers to propagate pro state propaganda
- There is continuous monitoring and surveillance of whatever has been printed or is about to be printed, through the Media Facilitation Center

---

<sup>64</sup><http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H1l5979OVGB%2bWPAXiks7ivEzdmLQdosDnCG8FaJ7cpkH%2fR9YlpwV%2bAPs%2bmcJcH5I4VEHaUJAAZCeS1gKdFOTIUSHQDT3EiNHS2mKlF>

## **CHAPTER: 4**

### **Access to Health care**

Following the abrogation of Article 370, the Kashmir valley has been under a severe clamp down. The telephone/mobile networks and internet services have been shut, there is restriction of movement of vehicles and an extra 8000 India army troops have been deployed in the region. The valley has been under a total curfew for more than two months, critically affecting the medical and health care system in the region. This massive siege continuing for such a long period has severely impacted peoples' right to access to health care and medical facilities, as guaranteed under international human rights law.

### **Access to Medicines and Healthcare**

There are around 2,000-3,000 Srinagar-based distributors supplying drug<sup>65</sup>s to all ten districts of the Valley, which has a population of over 7.2 million<sup>66</sup>. However, only 500<sup>67</sup> of the distributors have a wide reach. "The problem is that the supply-link between the drug stores, stockist and depots has been broken [due to the communications shut down, clamp down and curfew]. That needs to be addressed by the authorities. The only way to do that is to restore internet and phone services as soon as possible," according to Bhat, a stockist and owner of AA Pharma, at his store near the SMHS hospital<sup>68</sup>. Currently, therefore, there are reports of shortages of key medicines in pharmacies.

### **Reduction in patient admissions in hospitals**

---

<sup>65</sup><https://www.news18.com/news/india/kashmir-dispatch-11-valley-running-out-of-medicines-with-no-fresh-supply-coming-say-doctors-2282033.html>

<sup>66</sup> Testimony Mr. Bhat, a stockist and owner of AA Pharma.

<sup>67</sup> Ibid

<sup>68</sup><https://thewire.in/rights/kashmir-life-saving-drugs-clampdown-continues>



Daily hospitalization under Ayushman Bharat Yojana or Pradhan Mantri Jan Arogya Yojana<sup>69</sup> (PMJAY) rate per lakh population dipped from 57 before August 5<sup>th</sup> to just 6 in the three weeks after that. The valley hospitals which before the change in status had been among the best performing institutes saw zero admissions for days<sup>70</sup>.

In the week beginning June 24 there were 2050 hospital admissions, in the July 1<sup>st</sup> week there were another 1747. Between July 8 and 15 there were 1452 admissions, between then and July 12 there were 1688 admissions. The figure stood at 1619 in the July 22-29 week, which rose to 1743 in the week starting July 29. However in the next three weeks starting from August 5, the totals admissions stood at 179, 163 and 250 respectively.

Sources in the National Health Authority say that since PMJAY is a completely online system, the programme suffered in the aftermath of the shutting down of internet services along with the security clampdown and movement restrictions has drastically impacted the number of admissions in hospitals.<sup>71</sup>

Super Specialty hospital, an associated hospital of Government Medical College (GMC), Srinagar, has witnessed a dip of 40% of patients. Similarly, two other associated hospitals of the GMC — Shri Maharaja Hari Singh (SMHS) as well as the maternity Lal Ded — have witnessed a considerable dip in patient admissions since August 5.

A doctor at the Super Specialty hospital Srinagar said a good number of patients, who had follow-ups or surgeries scheduled could not visit the facility due to the curfew, leading to a reduction in patients. “Surely there is a decrease in the patient

---

<sup>69</sup><https://medibulletin.com/drastic-dip-in-ayushman-bharat-admissions-tells-kashmir-story/>

<sup>70</sup> Ibid

<sup>71</sup> Ibid

flow at the GMC and its associated hospital in Srinagar. Number of surgeries that were supposed to be carried out, have also seen a dip,” he said.<sup>72</sup>

*Pregnant lady unable to secure hospital admission (August 2019)*

A nine-month pregnant lady presented to a maternity hospital at Srinagar for a routine check-up (ante-natal). She was accompanied only by her toddler and had come to hospital from a far-off town hitch-hiking and walking due to lack of any kind of public transport. The doctor examined her and found her blood pressure to be too high and was advised her to be admitted immediately for monitoring and medications. The patient refused because she said she had no way of reaching her family and informing them that she needed admission. She said that her family would think that she was “kidnapped by the army”. She left the hospital against medical advice and went home. It was later reported to the examining doctor that the patient returned with her relatives the next date in a far worse condition that required urgent surgery. A surgery that probably could have been avoided had the patient been able to contact her family during her first visit.

### **Doctors raising concerns**

18 Doctors from the British Kashmiri Medical Association (BKMA) have written a letter to the British Medical Journal’s online editorial with the following concerns:

“Patients needing dialysis, chemotherapy, emergency surgeries, and pregnant women are unable to get timely treatment due to unavailability of transport, ambulance services, shortage of medical staff, and dwindling supplies of life-saving medications.

---

<sup>72</sup><https://www.deccanherald.com/national/north-and-central/srinagar-tertiary-care-hospitals-see-dip-in-patients-761770.html>

Scheduled cancer surgeries are being cancelled and people have no means to call an ambulance. It has become extremely difficult for doctors to seek urgent advice, liaise with others, or refer to other specialties. Junior doctors have to physically travel between hospitals in hostile conditions to seek such advice while compromising their own safety. Due to lack of internet, clinicians have no access to clinical guidelines, evidence base, and insurance details of patients which makes the delivery of healthcare extremely difficult.

Nearly 8 million people caught up in this blockade are being denied the fundamental right to healthcare. Numerous reports in international media have alleged several deaths due to exacerbation of chronic illnesses which could have been prevented if people were able to access urgent medical care<sup>5</sup>. Estimates suggest 20% (1.6 million patients) of the population that suffers from a chronic disease is at risk of poor outcomes due to the current situation”<sup>73</sup>

The letter says that “people are unable to call an ambulance to take a sick person to hospital” forcing them to take the sick person in a “private vehicle”. “These vehicles [private vehicles] are stopped every few metres by security forces standing at concertina wire barricades to check identity and ask questions”. While the government had initially denied pellet injuries, on August 14, the State police had confirmed that there have been pellet injuries during this period. It says: “Several patients have been admitted with pellet gun injuries, and some have been seriously injured. Only those who can make it to a hospital can get some care.”

“Some women due to deliver were moved closer to a hospital when the troop buildup began as they anticipated some trouble. There are likely to be many more women who are not able to get to a hospital for their delivery, or have got there

---

<sup>73</sup><https://www.bmj.com/content/366/bmj.l5204/rr-24>

very late,” the letter mentions. “The situation has also led to a lot of mental stress among a population already living with high levels of psychosocial stress.”<sup>74</sup>

The letter argued that there is a “blatant denial of the right to health care and the right to life”. They doctors have urged the central government to “ease restrictions on communication and travel at the earliest, and undertake any other measures that are required to allow patients to access health care without hindrance”.<sup>75</sup>

Lancet<sup>76</sup>, the reputed medical journal, in an editorial titled *Fear and Uncertainty around Kashmir’s Future*<sup>77</sup>, has underlined how “protracted exposure to violence has led to a formidable mental health crisis” in the region<sup>78</sup>.

There have also been instances of health workers being detained because they raised concerns about these barriers to health care.

For example, Dr Umar Salim was an Urologist, who was detained after raising concerns about the health crisis.<sup>79</sup> Dr. Salim, an urologist at Government Medical College in Srinagar, had held a placard saying: “This is not a protest. This is a request. Please restore landline and internet connectivity for all hospitals and medical establishments in Jammu and Kashmir”

He added that poor patients were not able to access the healthcare benefits under the Ayushman Bharat scheme for the last three weeks due to the restrictions on internet and landlines.

---

<sup>74</sup><https://journosdiary.com/2019/08/19/bmj-doctors-government-patients-kashmir-access-health-care/>

<sup>75</sup><https://www.thehindu.com/news/national/other-states/in-letter-in-bmj-doctors-urge-government-to-allow-patients-in-kashmir-to-access-health-care/article29154655.ece>

<sup>76</sup><https://www.thehindu.com/news/national/karnataka/doctors-voice-concern-over-health-of-patients-in-jammu-and-kashmir/article29225418.ece>

<sup>77</sup><https://text.npr.org/s.php?slId=755853835>

<sup>78</sup><https://countercurrents.org/2019/08/in-kashmir-health-professionals-speak-truth-to-power>

<sup>79</sup><https://www.youtube.com/watch?v=LxwhI4BvK7s>

When a journalist pointed out that the authorities had claimed that the health situation in Kashmir is normal, Dr. Salim said that the Ayushman Bharat scheme was based on smart cards which are swiped after which the details are checked.

“I don’t have data right now that patient mortality has increased. But, it is also true that if a patient who needs dialysis three times a week, and can just afford one, then he can surely die,” said Akhtar. He had barely spoken for ten minutes when police took him away from the spot<sup>80</sup>. “I have a patient who required chemotherapy on August 6. He came to us on August 24 but could not obtain the chemotherapy medicine,” Dr Salim said<sup>81</sup>. “Another patient whose chemotherapy drug has to be obtained from Delhi was unable to place an order for the drug. His chemotherapy has been postponed indefinitely.” Dr Salim also warned kidney dialysis patients could only receive treatment once a week and Kashmiris could not purchase medicines<sup>82</sup> because ATMs had run out of money<sup>83</sup>. “If patients don’t receive dialysis, they will die. If cancer patients don’t receive chemotherapy, they will die. Those patients who can’t be operated on can die,” he said<sup>84</sup>.

Others have also raised serious concerns about difficulties accessing health care in this context, including maternal health care for pregnant women. A thirty year old pregnant lady had to deliver her precious<sup>85</sup> baby on her home due to movement restrictions and as she had no way to contact the ambulance.

In another case, a journalist from Kashmir wrote about his sister who suffered a miscarriage: “The doctors at the hospital regret that the ban on communication prevented them from real time communication to the senior gynecologist that could

---

<sup>80</sup><https://thewire.in/health/kashmiri-doctor-medical-concerns-police>

<sup>81</sup><https://www.dawn.com/news/1502001>

<sup>82</sup><https://propakistani.pk/2019/08/29/indian-army-arrests-doctor-minutes-after-he-exposed-healthcare-crisis-in-kashmir/>

<sup>83</sup><https://www.telegraph.co.uk/news/2019/08/07/kashmir-residents-say-starving-first-accounts-surface-lock-down/>

<sup>84</sup><https://www.telegraph.co.uk/news/2019/08/27/kashmiri-doctor-arrested-warning-blackout-could-cause-deaths/>

<sup>85</sup> A precious baby is a baby that is conceived after years of trying and that is delivered after medical intervention.

have saved the baby.” On August 9, a stillborn baby was born to parents who, with the suspension of transport, had to walk to a district hospital after developing complications<sup>86</sup>.

Critical appointments of various patients have been missed since August 5<sup>th</sup>. For instance, Mohammad Shafi has been at the bedside of his 13-year-old son Rafi for two weeks. Rafi suffers from a chronic kidney ailment and needs dialysis every 15 days, a medical procedure that cannot be done at his village in Tangdar area of Kupwara. "We can't go anywhere for now. My son needs medical care which isn't available in Tangdar. So we are planning to stay at the hospital until the situation improves," Shafi told Al Jazeera. "We were supposed to get his dialysis done on August 15 itself, but couldn't do it. Due to the restrictions, everything was shut and we were scared to go out," said Shafi. "But when he fell sick, we pleaded with a neighbour who owns a vehicle to bring us here."

Mumtaza Dar from Beeru village in Budgam district was scheduled to undergo surgery at the SMHS hospital on August 10, but she could not make it to the hospital due to the restrictions on movement placed by the Indian authorities. Forced to delay her medical needs, the chronic piles patient bled for weeks. As her condition at home worsened, her family hired a vehicle to take her to Srinagar last weekend. "For the first two weeks, we were scared to come to Srinagar. There was no transport available. There were restrictions everywhere and we didn't know what was going on," said Mohammad Ashraf Dar, a relative of Mumtaza.

A doctor at the SMHS hospital, who did not want to be named, said the inflow of patients had dipped by less than half, as people were delaying going to the hospital because of the uncertainty over the lockdown. "We only provide medicines to the

---

<sup>86</sup><https://www.hrw.org/news/2019/08/30/kashmir-shutdown-raises-healthcare-concerns>

patients, who are in the emergency. Others have to purchase them from medical stores outside the hospital," he said.

The communications blackout has forced the doctors to improvise in order to carry on their work. At Lal Ded, one of the biggest maternity hospitals in Indian-administered Kashmir, a megaphone is mounted at the top of the building to call for the doctors whenever a patient needs them. A hospital staff told, "An emergency case was brought to the hospital. The specialist doctor had already left for home and I was asked to bring him. It was late at night and I didn't know his house. So I had to knock on every door in the neighbourhood," he said. Abdul Rashid (SMHS hospital, ambulance driver) said he is worried that one of these days, a patient may lose her life due to the crippling restrictions imposed by the Indian authorities<sup>87</sup>.

As many as 130 people working in public health and academia have signed a letter detailing the various disruptions to healthcare and medical services in Jammu and Kashmir.

A *Deccan Herald* reporter said medicine shops are shut and so are ATMs. She suggested that the government organize mobile medical vans to reach people as the latter are unable to access health facilities. She also said that there are mounds of garbage lying around the city, including dead cattle and dogs, which posed serious health risks. Cleaning staff have not been able to work in various areas and the reporter cautioned that this could lead to outbreaks of disease.

A *Reuters* correspondent said that the principal of a government medical college has been visiting various district officials personally to get treatment done as they have not been given satellite phones to communicate and only the police have

---

<sup>87</sup><https://www.aljazeera.com/news/2019/09/chaos-crisis-kashmir-hospitals-month-long-lockdown-190905205741695.html>

communication channels. “That shows the government’s priority,” said the principal<sup>88</sup>.

### **The Right to Health in International Law**

India has ratified the International Covenant on Economic, Social and Cultural Rights. Article 12 of the Covenant states that parties to the Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. General Comment 14 of the Committee on Economic, Social and Cultural rights states that, as a part of this right, functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity. Health facilities, goods and services also have to be accessible to everyone without discrimination, and must be affordable to all.<sup>89</sup> The Special Rapporteur on the right to health issued a report on the right to health in conflict situations. The report stated that States are under the obligation to ensure that health facilities are not harmed as a consequence of conflict. The report also noted that blockades, long or indeterminate curfews and roadblocks restricted the movement of people and transport, and negatively affected access to and delivery of essential health-care services in conflict-affected areas. The Rapporteur recommended that States should ensure that movement restrictions for people in conflict areas are legitimate and essential, and provide exceptions for access to health facilities, goods and services which can be exercised with minimal delays.<sup>90</sup>

---

<sup>88</sup><https://thewire.in/health/kashmir-lockdown-takes-toll-on-healthcare-medical-services>

<sup>89</sup><https://www.refworld.org/pdfid/4538838d0.pdf>

<sup>90</sup><https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/422/97/PDF/N1342297.pdf?OpenElement>



- Since the imposition of curfew post abrogation , there has been a reduced flow of patients to the hospital , severely restricting access to healthcare.
- Various planned and critical surgeries got cancelled
- Due to absence of internet, senior consultancies from across the globe, meant for discussing cases was not possible.
- Due to the blockade imposed, there was a dearth of medicines at various places , although not at all places.
- Mental health implications of this are unfathomable currently

## CHAPTER: 5

### EDUCATION AND CHILDREN'S RIGHTS

The militaristic engagement with the conflict in the valley over the past two decades has put peace and militarisation in one continuum, creating a new form of 'normal' in Kashmir. This illusion of normalcy indicates to the rest of the world that everything is fine in Kashmir. However, the recent testimonies of the student community from Kashmir will indicate that a total chaos and disorder post August 5th, 2019, has adversely affected the lives of people in the Valley.

Both militancy and militarization have affected almost all aspects of the valley, but one group which has seen its impacts most adversely is students.<sup>91</sup> Various human rights organisations have emphasised the negative impact of conflict on children. There are various forms to it such as structural, social and psychological. In general, the situation in Kashmir has gravely impacted children: many children have been detained<sup>92</sup> under the PSA for “stone-pelting”<sup>93</sup>, many have lost their vision due to pellet firing<sup>94</sup> on their eyes<sup>95</sup> by security forces, some have died due to tear gas shelling<sup>96</sup>, and many experience post-traumatic stress disorder. In this context, it becomes imperative to ask how educational institutions can function in a conflict zone, particularly post 5<sup>th</sup> August 2019? This question particularly

---

<sup>91</sup><https://www.orfonline.org/expert-speak/education-paralysis-in-kashmir-need-to-protect-the-future-55680/>

<sup>92</sup> Check Amnesty Report, ‘*Tyranny of a Lawless Law*’ <https://amnesty.org.in/wp-content/uploads/2019/06/Tyranny-of-A-Lawless-Law.pdf>

<sup>93</sup> Soon after the abrogation of Article 370 on 5th Aug 2019, the Supreme Court was informed about the detainment of 144 minors in the valley. It can be suspected that the unofficial figure might be higher than this. <https://www.aljazeera.com/news/2019/10/frightened-minors-held-kashmir-crackdown-191002075219434.html>

<sup>94</sup> Jammu and Kashmir Police accepted the use of pellet guns and injuries caused by the pellet firings in the valley 2019; this is contradictory to their initial statement where the government described the situation in Kashmir as calm and peaceful. <https://www.bloombergquint.com/politics/kashmir-situation-soura-srinagar-protest-bbc-aljazeera-reuters-home-ministry>

<sup>95</sup> <https://www.aljazeera.com/indepth/features/kashmir-pellet-injuries-bring-memories-2016-uprising-180403164735687.html>

<sup>96</sup> <https://www.aljazeera.com/news/2019/09/kashmiri-teenager-dies-pellet-tear-gas-shell-wounds-hospital-190904181621345.html>

becomes important after examining the number of schools that have been burnt down in the valley since 2016<sup>97</sup>. Schools have often become the site of confrontation<sup>98</sup> between the militants, armed forces and unidentified armed men in the valley.

### **Aftermath of 5th Aug, 2019:**

#### **Empty classrooms:**

In Kashmir, according to reports, there are 11,319 government schools<sup>99</sup> and 2,198 private in which 9,23,048 and 3,39,366 respectively students are enrolled. The schools in Kashmir were reopened after their summer vacations on 24th July. Soon, after its first week of opening, on 5th August the educational system was locked down, internet services were banned, telecommunications services were reduced and the entire region saw an escalation of security forces, creating a war-like situation in the valley. The highest enrollment<sup>100</sup> of students is in the urban areas and these are the locales most impacted by the lockdown, thus drastically impacting the attendance in schools.

In the past as well, governmental responses to the unrest in Kashmir were marked by a projection of normalcy through two important sectors- education and tourism<sup>101</sup>. Within the city of Srinagar, the state administration passed an order for the opening of 190<sup>102</sup> primary schools from August 19th and made it mandatory for all the government officials to resume working. With most private schools have remained shut in the valley till this date, attendance of students in public schools was observed in miniscule numbers in August. All schools have been ordered to

---

<sup>97</sup> <https://www.aljazeera.com/indepth/features/2016/11/burning-kashmir-schools-161102102009566.html>

<sup>98</sup> <https://www.rediff.com/news/report/spec1/20040726.htm>

<sup>99</sup> [www.dsek.nic.in/viStat.html](http://www.dsek.nic.in/viStat.html)

<sup>100</sup> Ibid

<sup>101</sup> Watch the recent reporting by DDA news on the opening of the region to tourists at times of civil curfew:

<http://ddnews.gov.in/ground-report-jk-and-ladakh/10102019-jammu-kashmir-open-tourists>

<sup>102</sup> <https://www.indiatoday.in/india/story/jammu-and-kashmir-news-live-updates-article-370-1582143-2019-08-19>

reopen from October 4th 2019<sup>103</sup> but the current lockdown of the region doesn't provide a favorable environment for teaching and learning. Private tuition centres<sup>104</sup> have also been shut down since August 5.

### **Night raids, minor detainees, fear and psychosis:**

The detention of children has been noted to be high in the valley even before 5th Aug 2019, although discussed in detail in other chapter, but important to make a mention here. Fact finding teams<sup>105</sup> consisting of members of civil society in India have come out with their reports after their recent visits to the valley, and all noted the detention of children during this period.<sup>106</sup> International reports by media such as the *Washington Post* has also noted that children have been detained under the PSA, the youngest being nine-years old.<sup>107</sup>

High instances of night raids by security forces have been reported by both national<sup>108</sup> and international media<sup>109</sup> in Kashmir. The news has reported that during these raids, security forces pick up children. *Quint* reported, how with the detention of older children under PSA, younger children are afraid to go to school, fearing being picked up. Parents have resonated similar concerns around the safety and security of their children, and have decided against sending them. 'Our

---

<sup>103</sup> <https://www.indiatoday.in/india/story/nearly-2-months-after-abrogation-of-article-370-all-kashmir-schools-to-reopen-today-1605736-2019-10-03>

<sup>104</sup> Read how students are preparing from jail : <https://thewire.in/education/jammu-and-kashmir-exams>

<sup>105</sup> Check: The fact finding report by the All India Women team comprising of Annie Raja, Kawaljit Kaur, Pankhuri Zaheer, Poonam Kaushik and Syeda Hameed; dated 24th September 2019. <https://countercurrents.org/2019/09/all-woman-team-releases-fact-finding-report-on-kashmir>

<sup>106</sup> Check: The fact finding report by Jean Dreze, Kavita Krishnan, Maimoona Mohallah and Vimal Bhai; dated 14th Aug 2019. <https://www.nchro.org/index.php/2019/08/14/kashmir-caged-a-fact-finding-report-by-jean-dreze-kavita-krishnan-maimoona-mollah-and-vimal-bhai/>

<sup>107</sup> <https://in.reuters.com/article/india-kashmir-children/nine-year-old-among-nearly-150-children-briefly-held-in-kashmir-court-probe-idINKBN1WG472>

<sup>108</sup> <https://scroll.in/article/935245/raids-at-night-handbills-by-day-army-siege-in-south-kashmir-escalates-after-special-status-revoked>

<sup>109</sup> <https://www.bbc.com/news/world-asia-india-49481180>

children could get caught in the middle of a protest or a raid. We can't afford to let them out of sight.'<sup>110</sup>

Furthermore, the atmosphere in the valley has a negative impact on children's mental health. According to reports, on September 19, a fifteen year old boy named Yawar Ahmad Bhat from Chadigam Village, Pulwama committed suicide by drinking poison. Yawar was detained and beaten by the security forces on 17th September, though the Army denied this allegation.<sup>111</sup>

### **Systematic exclusion of student community:**

The presence of the armed forces in public spaces becomes a hindrance to access to schools. For instance, the number of security check posts that school buses<sup>112</sup> have to pass through just to provide accessibility to education. The close proximity of security camps to schools makes students victims of surveillance and sexual violence.<sup>113</sup> It also goes against the UNSC measures towards the Safe School Declaration<sup>114</sup> which India<sup>115</sup> has still not ratified<sup>116</sup>. Furthermore, there is a possible correlation between militarization and the increasing drop-out rates of girls from schools in the Kashmir Valley.<sup>117</sup> Schools in Kashmir in the past were occupied<sup>118</sup> by armed forces. They often became sites of interrogation, and encounters with militants. A 2018 JKCCS report states that till date, the Jammu

<sup>110</sup>[https://www.thequint.com/news/india/kashmir-situation-night-raids-children-article-370-srinagar-pulwama?fbclid=IwAR3OHO\\_1K9Qt66JOzEwAv2U\\_UAlyoAds\\_FyQ2G69kFztdQxLEKszOYJnqSo](https://www.thequint.com/news/india/kashmir-situation-night-raids-children-article-370-srinagar-pulwama?fbclid=IwAR3OHO_1K9Qt66JOzEwAv2U_UAlyoAds_FyQ2G69kFztdQxLEKszOYJnqSo)

<sup>111</sup><https://thewire.in/rights/kashmir-boy-dies-by-suicide-after-allegedly-being-beaten-by-soldiershttps://thewire.in/rights/kashmir-boy-dies-by-suicide-after-allegedly-being-beaten-by-soldiers>

<sup>112</sup><https://www.hindustantimes.com/india-news/kashmir-2-army-men-injured-in-gun-battle-at-dps-srinagar/story-j6sthW7ERUnwSuVyjNCNWP.htm>

<sup>113</sup><https://www.thehindu.com/news/national/other-states/sexually-assaulted-by-soldier-abused-and-spat-at-by-police-in-custody-handwara-girl/article8607256.ece>

<sup>114</sup>[https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe\\_schools\\_declaration.pdf](https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe_schools_declaration.pdf)

<sup>115</sup> Read: <https://scroll.in/article/734526/why-india-did-not-endorse-a-crucial-un-declaration-to-halt-the-military-using-schools>

<sup>116</sup><http://protectingeducation.org/guidelines/support>.

<sup>117</sup><http://ecostatjk.nic.in/ecosurvey/Economic%20Survey%202017.pdf>

<sup>118</sup><https://www.greaterkashmir.com/news/kashmir/military-use-of-schools-in-jk-violates-childrens-right-to-education-jkccs-report/?amp>

and Kashmir State Education Department has not provided any data on the rates of drop outs of girl students and links with the militarization of schools in the valley

### **Challenges regarding proof of age in Kashmir**

Many children who are technically of “minor age” have been detained under the PSA. School registration becomes one source of verification of the date of birth of the students. In many cases of children detained under the PSA, the armed forces have argued that the age of the students as mentioned in their school birth certificate were false. One such case is of Mohammed Aftab, a fourteen year old from district Shopian. He was picked up by security forces on midnight of 9th August 2019. The family was informed on 12th August that their son was detained under the PSA and sent to Central Jail in Srinagar. The family hasn't seen their son since then and believes like other children who were detained, that Aftab has also been sent to jail in Northern India, Varanasi.<sup>119</sup> A habeas corpus petition has been filed by his family to challenge Aftab's detention (as he is a minor), and for him to be transferred to a Juvenile Home. However, the state counsel report has challenged the authenticity of Aftab's birth certificate as provided to his family by the school in which their son is enrolled. Senior Superintendent of Police, Sandeep Choudhary verified the state counsel's report by pointing out a mistake committed by the school administration, who had, while giving admission to Aftab, allegedly written a ‘hypothetical figure in the date of birth.’<sup>120</sup>

### **Quality Education in the Valley on the Decline**

The unrest in the valley over the past decades has had an adverse impact on students and their ability to learn. They are often not able to attend classes, exams,

---

<sup>119</sup> <https://www.aljazeera.com/news/2019/08/india-revokes-kashmir-special-status-latest-updates-190806134011673.html>

<sup>120</sup> <https://scroll.in/article/939516/in-kashmir-boys-aged-14-and-16-held-under-dreaded-public-safety-act-and-sent-to-uttar-pradesh-jails>

and complete their curriculum. Teachers also find it hard to attend classes and conduct thorough evaluations. The bodies regulating the education system in the valley have acknowledged students' loss of academic years during unrest in Kashmir, and the J&K Education Director has allowed students to be automatically promoted to higher classes, except for those in class 10 and 12<sup>121</sup>.

### **Legitimacy of Schools at stake:**

The examples of the government's response to challenges regarding the age of students in Kashmir, as mentioned above in the case of Aftab Ahmad, detained unlawfully under PSA points to the fact that the security apparatus in the valley doesn't make a distinction between a minor and an adult while adopting measures that risk violating international humanitarian law, human rights law, guaranteed to the children in conflict zones. Such cases<sup>122</sup> support the concern of civil society that children are direct victims of militarization in Kashmir<sup>123</sup>.

The 2018 JKCCS report asserts that children are direct victims of armed violence in J&K. The report states that the pattern of student killings in Jammu and Kashmir shows how Kashmir division accounts for 87% i.e. 162 student killings from 2003 to 2017<sup>124</sup>. Has this percentage increased from 2017-19? The number of children detained<sup>125</sup> under the PSA in 2019 after Aug 5 indicates that the number of children detained has grown alarmingly over the years.

Various reports have already shown and explained how students in Kashmir are facing multiple challenges. These patterns show how the militarization of the valley over the decades has been extremely detrimental towards the security of

---

<sup>121</sup> Check the Academic Planner 2018-19: <http://www.dsek.nic.in/Misc/393-2019.pdf>

<sup>122</sup> <https://countercurrents.org/2019/09/all-woman-team-releases-fact-finding-report-on-kashmir>

<sup>123</sup> <http://jkccs.net/wp-content/uploads/2018/03/2018-Impact-of-Violence-on-Children-of-JK-JKCCS.pdf>

<sup>124</sup> Pg no 26, <http://jkccs.net/wp-content/uploads/2018/03/2018-Impact-of-Violence-on-Children-of-JK-JKCCS.pdf>

<sup>125</sup> Read Caravan article on the testimony of minors who were illegally detained. Most of the testimony from the ground has emphasized on the excessive use of force  
: <https://www.google.com/amp/s/caravanmagazine.in/amp/conflict/jammu-kashmir-minor-illegal-detention-police>

students. Militarization of schools is directly proportional to increasing drop-out rates of students.<sup>126</sup>

These actions are inconsistent with the international human rights law provisions guaranteeing the right to education. The Universal Declaration of Human Rights establishes in article 26 the right to free compulsory elementary education. Article 13 of the International Covenant on Economic, Social and Cultural Rights defines the scope of this right more precisely, requiring that education should be available to all who have not received or completed primary education. The Convention on the Rights of the Child obliges States to ensure, without discrimination of any kind, access to education for all children living in their territories<sup>127</sup>.

### **E Curfew<sup>128</sup>: No communication; No Information:**

According to *India spend*<sup>129</sup> since July 2016; schools and colleges in Kashmir were shut down for 60% on the working days. Between January 2012 to 2019, 278<sup>130</sup> internet shutdowns were recorded in Kashmir. At a time when social media has become a central part of our lives, and internet is key to this, the impact of internet blockades is felt keenly by the student community living in/out of Kashmir<sup>131</sup>. Some reported on how they missed out on job opportunities<sup>132</sup> and admissions to colleges<sup>133</sup> and schools outside of Kashmir. Kashmiri students studying in Delhi reported struggling with their admission fees and monthly rent

---

<sup>126</sup> Check JKCCS report, 2018: <https://jkccs.net/wp-content/uploads/2018/12/Annual-Report-2018.pdf>

<sup>127</sup> <https://www.thehindu.com/opinion/lead/childhoods-lost-in-a-troubled-paradise/article29522893.ece>

<sup>128</sup> What is E-Curfew: <https://www.thecitizen.in/index.php/en/NewsDetail/index/3/4830/E-Curfew-in-Kashmir>

<sup>129</sup> <https://archive.indiaspend.com/cover-story/since-july-2016-kashmir-schools-colleges-have-been-shut-on-60-of-working-days-22058>

<sup>130</sup> <https://internetshutdowns.in/>

<sup>131</sup> Read NWMI and FSC's report on Information Blockade in Kashmir:

<https://freespeechcollectivedotn.files.wordpress.com/2019/09/news-behind-the-barbed-wire-nwmi-fsc-report-2.pdf>

Read the epw article: <https://epw.in/engage/article/silence-valley-kashmiri-media-after-abrogation>

<sup>132</sup> Read: How a Kashmiri Scholar missed his interview for a job at Hyderabad Central University:

<https://scroll.in/article/933160/its-our-land-that-matters-to-them-not-our-lives-a-kashmiri-students-account-of-a-horrific-week>

<sup>133</sup> <https://www.trtworld.com/perspectives/in-pictures-how-india-s-communication-shutdown-impacted-kashmiris-30644>



since the abrogation of Article 370, since their parents were not able to send them the money. Students studying outside of Kashmir experienced anxiety <sup>134</sup>about the safety of their family back home in the valley, since all means of communication were blocked from 5th August, 2019.

This kind of exclusion was done systematically at two levels, first by keeping the population un-informed and secondly by excluding them from any kind of public participation to make use of these opportunities<sup>135</sup>. Many students missed the opportunity to study in university outside the region. The ground reality of students from the valley reveals how the conflict had produced hindrance to access education and employment opportunity outside J&K. Post-Pulwama attack 2019, Kashmiri students studying in different parts of India reported harassment<sup>136</sup> and expulsion from their colleges and universities. The consequences<sup>137</sup> of any kind of unrest in the valley are experienced harshly by the children in or from Kashmir.

### **Conclusion:**

If one assesses the patterns of militarization with respect to the schools and student community in Kashmir, including looking at access to schools, dropout rates, and disruption of student life, as well as the impact of the conflict on children (increasing numbers of mass blindings), the evidence suggests, that the student community is in grave danger in Kashmir.

One need not forget that the Kashmiri student community comes from social milieux where some have seen death and disappearance of their fathers and

---

<sup>134</sup><https://scroll.in/article/936980/as-j-k-students-are-cut-off-from-home-for-over-a-month-they-struggle-to-make-ends-meet>

<sup>135</sup><https://thewire.in/rights/students-scholars-statement-communication-blackout-kashmir-academic-institutions>

<sup>136</sup><https://www.universityworldnews.com/post-mobile.php?story=20190221123856911>

<sup>137</sup><https://www.indiatoday.in/india/story/pulwama-terror-attack-kashmiri-students-allege-harassment-crpf-helpline-1457910-2019-02-16>

brothers, torture of their close friends, sexual violation of their siblings, and the illegal detention of their kith and kin.

The ground realities of this region don't indicate that the situation is becoming better in the future, and there is a risk that the student community will bear the harshest brunt in the near future.

There is also a denial of humanitarian access to institutions and aids, as well as amnesty for children who may take up to armed rebellion. An independent inquiry body consisting of members of civil society and concerned education experts should be immediately set-up. The committee should investigate number of children employed as SPOs in J&K Police till date. Most of the *dise*<sup>138</sup>(district information system for education) school reports of the educational institutions of Kashmir division are not available on *dise* in since September 2017. A serious investigation is required to calculate the loss of academic years in schools, causes of drop-out rates of female students, and the number of students who have been visually impaired due to pellet gun injuries from 2016 till now.

- **Quality of education getting Compromised**

With almost no school days the quality of education has dwindled drastically, as the pedagogy gets disturbed. The interactive aspects of teacher – student tend to lose.

- **Discipline obstructed**

The discipline that needs to be part of everyday life of a student is being constantly obstructed and effecting student's holistic learning. In addition the discipline

---

<sup>138</sup><http://www.dise.in/Downloads/School%20Directory/J&K.htm>

required for future aspects is being lost consistently

- **Learning affected**

With no school days and no discipline, the allotted syllabi of a student are never completed, thus affecting her/his overall learning. Evaluations are done on the basis of 20percent to 30 percent of the syllabus only.

- **Home based exams- no accountability**

To compensate for closed schools, students are promoted through home based exams where under almost no supervision; students give exams and are promoted based on their performance in home based exams. No doubt parents are the best evaluators, but not in all cases. Moreover the idea of examination centre and hall is losing its relevance.

- **Due to communication blockade- admission deadline missed**

Due to communication blockade, students weren't timely informed about their admission notifications and missed the admission opportunity for this academic year, mostly in the cases of outside Kashmir. A many fresh pass outs, were not able to apply for jobs

- **Internet blockade**

*e learning stopped-* All e-resources for academic learning for students are blocked since 5<sup>th</sup> august, extremely impacting the learning of students

A many students who had been detained illegally are suffering from trauma and refuse to study further.

In cases where in FIR were lodged, students tend not to study, as they have lost all hope of getting any kind of government jobs in future.

Routes to schools are via military camps and buses have to cross these areas which is leading to a lot of students missing school

## CHAPTER: 6

### Essential Commodities and Barriers to Trade in Kashmir after the Lockdown

Essential Commodities are defined as “Goods considered essential to maintain a minimum acceptable standard of living”<sup>139</sup>. The list includes: "(1) Drugs<sup>140</sup> (2) Fertilizer, whether inorganic, organic or mixed; (3) foodstuffs, including edible oilseeds and oils; (4) Hank yarn made wholly from cotton; (5) petroleum and petroleum products; (6) raw jute and jute textiles; (7)(i) Seeds of food-crops and seeds of fruits and vegetables; (ii) seeds of cattle fodder; and (iii) jute seeds.]”

These are regulated by the Essential Commodities Act. The intent of this act was to ensure the easy availability of essential commodities to consumers and to protect them from exploitation by unscrupulous traders. The enforcement/implementation of the provisions of the Essential Commodities Act, 1955 lies with the State Governments and UT Administrations. After August 2019, the imposition of the curfew and other lockdown measures have resulted in several barriers to trading commodities in Kashmir, which have started to impact people’s livelihoods

In this section we are dealing with the items that have not been mentioned in other sections

#### 1) Food

Article 11 of the ICESCR guarantees “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. The general

---

<sup>139</sup> As defined in Essential Commodities Act 1955.

<sup>140</sup> . Explanation.-For the purposes of this Schedule, "drugs" has the meaning assigned to it in clause (b) of section 3 of the Drugs and Cosmetics Act, 1940;

comment on the right to food has stated that “The obligation to fulfil (facilitate) means the State must proactively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security”.<sup>141</sup>

However, the lockdown in Kashmir surrounding the abrogation of Article 370 has severely impacted the ability of people to access food and conduct trade.

### *Apples*

According to the latest reports, the security restrictions and communication blockade have resulted in empty markets. The Sopore Market, 2<sup>nd</sup>-largest fruit market in Asia, was seen to be completely empty during this time, with growers selling Rs 750-apple-crates at a nearly 80% reduced price<sup>142</sup>. On 16 October, two apple traders were shot by unidentified militants further discouraging traders to come in Kashmir.<sup>143</sup> As a result, apple businesses are down by 95% as compared to the last year. The government has set up a National Cooperative to help the farmers sell their produce but till now 80% of the produce has been rejected on the basis of quality restrictions.<sup>144</sup> With the increasing restrictions in the movement of vehicles and the communications blockade, apple traders have been unable to get in touch with growers in Kashmir and saw a fall in 50-60% of the arrival of produce in the beginning of the season in august. This is particularly significant since the apple industry in Kashmir employs over 3.5 million people<sup>145</sup>. “There is a 90 per cent fall in arrival of apples from the Kashmir valley to the Jammu mandi, compare to the

---

<sup>141</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en)

<sup>142</sup><https://caravanmagazine.in/conflict/modi-war-dispatches-from-seething-kashmir>

<sup>143</sup><https://economictimes.indiatimes.com/news/politics-and-nation/migrant-labourer-apple-trader-shot-dead-in-kashmir/articleshow/71623888.cms>

<sup>144</sup><https://www.aljazeera.com/news/2019/10/kashmir-shutdown-farmers-struggle-living-191021131415392.html>

<sup>145</sup><https://economictimes.indiatimes.com/news/economy/agriculture/how-the-current-security-arrangement-in-kashmir-is-affecting-its-fruit-trade/articleshow/70597597.cms?from=mdr>

previous year in the same period,” said Praveen Gupta, president, Jammu Fruit Association<sup>146</sup>.

### ***Walnuts***

Reports show that there has been a 90% fall in the supply of walnuts (by the middle of September) as compared to last year, due to road blockades and farmers being unable to harvest because of civil curfew<sup>147</sup>. Over 90% of the country’s walnut production comes from Kashmir. According to traders, the average price of walnut kernels in the wholesale market of Jammu mandi has increased by 35% in the last one month to Rs 900/kg due to the uncertainty of arrivals.<sup>148</sup> The producers have experienced a major setback due to travel and telecommunication restrictions and which is resulting in huge trade losses.

While the walnut trade is considered to be the backbone of the economy in Uri district, those associated with it are saying that this year they had to bear losses worth crores due to the situation that has arisen post August 5.<sup>149</sup>

### ***Vegetables***

Due to the increased uncertainty and the continued restrictions, the regulatory authority has been absent from the markets, resulting in high prices of vegetables and fruits across the valley. Despite ample supply, the prices have shot up and are being decided solely by the vendors. For example, tomatoes which are generally priced at Rs. 20 have gone up to Rs. 70 and the prices vary in different markets.<sup>150</sup>

---

<sup>146</sup><https://economictimes.indiatimes.com/markets/commodities/news/apple-traders-worry-about-advance-paid-to-jk-growers/articleshow/71145384.cms?from=mdr>

<sup>147</sup><https://economictimes.indiatimes.com/news/economy/foreign-trade/delay-in-walnut-arrival-from-jk-forces-traders-to-import-more-from-us-chile/articleshow/71018891.cms>

<sup>148</sup>[https://economictimes.indiatimes.com/articleshow/71018891.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/articleshow/71018891.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>149</sup><https://www.dailyexcelsior.com/no-transport-telcom-sends-walnut-trade-on-back-foot-in-valley/>

<sup>150</sup><http://brighterkashmir.com/vegetables-become-dearer-thanks-to-shutdown->

## 2) Other Trade and Businesses

Several local businesses such as local bakeries, goat herders etc. were affected immediately due to the road blockades and curfews. A member of the Kashmir Chamber of Commerce and Industry (KCCI) was reported to have said, on 11<sup>th</sup> August<sup>151</sup>, that "[t]he average loss of business per day in Kashmir today is to the tune of at least Rs 175 crore as life has come to a standstill due to the restrictions imposed by the authorities," As many as 50,000 migrant workers from India were held up in Kashmir, waiting in long queues at state transport services, unable to travel back home 10 days into the siege<sup>152</sup>. "We are staring at a trading loss of about Rs 400 crore to Rs 450 crore, by conservative estimates. Our supplies are down to less than 50 percent" said Deepak Kumar, general secretary of Warehouse Traders Federation.

"How can we survive with just 20 percent business?" asks Manmohan Singh Khalsa, president of J&K Truck Union, which has 2,000 truck owner-members. Both statements were reported on the 24<sup>th</sup> of September, when the estimated losses faced by traders in Jammu due to blockade in Kashmir, was estimated to be Rs. 700 crore<sup>153</sup>. Nearly 300 JKPDD employees last week held a demonstration following a state government order which declared nomination of boards of directors for the newly created PSU(JKPDD is being reconstituted into four state public sector undertakings)<sup>154</sup>.

---

<sup>151</sup><https://www.indiatoday.in/india/story/kashmir-issue-amid-restrictions-traders-in-srinagar-suffer-loss-of-rs-1-000-crore-in-week-1579811-2019-08-11>

<sup>152</sup><https://peoplesdispatch.org/2019/08/14/domestic-and-migrant-workers-hit-hard-by-abrogation-of-article-370-in-kashmir/>

<sup>153</sup><http://www.forbesindia.com/article/special/kashmir-clampdown-jammu-traders-stare-at-rs-700-crore-loss-apple-trading-worst-hit/55439/1>

<sup>154</sup><https://www.news18.com/amp/news/india/power-outrage-fearing-privatisation-jk-electricity-department-workers-plan-a-strike-2326773.html>



- Tremendous impact on the Supply Chain of the trade
- Warehouse management failed , tremendous impact on daily wagers particularly street vendors
- The blockade imposed has severely impacted the exports as well . The goods which were meant to be sent out have been stuck in warehouses.
- People were unable to go and meet their daily requirements due to restrictions
- Although stocks had been kept at government stores, but people were not able to access it.
- Supply of perishable items was hit due to these blockades
- Add latest Kashmir Chamber of Commerce figure of losses

## CHAPTER: 7

### IMPACT OF THE BLOCKADE ON RELIGIOUS FREEDOM

The (re)construction of religious identity in Kashmir has been a crucial issue in the self-determination struggle against India. Hoffman and Duschinski note that since 1990s, security forces have appropriated sites of Hindu significance and transformed them into military compounds or security stations.<sup>155</sup> Mosques in Kashmir, as critical sites of community mobilization and participation, have been continuously barricaded/put under indefinite curfew in a move that separatist leaders have identified as an effort to suppress religious practice.<sup>156</sup> In more recent times, the systematic shutdowns and communications blockades in the Kashmir Valley have had a significant impact on the right to practice religion freely. Several reports have been published since at least 2009, highlighting the severe crackdown on mosques, religious processions, and even weddings and funerals. In other words, the Indian State has deliberately put an end to large assemblies of people, and prevented community gathering.

#### Ban on Muharram

Muharram/Ashura processions<sup>157</sup> have been restricted in Kashmir since 1990s, when then Governor Jagmohan Malhotra banned them as a response to alleged

---

<sup>155</sup> Bruce Hoffman and Haley Duschinski, *Contestations over Law, Power and Representation in Kashmir Valley*, *Interventions: International Journal of Postcolonial Studies*, 16(4), 501-530. July 23, 2013.

<sup>156</sup> See above.

<sup>157</sup> Muharram is the first month of the Islamic calendar. Ashura is the 10<sup>th</sup> day of Muharram – for Sunnis and Shias both, it is a very holy day and is observed through fasting. For Shias, however, Ashura is especially significant as it is a solemn day of mourning marking the martyrdom of Imam Hussein in 680 AD at Karbala in modern-day Iraq. It is customary for Shias to take part in processions for ceremonial mourning during Ashura. See generally BBC News, What is Ashura? (December 6, 2011). Available at <https://www.bbc.com/news/world-middle-east-16047713>

‘insurgency’ in the Valley<sup>158</sup>. This ban was never lifted<sup>159</sup>; senior Shia leaders have sometimes been put under house arrest in order to prevent them from leading processions<sup>160</sup>. In 2008, a religious and political group, Ittihad ul Muslimeen, petitioned the Jammu and Kashmir High Court calling for the ban to be quashed as it was a violation of the right to freely practice one’s religion. The government responded by stating that processionists must seek permission prior to taking part in the procession<sup>161</sup>, but no other direction or order was given. By contrast, the annual Amarnath Yatra has been allowed to continue and even supported by the Indian state<sup>162</sup>.

In 2009, the Ashura procession at Zadibal in Srinagar was met with violence from the police, who tear gassed the mourners. The police claimed that they had assembled without permission and were ‘anti-social’ elements.<sup>163</sup> Peerzada Ashiq reported similarly in 2010 that the authorities had disallowed Ashura processions in Srinagar; those who defied curfew were again met with tear gas and baton charging.<sup>164</sup> In 2019, after the entire Valley was shut down following the abrogation of Article 370, Muharram processions were once again banned in several regions.<sup>165</sup> While it has been reported that authorities did allow processions in Shia-majority areas, it is unclear whether other restrictions were heightened

---

<sup>158</sup> Syed Zafar Mehdi, *A Breach of Religious Freedom*, Outlook (November 23, 2012). Available at <https://www.outlookindia.com/website/story/a-breach-of-religious-freedom/283080> ; Aga Syed Mujtaba Abbas, *Why ban it?* Greater Kashmir (October 24, 2015). Available at <https://www.greaterkashmir.com/news/opinion/why-ban-it-3/>

<sup>159</sup> Tawqeer Hussain, *No Let up in 25 Year Old Ban on Muharram Procession in Kashmir*, The Citizen (November 3, 2014). Available at <https://www.thecitizen.in/index.php/en/NewsDetail/index/3/1172/No-Let-up-in-25-Year-Old-Ban-on-Muharram-Procession-in-Kashmir>

<sup>160</sup> Mehdi, above note 4.

<sup>161</sup> See above note 4.

<sup>162</sup> See above note 4.

<sup>163</sup> The Telegraph, *Muharram in Srinagar marred by violence* (December 29, 2009). Available at <https://www.telegraphindia.com/india/muharram-in-srinagar-marred-by-violence/cid/565387>

<sup>164</sup> Peerzada Ashiq, *Curfew to prevent Muharram procession*, Hindustan Times (December 15, 2010). Archived version available at <https://web.archive.org/web/20150402091004/http://www.hindustantimes.com/india-news/curfew-to-prevent-muharram-procession/article1-638588.aspx>

<sup>165</sup> Scroll Staff, *Muharram processions banned in Kashmir, restrictions reimposed in several parts of Valley*, Scroll.in (September 8, 2019). Available at: <https://scroll.in/latest/936653/muharram-processions-banned-in-kashmir-restrictions-reimposed-in-several-parts-of-valley>

during this period. It should be noted that Ashura is of particular significance and mourning for Shia Muslims, who are a religious minority in Kashmir. Traditionally, Shia Muslims would march from Lal Chowk to Dal gate, but this has been banned since 1989 due to claims that the procession often turned into anti-India protests.<sup>166</sup>

### **Ban on Congregational Prayers**

The traditional Friday prayers i.e. congregational prayers have also been disallowed numerous times, especially at the Jamia Masjid in downtown Srinagar. This masjid has long been a very active politico-religious space and thousands of Muslims assemble here every Friday to offer prayers.<sup>167</sup> However, this masjid is also a significant site for protest and dissent; every afternoon, after the prayers, security forces face off against young men armed with stones. A documentary by ScoopWhoop captures this ritual of a Friday protest very well.<sup>168</sup> In 2016, following the killing of Burhan Wani and protests in the Valley, authorities restricted prayers at Jamia Masjid for over 19 weeks.<sup>169</sup> Even when prayers were allowed again, the strikes and curfews meant that a majority of people could not attend. For the first time in two centuries, no Eid prayers were offered at the mosque. Prayers were once again disallowed in 2017 for several consecutive weeks.<sup>170</sup> However, Jamia Masjid is not the only one affected and reports indicate other mosques have also been closed.

---

<sup>166</sup> See above and note 4.

<sup>167</sup> Farooq Ahmed Peer, *Jamia Masjid: The pride of Kashmir*, Greater Kashmir (January 11, 2017). Available at <https://www.greaterkashmir.com/news/opinion/jamia-masjid-the-pride-of-kashmir/>

<sup>168</sup> ScoopWhoop, Kashmir - Inside A Friday Protest - Part 1, CHASE Ep. 6. July 14, 2016. Available at <https://www.youtube.com/watch?v=6Q1rd6jaIRY>

<sup>169</sup> *Kashmir unrest: Jamia Masjid holds Friday prayers after 19 weeks*, Hindustan Times (November 25, 2016). Available at <https://www.hindustantimes.com/india-news/kashmir-unrest-jamia-masjid-holds-friday-prayers-after-19-weeks/story-KvPvNq6hLjgkDh0EgZVhoM.html>

<sup>170</sup> Kashmir News Trust, *Authorities have disallowed congregational Friday prayers at the Jamia Masjid in downtown Srinagar for the fourth consecutive week* (July 14, 2017). Available at <https://www.kashmirnewstrust.com/no-friday-prayers-kashmirs-historic-jamia-masjid-fourth-consecutive-week>

Journalist Safwat Zargar, writing for Scroll, reports that there has been a crackdown on mosques across the Valley, in an attempt to curb dissent against the Indian government's decision to abrogate Article 370.<sup>171</sup> The Khanqah-e-Moula on the banks of Jhelum River could not hold Eid or Friday prayers for the first time in more than 600 years. The Asari Shareef Shehri shrine in Kailashpora, similarly, was not allowed to hold congregational prayers. While the Indian State has always targeted religious gatherings and places of worship in order to repress any discontent, the clerics themselves state that this level of repression is unprecedented.<sup>172</sup> According to reports by *Greater Kashmir* and *Scroll*, the J&K police in July 2019 (some days before the communications blockade and before Article 370 was abrogated in Parliament) ordered the zonal superintendents to submit details of all the mosques within their jurisdiction.<sup>173</sup>

Currently, in 2019, Kashmir has been subjected to severe curfews and bans on gatherings through the use of Section 144 Cr.P.C. As recently as September 27, fresh restrictions were imposed in Srinagar and neighbouring towns.<sup>174</sup> Despite some reports that Eid passed peacefully, residents of the Valley actually spent the day in complete lockdown, unable to contact their loved ones or gather for their prayers.<sup>175</sup> Even mourning loved ones has been extremely challenging. Imposition of curfews has meant that people are unable to contact their relatives to convey that someone has died, and, once contacted, relatives must arrange for 'curfew passes'

---

<sup>171</sup>SafwatZargar, *In Kashmir, a quiet crackdown – on mosques and clerics*, Scroll.in (September 6, 2019). Available at <https://scroll.in/article/936380/in-kashmir-a-quiet-crackdown-on-mosques-and-clerics>

<sup>172</sup> See above.

<sup>173</sup> Scroll Staff, *J&K Police seek details of mosques in Srinagar, senior officer calls it periodic exercise*, Scroll.in (July 29, 2019). Available at <https://scroll.in/latest/932184/j-k-police-seek-details-of-mosques-in-srinagar-senior-officer-calls-it-periodic-exercise>

<sup>174</sup>The Tribune, *Fresh restrictions in parts of Kashmir in view of congregational prayers* (September 27, 2019). Available at <https://www.tribuneindia.com/news/jammu-kashmir/fresh-restrictions-in-parts-of-kashmir-in-view-of-congregational-prayers/838986.html>

<sup>175</sup>Azhar Farooq and Rebecca Ratcliffe, *'Our hearts are on fire': Kashmir spends Eid al-Adha in lockdown*, The Guardian (August 12, 2019). Available at <https://www.theguardian.com/world/2019/aug/12/our-hearts-are-on-fire-kashmir-spends-eid-al-adha-in-lockdown>

in order to attend the funeral.<sup>176</sup> No congregational prayers can be offered to mourn the person who has passed; the dead must depart in silence.

## **Intimidation of Religious Leaders**

Safwat Zargar also documents instances of intimidation by the security forces where clerics have been summoned to army camps and “counselled” and threatened not to speak out against the removal of Article 370.<sup>177</sup> Some clerics have also been detained for being critical of government policies.<sup>178</sup> APDP has recorded testimonies of families of Imams (head priests) of various mosques who have been detained and booked under PSA.

## **Religious Freedom in Law**

Religion is a major coping mechanism for Kashmiris, especially students who often lose out on months of education due to curfews or strikes<sup>179</sup>. Systematic bans on religious festivals or processions make it extremely challenging for Kashmiris to even go about their daily lives. The Indian Constitution through Article 25 guarantees to every individual the right to freely practice their religion<sup>180</sup>. Additionally, Article 19(1) (a) and 19(1) (b) guarantee to all citizens the right to freedom of speech and expression, and the right to assemble peaceably without

---

<sup>176</sup>Peerzada Ashiq, A wedding and a funeral in Kashmir, *The Hindu* (September 13, 2019). Available at <https://www.thehindu.com/society/a-wedding-and-a-funeral-in-kashmir/article29409736.ece>

<sup>177</sup> See above note 9.

<sup>178</sup>Ishaq Naseem, *Kashmir clerics, taken briefly into custody by cops over 'anti-India' sermons, decry interference in religious affairs*, *Firstpost* (May 22, 2019). Available at <https://www.firstpost.com/india/kashmir-clerics-taken-briefly-into-custody-by-cops-over-anti-india-sermons-decry-interference-in-religious-affairs-6683571.html>

<sup>179</sup>PrithviIyer, *Religion a coping mechanism for Kashmir students combating mental health issues*, *The Print* (August 2, 2019). Available at <https://theprint.in/opinion/religion-a-coping-mechanism-for-kashmir-students-combating-mental-health-issues/271283/>

<sup>180</sup> Article 25 reads:

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.  
 (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -  
 (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

arms, respectively<sup>181</sup>. Taken together, these articles confer upon all persons the right to profess their religion through a number of acts or practices, such as Ashura processions in the case of Muslims. Internationally, the UN Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) in Article 18 states that every person has the right to freedom of thought, conscience and religion. In 1981, the UN General Assembly issued a *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*; Article 6 of this Declaration provides that:

*In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:*

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;*
- (b) To establish and maintain appropriate charitable or humanitarian institutions;*
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;*
- (d) To write, issue and disseminate relevant publications in these areas;*
- (e) To teach a religion or belief in places suitable for these purposes;*
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;*

---

<sup>181</sup> Article 19: Protection of certain rights regarding freedom of speech, etc.-

(1) All citizens shall have the right-

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

*(g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;*

*(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;*

*(i) To establish and maintain communications with individuals and communities in matters of religion or belief at the national and international levels.*

It is clear that the major norms of human rights include not only the right to believe in a certain religion but also to engage in practices that further such belief. In Kashmir, however, the ability to commemorate holy days or take part in communal gatherings for Eid or other festivals has been severely curtailed, especially after the revocation of Article 370. In sum, the Indian State has effectively prevented any and all forms of socializing and has attempted to break the spirit of community togetherness.

1. Curb of movements to reach religious places due to restrictions and curfews
2. Systematic pattern of restrictions in major places of worship across the state, thus curbing congregational prayers.
3. Incidents of torture for having beard, and following a particular religious ideology.
4. Consistent surveillance on religious institutions causing an element of fear.
5. Detention, arrest of religious preachers and sending them to jails outside Kashmir



## Chapter 8

### ACCESS TO JUSTICE

The notion of access to justice obliges states to guarantee each individual's right to go to court – or, in some circumstances, an alternative dispute resolution body – to obtain a remedy if it is found that the individual's rights have been violated. It is thus an enabling core right that helps individuals enforce other rights. Access to justice enables individuals to protect themselves against infringements of their rights, to remedy civil wrongs, to hold executive power accountable and to defend themselves in criminal proceedings. It is an important element of the rule of law<sup>182</sup> and cuts across civil, criminal and administrative law. Access to justice is both a process and a goal, and is crucial for individuals seeking to benefit from other procedural and substantive rights.

#### **Access to Justice under International Law:**

Access to justice is a right recognized under the major international and regional human rights instruments including: The Charter of the United Nations, the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (CESCR), the International Covenant on Civil and Political Rights (ICCPR), the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). The core instruments on the issue, the UDHR and the ICCPR, state that everyone has *'the right to effective remedy against violations of fundamental rights'*.

---

<sup>182</sup> Council of Europe (2015), Factsheet on guaranteeing equal access of women to justice, Strasbourg, Council of Europe.

According to international human rights law, Access to justice encompasses a number of core human rights, such as the right to a fair trial under, and the right to an effective remedy.

-The UDHR states that:“*everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law*”.<sup>183</sup>

Also, Art.10 of the same declaration states that “*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations, and of any criminal charge against him.*”

- The ICCPR<sup>184</sup> provides for the same right in more detail by requiring each State Party to the Covenant to undertake:

*a. To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*

*b. To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*

*c. To ensure that the competent authorities shall enforce such remedies when granted.*

Hence, access to justice is an internationally recognized fundamental right that generally guarantees every person access to an independent and impartial process and the opportunity to receive a fair and just trial when that individual’s liberty or property is at stake.

---

<sup>183</sup>Article 8, UDHR

<sup>184</sup>Clause 3, Article 2, ICCPR

The substance of ‘access to justice’ as a right makes it of particular importance in relation to its linkages with ‘equality before the law’ and ‘fair trial’. The relevance of access to justice within the human rights framework is seen in the ‘justiciability’ of all human rights and access to remedies in cases of violation. The recognition of a right would be meaningless without access to the means of enforcing claims arising from the right.

All victims of human rights violations have a right to effective remedy. The right to effective remedy has been recognized under various international and regional human rights treaties and instruments and also as a rule of customary international law. The right to effective remedy requires states to provide all victims of human rights violations with: (1) Equal and effective access to justice; (2) Adequate, effective and prompt reparation for harm suffered; and (3) Access to relevant information concerning violations and reparation mechanisms.<sup>185</sup>

As per the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, “A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law”.<sup>186</sup>

### **Access to Justice in India**

The Indian Constitution guarantees justice to all. All Indian citizens are guaranteed equal right to life and personal liberty. The Constitution of India enjoins the state

---

<sup>185</sup><https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

<sup>186</sup><https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

to secure social, economic and political justice to all its citizens, making the constitutional mandate for speedy justice inescapable through article 14 which guarantees equality before the law and the equal protection of the laws. Article 39A of the Constitution mandates the State to secure the operation of the legal system in such a way that it promotes justice on a basis of equal opportunity and ensures that the same is not denied to any citizen by reason of economic or other disabilities. Further equal opportunity must be afforded for access to justice as its not sufficient that the law treats all persons equally, irrespective of the prevalent inequalities but the law must function in such a way that all the people have access to justice in spite of economic disparities. The expression “Access to justice” focuses on the following two basic purposes of the legal system:

- The system must provide access to all.
- It should lead to results which are fast, fair and economically viable.

The Supreme Court has on various occasions, in its judgments made it clear that there can be no delay in trial, as that itself constitutes denial of justice. Moreover, the directive principle of state policy directs the state to strive for reducing inequalities amongst groups of people in different areas under article 39A of the constitution of India. While interpreting this provision the Supreme Court held that, social justice includes ‘legal justice’ which means that the system of administration must provide a cheap and expeditious instrument for realization of justice.

The legal position in India is no different. Access to justice has been recognised as a valuable right by courts in this country long before the commencement of the Constitution<sup>187</sup>, the same has been again upheld in a number of landmark cases<sup>188</sup>.

---

<sup>187</sup>Anita Kushwaha V. Pushap Sudan, AIR 2016 SC 3506, 2016 (8) SCC 509.

<sup>188</sup> such as Llewelyn Evans, Hussainara Khatoon v. State of Bihar, Imtiaz Ahmad v. State of Uttar Pradesh & Ors., In Brij Mohan Lal v. Union of India and Ors., Tamil Nadu Mercantile Bank Shareholders Welfare Association v. S.C. Sekar and Others, In State of Haryana v. Darshna Devi, .”Anita Kushwaha V. Pushap Sudan,

It is pertinent to mention that India has not only signed but also ratified the ICCPR in 1979. Also, India has contributed significantly to the development of the Universal Declaration of Human Rights. As such, India is obligated to ensure “Access to Justice” to all its citizens.

### **Access to Justice in Indian Administered Kashmir- An Illusion**

Justice Wiley Rutledge (US Supreme Court) has quoted that “Equality before the law in a true democracy is a matter of right. It cannot be a matter of charity or of favor or of grace or of discretion.”

When it comes to Kashmir, every law and principle of democracy seems to go out of the window. Law acts as an arm of the State to achieve justice. The laws act as a vehicle to provide justice, not on selective basis but as a duty. However, the same is not applicable to the Indian Administered Kashmir. Laws are the tools that are used by the authorities to suppress and oppress the common man.

While India successfully revoked Article 370 from the Indian Constitution by introducing The Jammu and Kashmir Reorganization Act, 2019 the authorities failed miserably to protect the basic human rights of the citizens of Kashmir.

Access to justice, as per Indian Constitution is a fundamental right of every citizen and is one of the facets of life under Article 21 and equality under Article 14. Since the Indian Government used Art. 370 to abrogate Art.370 itself, the Indian Constitution apply to Kashmir now in too. However, under the same constitution, the residents of Kashmir are being deprived of their basic fundamental rights which are a clear violation of Part III of the Constitution of India. It is pertinent to note that judgments of the Supreme Court of India<sup>189</sup> and the J&K High Court<sup>190</sup> have clarified that all decisions of the Supreme Court of India are applicable to the State of J&K.

---

<sup>189</sup> Col. Rajnish Bhandari v Union of India & Ors [Civil Appeal 3204/2019]

<sup>190</sup> Jankar Singh vs State & Ors. 1995 CriLL 3263

The human rights violations have continued for many decades and are an ongoing issue in Kashmir. Now in addition to that, there are constitutional violations as well. Access to justice, as an ordinary civilian in Kashmir would understand is the accessibility to courts, legal aid and speedy and fair trials. But the current situation suggests a different story.

Since 5<sup>th</sup> August, 2019, the High Court and the lower courts have been dysfunctional for a considerable amount of time due to the restrictions and blockades. For example, the Courts rely on the postal services for serving the notices to the respective parties. But since the abrogation of Article 370, the postal services across the state are badly hampered as per media reports. As such, it is often not possible to summon the parties to appear before the court. Also, the communications services are suspended as well. Consequently, the High Court failed to serve notice to concerned parties. The curfew imposed on the valley for the past four months adds to the misery of the people. With no buses running for almost three months now, the parties faced further obstacles to approaching the courts of law and justice. The authorities thereby have obstructed the right of easy access to justice.

The stake-holders, including the victims, were not allowed to go to their respective destinations (courts) even after showing their ID cards when their cases were being heard. Hundreds and thousands of young boys (even children as young as 9 years old) and men were illegally detained and no detention order was being shown to the detainees or their families, thereby violating Article 14, 21 and 22 of the Indian Constitution.

Legal aid is a constitutional right guaranteed by Articles 21 and 39-A of the Constitution of India. “Access to Justice” is a basic human right recognized by the

Indian Constitution as well as various international covenants. However, it is pertinent to mention here the fact that despite so many detentions (nearly 16000 detentions) made by the concerned authorities, only few judges are present to hear and adjudicate the Habeas Corpus writ petitions. At present, only two benches are present in the High Court to dispose of the said petitions.

Moreover, lawyers who are considered as officers of the court were also detained in large numbers by the authorities. The former President of the Jammu and Kashmir Bar Association-Nazir Ahmad Ronga has been held in preventive detention since 9<sup>th</sup> August, 2019 under the Public Safety Act. Also, the present Presidents of the JK Bar Association-Mr. Mia Abdul Qayoom has been held in preventive detention under the Public Safety Act (which the Amnesty International has termed as “Repressive and Draconic”) even before the passing of the bill and lodged at Agra jail of state of Uttar Pradesh which is approximately 1000 kms away from the city of Srinagar. Even the President of Baramullah (Abdul Salam Rather) and Anantnag (Fayaz Sodagar) District Bar Association have been detained. The High Court Bar Association filed a petition before the HC of Jammu & Kashmir to allow two of its members to meet the Bar President. However, the same was rejected by the Court. From the past three months, even the nature of orders passed by the court is no different. The Court most often adjourns the cases for some reason or the other, the result being that the detainees who are subjected to preventive detention may actually languish in prison longer than the law allows. Since august 2019, a thousand- member body of the Bar Association is on strike to protest the illegal detentions of the lawyers. As such, the people are deprived of having an access to justice because they are unable to access their lawyers. Evident enough, it is again an infringement of Article 21 and inconsistent with 39-A of the Constitution.

The Indian Authorities are a law unto themselves. Even the higher judiciary unfortunately seems to have turned a blind eye to the plights of Kashmiri citizens. The normal life in Kashmir remains disturbed and affected for the 120 days following abrogation of Article 370 and so do the infringement and blatant violations of constitutional guarantees and protection.

- Access to fair, just and due process of law being denied
- Due to lack of communication people are not informed about their court hearings
- Cases being closed without the knowledge of parties

### **Illusion of Normalcy**

The fundamental question that this chapter aims to address is the deconstruction of Indian Government's claim of achieving and maintaining 'normalcy' in Kashmir. The normalcy in plain language is a situation where at, the ordinary laws and regulations shall govern the State, and it is considered as norm in all the democratic State. But, during the extreme exceptional circumstances, the ordinary laws will be inapplicable to combat the crisis. Therefore, there would be need of emergency laws, which could have the potential of restricting or suspending the human rights.

There is an important need to set out some basic factual premise before addressing the question whether Kashmir has retained to 'normalcy' in the present circumstance. Firstly, there is a need to acknowledge that Kashmir had been always in a permanent *de-facto* State of emergence, since 1989. In the post 1989, the Kashmir had been at the grip of emergency security laws with severe restriction



and violation of fundamental human rights. Although, the normalcy narrative is being sold to mainstream world community, but on the other side, the Indian Government had weaponized the isolated violence of militancy to claim that the normal laws would not be able to operate in places like Kashmir.

Indefinite curfew imposed in Kashmir in the aftermath of Article 370 is the extension of de-facto state of emergency, with the implication of more restriction on Kashmir People's social and economic rights, and the Indian Government intends to 'normalize' the status quo.

In the present context in Kashmir, the question is, 'Whether the Normalcy exists or has been restored in Kashmir or is it a permanent de-facto state of emergency'. This may be assessed, discussed and answered through two different branches of Law, i.e 1) International Human Rights Law; 2) Indian Constitutional Law.

Article 4 of ICCPR provides the basic framework of 'State of Emergency' in International Human Rights Law. The 'State of Normalcy' exists whenever there is an absence of publicly declared 'State of Emergency or Siege', which must be in compliance of Article 4 of ICCPR

The Indian Constitution also does not provide any concrete or objective definition for 'Normalcy'. But, it grants extra ordinary power to The President to suspend the enforcement of Fundamental Rights during the emergency. Jammu & Kashmir has been under the President's Rule since June 20, 2018, and it has been extended from time to time by the Central Government.

Article 359 allows the President after the aid and advice of Council of Minister can suspend all fundamental rights mentioned in Part III of the Constitution except Article 20 and 21 of the Constitution. Therefore, the Right to Life and Liberty (Article 21) cannot be abrogated or suspended even during the emergency. Despite the Indian Constitution not permitting the suspension of Right to Life and Liberty,

the judiciary, both High Court and Supreme Court have considerably failed to safeguard the right to life and liberty of the people of Kashmir. There are more than 4000 people (including several children) detained by the Government for simply peacefully protesting against the revocation of Article 370 in Kashmir. Yet, the Jammu & Kashmir High Court and Supreme Court of India refused to grant relief in habeas corpus petition filed by the families of illegally detained by the Indian Government.

The indefinite curfew imposed in the valley and de-facto suspension of Fundamental Rights has no basis under Indian Constitution.

### **III. The State of Siege in Kashmir- The Normalization of De-Facto State of Emergency in Kashmir**

The Kashmir valley is presently going through one of the worst forms of State authoritarianism and high handedness. On August 5, 2019, the Indian Government has abrogated the special status granted to State of Jammu & Kashmir under Article 370 of the Indian Constitution. Soon, the Indian Government has placed absolute embargo on the people's freedom of movement, communication and internet services. The shops were closed, the hospital were not running properly, the doctors were unable to reach hospitals, the court proceedings in the High Court of Jammu & Kashmir was completely stalled. The entire trade and business activities have ceased since the abrogation of special status of Kashmir. As a result, the Kashmir Valley was completely under kept under lockdown by the military authorities and the entire valley witnessed the triumph of military's brutal repression and occupation against Kashmir people.

The Indian Government has continuously asserted that 'normalcy' has been returned to Kashmir. But, the testimonies and ground level reports indicate the

contrary, as there are still severe restrictions and curtailment of basic human rights of the residents of the Kashmir valley.

In the days post August 5 2019, the Indian Government has completely denied access to economic, social and cultural rights. This measure was not an initiation of a 'State of Emergency, rather it is an extension of the existing permanent 'de-facto state of emergency' with more aggressive measures undertaken in the Kashmir Valley. Finally, this has turned the common person's life in agony and is a 'collective punishment' against the Kashmir people.

**A. The change in the contours of de-facto state of emergency post the abrogation of Article 370 in Kashmir- complete denial to access social, economic and cultural rights**

The contours of Normalcy were altogether altered after the 5th August 2019. The definition of Normalcy was changed and it imposed a severe restriction on the basic fundamental rights of the Kashmir people. After the pronouncement of Abrogation of Article 370, the Indian State imposed a complete communication blackout including phone and internet services in Kashmir, there was a indefinite curfew imposed in Kashmir and severe restriction on the freedom of movement and assembly. Even though, these restriction violates basic fundamental and human rights of the Kashmir people and constitutes an imposition of de-facto state of emergency. The Indian Government continues to claim "All is well" or that "There is absolute Normalcy" in Kashmir. This part of the chapter reveals that how the Kashmiris' lives are more oppressed, and a lot of suffering has occurred post the abrogation of Article 370 on August 5, 2019. Also, reports suggest that the claim of the Indian Government that normalcy has been achieved is a myth; rather the Indian Government has established a de-facto state of emergency as a permanent norm.

## **i. The Communication Blockades Impact on the Access to Healthcare, and Medicines**

The Kashmir region has often faced long curfews and frequent communication blockades and deprived the Kashmir people of their basic fundamental rights. In this modern era, the communication devices are not considered as a ‘luxury’ items, instead it is facet of a necessity and access to many human rights including access to healthcare and education. The communication blockade is clearly an impediment in the exercise of freedom of speech and expression, often it targeted to silence the media and journalist. Additionally, a major impact on their access to medical care, education, medicines and. However, in the pre-abrogation of Article 370, the frequent restriction was imposed for a limited period of time. But, in the post August 5, the communication blockade was imposed for an indefinite period, till further order. The blanket prohibition on communication ipso facto violates international and constitutional rights of freedom of speech and expression.

The communication blockade on phone and internet services has had a major impact on various rights including civil, political, social, economical and cultural rights guaranteed in international law. One of the primary challenges faced by the health sector is that the poor people are unable to access public transportation or ambulances to take patient to the hospital. The breakdown of the transportation combined with absence of communication leads to major impediments in the health sector of Kashmir.

### **1. Communication blockade curtailed the access to essential life saving medicines**

The communication blockade has seriously disrupted the supply of medicines in the Kashmir region. The undisrupted supply of medicines is a necessary component of effective health sector. After the August 5, 2019, the communication

blockade and indefinite curfew had a major impact on the supply of essential life saving medicines. The owner of drug store near SMHS hospital has stated in his testimony that he faced difficulty in maintaining the supply of medicines during the communication blockade. “We faced many problems; it was even difficult to reach the drug store as there were a lot of barricades and check post, while we tried to reach our shops. We had to constantly change our routes to reach out to our shops. Since, we used to deal with drugs, (there should not be shortage of drugs) as if there is shortage of any drug it can even cause death. Generally, our business is primarily dependent on the mobile phones. The blockade on communication has ruined the life of Kashmiri people, especially ailing patients, because there was severe shortage of medicines in the initial 20 days.”

#### i. Communication Blockade and Indefinite Curfew Placed Unreasonable Media Restrictions

The communication blockade and indefinite curfew was fundamentally intended to silencing the voices and protest from Kashmir. For more than three decades, the Indian authorities have always targeted the independent journalist and attempted to silence them, from placing any narrative against the interest of Indian State. In the Indian-administrated Kashmir, the journalists have already been subject to strict surveillance from the intelligence bodies and military institutions of India. They have been constantly intimidated and persecuted by the Indian State. Nevertheless, the journalists in Kashmir remain uncompromisingly committed to bring objective truth and report the human rights abuses in Kashmir. The complete communication blockade and indefinite curfew was imposed with the purpose of preventing the journalist from reporting the narrative of people’s voice and protest against the abrogation of Article 370 in Kashmir.

Safwat Zargar (Journalist working for Scroll) & Bashrat Maswood (Journalist works for ‘the Indian Express’) has given a testimony in regards to the impact of

communication blockade on the media and journalism in Kashmir. As per the account, the media is silenced in Kashmir and they are facing extremely difficult situation to cover the facts and stories in Kashmir, after the abrogation of Article 370. There is a sense of fear permeated within the journalists and public to report the incidents and State abuses occurring in Kashmir.

The journalists have to send their story along with reports to Delhi from Kashmir(566 km distance) via USB device, and wait indefinitely to publish their stories. Most of them never know whether the story will get published. Bashrat Maswood mentioned his struggle to publish a story. “On 6th August we sent a USB to Delhi with stories in it and we did not know for days to come whether our stories reached there and whether they had been published”

The Indian authorities also had de-facto neutralized many newspapers that were committed to speak truth to power and report the real facts objectively. In many months before 5th August, the editors of Greater Kashmir and Kashmir Reader were grilled by NIA and government advertisements were stopped to Greater Kashmir, Kashmir Uzma and Kashmir Reader. It created a chilling effect and a message was sent to other publications that the Indian Government shall not tolerate news reporting contrary to the version of the Government. This created a psychological chilling effect on individual journalists, as they feared being targeted by the Indian agencies.

#### a) De-facto Impunity for human rights violations

One of the biggest indicators to assess whether the situation in the Kashmir region has achieved or retained normalcy is to analyze the functioning of the judicial system and prominence of Rule of Law. Many lawyers have given their testimony in regards to the working of Judiciary, and this indicates a systemic breakdown after the abrogation of Article 370 in Kashmir.

One of the lawyers, Rayees Ahmed (Lawyer at High Court Srinagar) has testified about the helpless condition of the judiciary in Kashmir. “The institution of Judiciary seems to be almost non-existent for the people here. We all know that thousands of people have been arrested and detained in Kashmir post 5th August yet only a handful of people approach the Court for seeking bail. Perhaps they have realized that it is the sweet discretion of the Police to release and arrest people in Kashmir. Even if the individual is successful in obtaining bail or quashing the FIR, the police will show them that the person is involved in some other FIR, It is only when the local S.H.O or S.P gave green signal, the person shall be released. The Court (judicial system) have been reduced into a mere post office in Kashmir”

b) The De-facto Impunity and Non-Working Courts to redress the human rights abuses in Kashmir.

One of the biggest indicators to assess whether the situation in the Kashmir region has achieved or retained normalcy is to analyze the functioning of judicial system and prominence of Rule of Law. Many lawyers have given their testimony in regards to the working of Judiciary and legal profession to indicate that the Kashmir have completely under the military lockdown after the abrogation of Article 370 in Kashmir.

One of the lawyer Rayees Ahmed (Lawyer at High Court Srinagar) have testified the pathetic condition of the judiciary in Kashmir “the institution of Judiciary seems to be almost non-existent for the people here. We all know that thousands of people have been arrested and detained in Kashmir post 5th August yet only a handful of people approach the Court for seeking bail. Perhaps they have realized that it is the sweet discretion of the Police to release and arrest people in Kashmir. Even if the individual is successful in obtaining bail or quashing the FIR, the police will show them that the person is involved in some other FIR, It is only when the

local S.H.O or S.P gave green signal, the person shall be released. The Court (judicial system) have been reduced into a mere post office in Kashmir”

The police have already arrested and detained lawyers including the Bar President under the Public Safety Act. It has created a strong sense of fear among the lawyers. Shah Faisal working for Human Rights Law Network has stated that “Since, the abrogation of Article 370 in Kashmir, no lawyers have been appearing before the court except the Government advocates. Initially, after August 5, all the matters were being adjourned. But presently, some lawyers have stated to appear before the court, these lawyers obtained favourable orders.. This was then used to encourage the Petitioners to appear in person and show that “normalcy” has returned and Courts are functioning smoothly.

The lawyers are also increasingly facing problems in filing the habeas corpus petition in the Court, because of the communication blockade, it has become impossible to contact for lawyers to contact their clients. The Court registry is presently only receiving 30 cases per day, which it normally used to get 100 cases per day.

#### c) Communication Blockade and Restriction on Freedom of Movement has Adverse Effect on Access to Education

In the aftermath of August 5, 2019, the Indian Government’s communication blockade along with the indefinite curfew had a major impact on the children’s access to education. The Indian State has international obligation under Article 28 & 29 of Convention on Rights of Child (CRC) to protect and respect the Kashmir children’s right to education on the basis of equal opportunity. The child’s right to education is severely impaired after the abrogation of Article 370 on August 5 1949.



The Jammu & Kashmir have issued a notice on the 2nd week of August of 2019 demanding re-opening of school, as to claim normalcy have retained and exist in Kashmir. The Indian Government continuously points out to the working of schools as an indicator to claim that everything is ‘normal’ in Kashmir. However, the real picture shows a contrasting picture of Kashmir’s school. Many parents in Kashmir have kept the children at home, due to the communication blockade and indefinite curfew in Kashmir. Even though schools are nominally open, but there are many other structural difficulties faced by the children to access education in school.

The complete communication blockade on communication and internet services had a chilling effect on the Kashmir people’s access to medical care. The indefinite curfew and communication blackout had curtailed the people’s access to medical care, and this was not limited to accessing treatment in hospital, but extends to severe supply shortage of essential medicines in the pharmaceutical shops.

The doctors and patients have suffered equally in the wake of communication blackout in Kashmir, the entire medical sector was in absolute dismal state. The doctors were not able to perform their job due to the absence of communication and restriction on the freedom of movement. On the other hand, there was a lack of essential medical services such as ambulances and medicines. The existence of serious and disproportionate restrictions on the access to medical care by imposing communication blockade itself disvalues the official narrative of ‘normalcy’ in Kashmir

The doctors were unable to work due to the military lockdown and curfew. Many patients are not able to obtain critical medical assistance by reason of restriction by the Indian State. The patients found difficult time to even find transportation or get the doctors for the treatment to treat the diseases and emergency casualties.

The doctors are also facing similar extreme challenges in disseminating the medical services during this communication blackout. The communication blockade of phone and internet services has hampered the complete functioning of the hospital, the testimonies of the doctor reveals that there is a limited access to healthcare after the abrogation of Article 370

- In all of the above chapters, indicators proved that normalcy ever existed
- If normalcy existed , there arises a question of legitimacy of the ads published in vernaculars explaining the benefits of abrogation and asking people to resume normal lifestyle
- At the time of writing this article, the internet services still remains barred raising serious questions on the state of normalcy in the valley.
- Schools and other educational institutes still remain shut or have bare minimum attendance.
- Tourism and Handicrafts industry have suffered major losses since the imposition of blockade

## **Annexure**

### **Political History of Kashmir**

#### *Year 1846*

16<sup>th</sup> March 1846: Treaty of Amritsar was signed between the British Government and Dogra Maharaja Gulab Singh of Jammu. In this treaty, the Princely State of Jammu and Kashmir was sold by the British to the Maharaja for the sum of seventy-five lacs of rupees (Nanankshahi). The Dogra rule in the state was tyrannical for the majority Muslim masses that were denied access to education, employment, and religious freedom.

#### *Year 1930*

When the educated Muslim Kashmiris started returning to the Valley after receiving higher education in Lahore and Aligarh, there were not many job opportunities for them because the Dogra Maharaja had reserved jobs and access to education mostly for Kashmiri Pandits. As a legitimate response some of these people formed a party, in the garb of a Reading Room at Fateh Kadal in Downtown Srinagar. The purpose of this group was to deliberate on how to get access to jobs compatible to their qualifications. There was a wave of anti-Dogra Darbar sentiment across the state of Jammu and Kashmir and it was anchored around multiple injustices such as poverty, ban on formation of political parties, no access to education and jobs, but most importantly it was about the injured religious sentiments of Muslims.

#### *Year 1931*

21<sup>st</sup> March 1931: A historical political rally took place at the Khanqah Shrine in Downtown Srinagar that was attended by thousands of people to discuss the

demands to be made to the Dogra Maharaja for the emancipation of the Muslim masses. Amongst the people present at the rally, one person whose name was Abdul Qadeer Khan, a cook for a British family staying in Kashmir, started raising slogans and delivered a fiery speech against the Dogra Maharaja. He was arrested on 25<sup>th</sup> June and his trial began.

13<sup>th</sup> July 1931: On the day of the trial of Abdul Qadeer at Central Jail, 22 Kashmiris were killed and many others were injured by the Dogra army. Thereafter, this date has been marked as the state sanctioned Martyr's Day in Kashmir wherein each year the mainstream political parties ironically visit the "Shaheed Mazaar", i.e. graves of these martyrs in Nashqbandh Sahab Shrine in Downtown Srinagar.

December 1931: Hindu-Muslim riots that started in Jammu spread to Mirpur and Rajouri wherein 1200 Muslims were killed. The context behind this was that government wanted to disrupt/sabotage the Glancy Commission's (a Grievances Enquiry Commission appointed by the Maharaja and presided by British officer Betre and Glancy) work in Jammu.

### Year 1932

16<sup>th</sup> October 1932: Formation of All Jammu and Kashmir Muslim Conference whose president was Sheikh Abdullah and that worked for the political rights and social welfare of Muslims across the Princely State of Jammu and Kashmir.

### Year 1939

10<sup>th</sup>-11<sup>th</sup> June 1939: After deliberations and trials for over more than a year, Sheikh Abdullah convinced the members of Muslim Conference (MC) to re-christen and secularize itself into "National Conference (NC)". This was done to include non-Muslim members of the State (particularly Pandits) to join the struggle of Kashmiri

Muslims against the Dogra tyranny. This change was accompanied by a change in the nomenclature and flag and it is considered as Sheikh Abdullah's way to introduce Congress Party in Kashmir. This decision was severely criticized by members of MC who were either sidelined or outnumbered to bring in this amendment. But Muslim Conference was gradually revived from 1940 onwards under the leadership of Chaudhri Ghulam Abbas.

#### Year 1944

The National Conference adopted the manifesto called "Naya Kashmir"/ New Kashmir. Some say that it was a historic event much celebrated by Kashmiri Muslims who were pursuing the idea of Kashmiri sovereignty and emancipation from the tyrannical rule of the Dogra Maharaja. However others argue that it was only a political stunt of Sheikh Abdullah to save himself from political oblivion (after the re-surfacing of Muslim Conference). All copies of Naya Kashmir manifesto were destroyed by National Conference itself but its Communist influence could be understood from the fact that Sheikh Abdullah named the central square of Srinagar as "Laal Chowk" after the Red Square of Moscow.

#### Year 1946

15<sup>th</sup> May 1946: Sheikh Abdullah launched Quit Kashmir Movement against the Dogra ruler, Maharaja Hari Singh. However, this movement was deemed erroneous and violative of Congress Party principles at the crucial time of Partition of British India; therefore Sheikh Abdullah was arrested for this.

October 1946: Chaudhri Abbas was arrested for launching civil disobedience movement (on behalf of Muslim Conference) that defied the prohibitory orders of

the government. After his arrest, Muslim Conference was divided into groups based in Jammu and Srinagar but it finally fizzled out.

### Year 1947

15<sup>th</sup> August 1947: The creation of the independent nation-states of India and Pakistan after the partition of British India. The Dogra Maharaja of the Muslim-majority princely state of Jammu and Kashmir, Hari Singh, delayed his decision to choose accession to India or Pakistan.

October 1947: There was an invasion by the armed tribesmen of Pakistan's North West Frontier Province who entered Kashmir to join the uprising against the Dogra Maharaja in Poonch region.

27<sup>th</sup> October 1947: The Maharaja signs the Instrument of Accession with India on 3 fronts: communication, currency and military. This temporary instrument was signed in the face of the immediate escalation of tensions after the tribesmen invaded parts of Kashmir. Thereafter, Indian armed forces were lifted into Srinagar to fight with the tribesmen. The fighting escalated into the first India-Pakistan war as Pakistan questioned the terms of this accession.

### Year 1948

1<sup>st</sup> January 1948: The Prime Minister of India takes the Kashmir issue to the United Nations.

5<sup>th</sup> February 1948: The U.N resolutions call for an immediate cease-fire line and a plebiscite.

### Year 1950

1<sup>st</sup> January 1950: The U.N brokered ceasefire ends the first India-Pakistan war, with India and Pakistan agreeing to a plebiscite and the withdrawal of troops behind the ceasefire line, leaving two-thirds of Kashmir under Indian Control and one-third under the control of Pakistan.

26<sup>th</sup> January 1950: The Indian constitution comes into effect. Through article 370 of the constitution the state of Jammu and Kashmir was accorded a special status with Indian jurisdiction restricted to defence, foreign affairs and communications.

October 1950: The biggest political party of Jammu and Kashmir, National Conference (NC), led by the mass leader Sheikh Abdullah, calls for elections in the state to create a Constituent Assembly to determine the future of Kashmir.

### Year 1951

30<sup>th</sup> March 1951: A United Security Council (UNSC) resolution rejects elections as a substitute for a plebiscite to determine the future status of Kashmir and appoints a representative to effect demilitarization, which was unsuccessful.

September 1951: National Conference (NC) wins all 75 seats unopposed in Constituent Assembly elections.

31<sup>st</sup> October 1951: In his first speech to the assembly, Sheikh Abdullah argues for accession to India.

### Year 1952

July 1952: Sheikh Abdullah signs the Delhi Agreement providing for autonomy for Jammu and Kashmir within India.

### Year 1953:

July 1953: The development of the protest movement led by Shyama Prasad Mookerjee in 1952, calling for the complete accession and integration of Kashmir into India, pushes Sheikh Abdullah to make proposals for independence. [Source: “Kashmir: The case for freedom” by Tariq Ali et al]

8<sup>th</sup> August 1953: Sheikh Abdullah was arrested and imprisoned by India. As he was dismissed from the position of the first Prime Minister of Jammu and Kashmir, Bakshi Ghulam Mohammad took his place as the Chief Minister of the state of Jammu and Kashmir. The dilution/erosion of the special powers of Kashmir under Article 370 of the constitution started with this.

17-20<sup>th</sup> August 1953: the Prime Ministers of both India and Pakistan met in New Delhi and agreed to the appointment of a plebiscite administrator by end of April 1954. However as the alliance between Pakistan and US deepened, Indian considerations over Kashmir became coloured by the cold war and the plebiscite was off the table. [Source: “Kashmir: The case for freedom” by Tariq Ali et al]

#### Year 1954

February 1954: The Constituent Assembly ratifies the accession to India

14<sup>th</sup> May 1954: The Constitution Order (of Jammu and Kashmir), 1954, comes into force, extending Indian jurisdiction over Kashmir, effectively annulling the Delhi agreement and curbing civil liberties. [Source: “Kashmir: The case for freedom” by Tariq Ali et al]

#### Year 1955

9<sup>th</sup> August 1955: Formation of the Plebiscite Front to press for Sheikh Abdullah’s release and to struggle for a plebiscite according the UN resolutions to decide the future of people of Jammu and Kashmir.



### Year 1957

24<sup>th</sup> January 1957: The UN Security Council reaffirms its 1951 resolution, stating that no action taken by the Constituent Assembly can be a substitute for a plebiscite in determining the final disposition of the state.

26<sup>th</sup> January 1957: The Constituent Assembly enacts the Constitution of Jammu and Kashmir which states that ‘the State of Jammu and Kashmir is and shall be an integral part of the Union of India’.

### Year 1962

20<sup>th</sup> October to 20<sup>th</sup> November 1962: A border dispute in the Ladakh region sparks war between India and China, resulting in territorial gains for China from both India and Pakistan. Formation of Aksai Chin.

### Year 1965

March 1965: The Indian Parliament passes a bill declaring Kashmir a province of India, claiming for India the power to appoint a governor, dismiss Kashmir’s government and assume its legislative functions.

23<sup>rd</sup> August-September 1965: The second war between India and Pakistan over Kashmir breaks out after Pakistan sends armed infiltrators across the 1949 ceasefire line.

### Year 1966

10<sup>th</sup> January 1966: Signing of the Tashkent Declaration between India and Pakistan to pull back to pre-1965 positions.

### Year 1971

3<sup>rd</sup> to 16<sup>th</sup> December 1971: Third India-Pakistan war results in Indian victory and the succession of East Pakistan as the independent state of Bangladesh.

### Year 1972

#### **INDIRA-ABDULLAH ACCORD**

February 1972: Plebiscite Front was banned from participating in State Assembly elections.

2<sup>nd</sup> July 1972: India and Pakistan sign the Simla Agreement which re-designates the UN ceasefire line in Kashmir as the 'Line of Control' (LoC) to be respected by both parties who are to resolve the Kashmir dispute through bilateral talks.

### Year 1974

13<sup>th</sup> November 1974: Mirza Afzal Beg, deputy of Sheikh Abdullah, signs an accord (for the release of Abdullah as Chief Minister) reiterating that the State of Jammu and Kashmir is a constituent unit of India without the condition for pre-1953 autonomy.

### Year 1977

23<sup>rd</sup> May 1977: Abdullah threatens succession unless India respects the provisions of Article 370 regarding Kashmir's autonomy.

### Year 1982

8<sup>th</sup> September 1982: Sheikh Abdullah dies and his son Farooq Abdullah assumes his position.

### Year 1984 Hanging of Maqbool Bhat

June 1984: Arrival of Jagmohan, New Delhi appointed governor of Jammu and Kashmir and a Hindu nationalist, who dismisses Farooq Abdullah and appoints Ghulam Mohammad Shah (another NC member) as the new Chief Minister. Imposition of extended curfews when protests began to erupt.

### Year 1986

7<sup>th</sup> March 1986: Ghulam Mohammad Shah was dismissed from the post of Chief Minister and Jagmohan assumed exclusive power through which he could restrict the government employment of Muslims.

### Year 1987

23<sup>rd</sup> March 1987: The vastly popular Muslim United Front (MUF) contests the 1987 State Assembly elections. Despite their popular support, MUF loses and the Congress-National Conference Alliance won amidst widespread allegations of poll rigging. Any mass uprising against the newly reinstated government of unpopular Farooq Abdullah was severely repressed.

### Year 1989

1989: Beginning of the armed movement to Indian rule by mostly the members of MUF who were incarcerated and imprisoned during/after the elections. Strikes took up one-third of the year's working days and the State Assembly elections were boycotted (turnout was under 5 percent).

### 1990s/ Nammath

1990s: The armed movement against India intensifies with people joining the militant outfits locally as well as from Pakistan. As this happened, there was a dense militarization of the space in the form of camps, bunkers and checkpoints

and the counter-insurgency forces of India unleashed unabated cycles of violence on civilians and militants alike.

20<sup>th</sup> January 1990: Gawkadal massacre

1<sup>st</sup> March 1990: More than half a million people march to the offices of the UN Military Observer Group in Srinagar to demand the implementation of UN resolutions stressing the importance of plebiscite and right to self-determination. The Indian army fires on demonstrators, killing twenty six civilians at Zakoora crossing and twenty-one at the Tengporabypass [Source: “Kashmir: The case for freedom” by Tariq Ali et al]

30<sup>th</sup> March 1990: The largest political rally in Kashmir yet at the funeral of Ashfaq Majeed Wani, the prominent pro-independence leader of Jammu and Kashmir Liberation Front.

### Year 1993

6<sup>th</sup> January 1993: The Sopore Massacre wherein Indian Border Security Force (BSF) kill fifty-five unarmed civilians in Sopore market in revenge for a militant ambush on one of their security patrols.

March 1993: The formation of the political amalgam of All Parties Hurriyat Conference (APHC) calling for right to self determination from across the political, religious and social spectrum of Kashmir (barring mainstream political parties).

### Year 1999

21<sup>st</sup> February 1999: Indian Prime Minister Atal Bihari Vajpayee met Pakistan's Prime Minister Nawaz Sharif to sign the Lahore Declaration which focused on the peaceful resolution of Kashmir dispute.

May-July 1999: The Kargil War

Year 2000

The mark of this year shifted the contour of political movement in Kashmir from an armed uprising to a mass, non-violent civilian struggle. Diplomatic talks between India and Pakistan started but did not yield into demilitarization of the area.

May 2008: The Government of Jammu and Kashmir decided to transfer land to Shri Amarnath Shrine Board for the annual Hindu pilgrimage which resulted in widespread and most sustained mass uprising against India since the early 1990's.

Year 2009

21<sup>st</sup> February 2009: The Bomai killings in which two worshippers were shot dead by the Indian army.

29<sup>th</sup>- 30<sup>th</sup> May 2009: The gang rape and murder by Indian army of two women, Asiya and Neelofer Jan, aged seventeen and twenty-two respectively in Shopian district escalated the people's uprising that was already building since 2008.

June 2009: Large-scale protests across Kashmir Valley against the rape and murder of Asiya and Neelofer led to imposition of curfews and defying calls for 'Eidgahchalo'.

Year 2010

30<sup>th</sup> April 2010: Machil Encounter

11<sup>th</sup> June 2010: More than 120 young people, mostly boys (including an 8-year-old boy) were killed in the summer uprising of 2010 after a seventeen-year-old Tufail

Ahmed Mattoo was hit in the head by the tear gas shell fired at close range by the Central Reserved Police Force (CRPF) in Downtown area of Srinagar.

### Year 2013

9<sup>th</sup>February: Afzal Guru was executed by the Indian State in complete secrecy; his execution was based primarily on circumstantial and tampered evidence. The decision was widely criticized by International Humanitarian Agencies.

### Year 2014

2<sup>nd</sup>September: Due to massive flooding there was a complete breakdown of the State machinery, the entire capital of Srinagar was inundated, with little or no help from the authorities as even they were caught off-guard and were ill equipped.

### Year 2016

With the killing of Burhan Wani, the state let loose a reign of systematic terror in state of Kashmir. As soon as the news of his killing spread, people thronged in millions to pay obeisance to him. Following the protests which arose after his death the State authorities resorted to mass blinding and detention.

### Year 2017

Following year after 2016 saw a massive increase in people joining militancy as a result the Central Government resorted to “Operation All Out”, which was meant to crush the militancy with an iron hand. This operation gave a free hand to the army in the State as a result of which many civilians lost their lives as well as their properties

### Year 2018

The coalition government in Kashmir between PDP and BJP, failed after the killing of Shujaat Bhukhari as a result of which the state was put under the Governors rule first and then indefinitely under the Presidents rule.

### Year 2019

On August 5<sup>th</sup>, the Central Government, vide a presidential order scrapped Article 370, which ensured cultural and ethnic protection to the people of Kashmir. Post the abrogation the Valley was put in an emergency like situation with army posted all over the city and curfew in place. Cellular and Data services were blocked completely; schools and businesses were shut down indefinitely. There is also a massive detainment of politicians as well as civilians.