

# Kashmir: A Place Without Rights

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**August 5 is a day of mourning in Kashmir. On this date in 2019, Kashmir's [autonomy](#) was countermanded by the Indian government. To prevent public protests marking the first year of the siege, various areas across Kashmir have been placed [under curfew](#).**

Conditions on the ground in Kashmir are in a state of emergency. It is a place of no rights, shackled in concertina wire, suffocating in a state of interminable lockdown. Kashmiris live in a context akin to collective internment. Every neighborhood is impaired and each life is impacted.

A complex system of [impunity laws](#) is used to [enforce](#) militarized governance. These laws extend immunity to one of the [largest](#) military forces in the world. Across Kashmiri civil society, where Muslims are in the majority, India is viewed as an occupying power.

India's State forces have reportedly carried out [extrajudicial executions](#), targeting and killing Kashmiri civilians (predominantly men) for unproven offenses. The rule of law has long since collapsed. Unrelenting militaristic and legal hostility to social dissent targets Kashmiri civilians; journalists, lawyers, laborers, academics, health professionals, students, and their allies. The alignment of national security with aggressive majoritarianism in India prohibits reflection on why Kashmiris resist. Such reflection is represented as seditious.

Since 1990, Kashmir attests to extraordinary human rights crimes, including [enforced disappearances](#), gendered and sexualized violence, [displacement](#), torture, extrajudicial executions, the death penalty, and the burial of civilians in [unknown, unmarked, and mass graves](#). Non-governmental sources [estimate](#) between 70,000 and 90,000 people have died, including from extrajudicial executions. More than 8,000 have been involuntarily disappeared. A large number of minority Hindu Pandits have been displaced.

## Line in the Sand

The social and political breakage of Kashmir today has its genesis in history. The [unchecked spread](#) of majoritarianism in India through the decades during which Hindu nationalists were not in elected office created political and legal contexts whereby the dismantling of Kashmir can now occupy center stage in government.

[Regional wars](#) have been [fought](#) between India and Pakistan over Kashmir throughout the last several decades, including during 1947-1948 after British rule ended in India; and in 1965, 1971, and 1999. Control of the Kashmir region is [divided](#) between India, Pakistan, and China, with India controlling the largest land area of Jammu and Kashmir, including the Kashmir Valley, Jammu, Ladakh, and a major segment of the [Siachen Glacier](#). Pakistan [controls](#) Azad Kashmir and northern areas of Gilgit and Baltistan. China controls [Aksai Chin](#) and the [Shaksgam Valley](#).

The Indian Constitution, [adopted in 1949](#), extended special status to Jammu and Kashmir through Article 370. [Article 370](#) prescribed Jammu and Kashmir's association with India, symbolizing the contract between the two entities.

Article 370 [underscored](#) Jammu and Kashmir's autonomy, excluding certain specific powers apportioned to the Indian government as defined in the [Instrument of Accession](#). Jammu and Kashmir acquired its own constitution and was not subject to the constitutional oversight that governs states in the Indian Union. As stipulated in the Instrument of Accession, and per Article 370(1)(b), the Indian legislature could only sanction laws pertaining to communications, defense, and foreign affairs. Other caveats of the Constitution of India may be extended to Jammu and Kashmir. However, fundamental to this outcome was the imperative that neither India nor Jammu and Kashmir may independently alter or discontinue Article 370, without arriving at an agreement.

Yet, shortly after the assumption of the constitution, India's government began to unilaterally modify the principles of Article 370. These modifications were derived through the government's powers to seize Jammu and Kashmir's legislative jurisdiction and independence, and disband elected state governments.

A record number of [47 presidential orders](#) were [issued](#) under Article 370 between [1954](#) and 1994, affixing 260 of the 395 articles in the constitution of India to Jammu and Kashmir. The Indian government used these presidential orders to expand the mandate of most Indian laws and institutions to Jammu and Kashmir, [extending](#) the will of the Indian Republic to subsume Kashmir's self-governance. Alongside, the Indian State renounced its commitment to establishing a plebiscite, despite promising to do so in domestic and international contexts in the late 1940s and early 1950s. (Two United Nations Security Council [resolutions](#) had conveyed the same requirement of India and Pakistan.)

Kashmiris commenced an armed insurgency in 1989. During [this period](#), local and cross-border militancy received support from Pakistan. By the Indian State's own [records](#), [armed militancy linked](#) to foreign groups reportedly [abated](#) by 2004-2006, as a local and non-violent movement ensued.

Unlike Article 370, Article 35A, the Permanent Residents Law, had endured through time. Affixed to the Constitution of India under Article 370, [Article 35A](#) defined Kashmiri rights to land, critical to their self-professed struggle for self-determination. It prohibited those from outside Jammu and Kashmir from purchasing land and establishing permanent residency. Article 35A ensured access to and control over land, fundamental to preserving a people's cultural identity, economic sanctity, and political standing.

### **Siege of August 5, 2019**

The Hindu Right's election in 2014, and its [re-election](#) in 2019, has profoundly impacted Kashmir. Casteist-racist and heteronormative, the government led by Narendra Modi [incorporates](#) populism, nationalism, authoritarianism, and [majoritarianism](#). Its actions against vulnerable communities and minority groups has evidenced abject [disregard](#) for democracy. Hindu nationalists have sought to [weaponize](#) religion and politics to incite the Hindu majority. Kashmiri Muslims and their allies have been repeatedly [depicted](#) as enemies of India, and as potential agents of terror.

In response to chronic oppression, Kashmiri civil society continues to take to the streets in large numbers. The protests bear [expression](#) to profound grief, fatigue, heartbreak, rage, resilience, and resistance. Local social movements for justice and accountability are routinely [met with extreme repression](#) from Indian forces. The Shri Maharaja Hari Singh Hospital in Srinagar reportedly [records](#) that, between mid-2016 and 2018, 1,253 persons were blinded by metal pellets used by state forces. According to the U.S. State Department, in 2018, approximately [160](#) civilians were killed extrajudicially, the most in over a decade. Kashmir's population lives with recurrent psychosocial trauma and a high rate of [behaviors](#). Individual and collective mourning is truncated, forcing loss and trauma to be internalized.

In revoking Kashmir's autonomy on August 5, 2019, the Indian government unilaterally [nullified](#) Article 370 and [revoked](#) Article 35A of the Indian Constitution, to disestablish the state of Jammu and Kashmir, and divide it into separate union territories under the direct rule of the central government.

In parallel, between August and December 2019, [prejudicial citizenship laws](#), akin to the Nuremberg Laws instituted in September 1935 in Nazi Germany, were [configured](#) for implementation across India. These laws privilege Hindus in defining citizenship and place the rights and protections of religious minorities at grave risk, particularly targeting Muslims.

In July and August last summer, tens of [thousands](#) of additional troops were reportedly [deployed](#) in Jammu and Kashmir. Following August 5, Kashmir [witnessed](#) the [reported torture](#) of children, the elderly and women; sexualized violence; illegal and mass detentions; house arrests of political leaders; curtailment of freedom of speech, movement, and dissent; falsification of social facts by the State; and closure of sacred places. People were afraid to approach the courts lest the extra-legal detention be converted into formal detention. The impact on Kashmir's political economy was devastating, leading to a loss of reportedly [US\\$2.4 billion](#).

In August, soldiers reportedly forced [12 civilian men](#) to remove their clothes and line up, naked, on the main road in Pulwama, beat them severely, and electrocuted their genitals. The tortured were reportedly forced to lie naked atop each other. Additional and similar [acts](#) of torture were also reported. [Fehmeeda Bano](#) died from inhaling tear gas and pepper gas grenades reportedly fired by police personnel during a civilian protest near her home in Srinagar. At the 44 Rashtriya Rifles [camp](#) in Shopian, armed forces personnel reportedly tortured three men and broadcast their cries over loudspeaker(s). In September, police reportedly [shot](#) pellets and teargas at religious processions in Srinagar during Muharram, injuring more than 100 people. Between August and December last year, 32 civilians were reportedly killed.

These events led to increasing and urgent concern among local civil society and international [human rights](#) institutions. In October 2019, the U.S. House of Representatives Committee on Foreign Affairs convened a [hearing](#) on the subject.

### **Fracturing Identity and Habitus**

By March 2020, with the advent of COVID-19, Indian State [forces](#), repeatedly identified by Kashmiris as perpetrators of abuses against civilians, were given extended responsibilities during the health emergency, expanding their reach over civilian life. Internet services [remained restricted](#) and civilians were reportedly denied access to information from non-State regulated sources. Persons [detained](#), including warrantlessly, were not released. Journalists continued to be denied access and [targeted](#).

Health services, already [strained](#), reached a [breaking](#) point. Between January and June, [32 civilians](#) were reportedly killed, as documented by an advocacy group.

In May, [Hazim Shafi Bhat](#), a teenager with disabilities, was reportedly killed by Central Reserve Police Force personnel in Kupwara. Police and paramilitary reportedly [raided](#) Nasrullah Pora Village in Budgam, attacking residents and looting and vandalizing properties. They [assaulted](#) women, and tied men to trees and [assaulted](#) them. Armed forces personnel reportedly shot bullets and pellets at a civil society demonstration in Awantipora protesting the killing of a militant commander, Riyaz Naikoo, [killing Jahangir Yousuf Wani](#) and [injuring at least 25](#).

Also in May, the Indian government [removed](#) certain [legal barriers](#) to [permanent residency](#) in

Kashmir, which can potentially reconstitute Kashmir's demographic makeup and render Muslims a minority. This proposed deprivation of the right to land is intensified by the reported seizure of [land](#), including private property, by Indian forces in Kashmir. Two new decrees; the Jammu and Kashmir Reorganization (Adaptation of State Laws) [Order](#), 2020, and the Jammu and Kashmir Grant of Domicile Certificate [Rules](#), 2020, expanded the parameters for residency. Following May, the [powers conferred](#) by Article 35A on the Jammu and Kashmir legislature to determine and guarantee rights and privileges to permanent residents were transferred to the government of India. These extend to the right to acquire immovable property, reside lawfully in Jammu and Kashmir, and seek employment in the public sector.

[The new rules permit](#) Indian citizens living for 15 years in Jammu and Kashmir to receive a domicile certificate with residency benefits. Eligible persons who may become lawful permanent residents of Kashmir now include long term inhabitants and their children, government officers and their children, and registered migrants and their children. For proponents of Kashmiri self-determination, this is especially damaging. Demographic reconstruction stands to diminish the integrity of Kashmiris as a people. It imperils their rights to place and [language](#). This endangers their [claims](#) to internal self-determination, and in turn, claims of external self-determination from alien exploitation and subjugation.

Contemporary relations position the Indian State as righteous protectors of the national domain and Kashmiris as imposters on their land. The reconstitution of domicile laws in May will likely induce dangerous effects. It may subdue the appearance of the political conflict in Kashmir by rearranging the "facts on the ground," while suppressing and dissipating movements for freedom, justice, and accountability. This unmitigated implementation of [states of exception](#), whereby the law is used to suspend a binding contract between peoples, seeks to make absolute India's rule of power in Kashmir.

The 2019 and 2020 decrees were implemented without the consent of the governed (in Jammu and Kashmir). The actions of the Modi government were based on the violent assertion that the government of India possesses unilateral authority to rescind Jammu and Kashmir's constitutionally secured autonomy. This autonomy was authorized through Articles 370 and 35A.

The invalidation of Article 370 destroyed the very constitutional safeguard that could make the nullification of Article 370 against the law (*contra legem*). It made the subsequent actions of the Indian State possible and sought to place such actions *outside* the bounds of the law.

### **This Next Moment**

Kashmiris are apprehensive that the events over the last year could [compel](#) another armed [uprising](#) in an already volatile region. They fear genocidal intent on part of the Indian State in cultural and, perhaps, physical form.

"In this new Kashmir the ground has cracked open," a Kashmiri woman told me after the events of last August. "All the fear and misery and terror of yesterday is channeled into a new and unknown tragedy that is exploding. It feels like massive prison gates have clamped shut around our Kashmir, our neighborhood, and my heart. We can't breathe."

[Atta Mohammad](#), who, before he died in 2016, was the gravedigger and caretaker of unknown graves at Chehal Bimyar in Baramulla District in Kashmir, told me in 2011, "We live among these graves. People in Kashmir...fear that they could be put in such a grave... Survival in Kashmir means learning how to live with death."

These toxic histories, born of feudal-colonial, post/colonial, and majoritarian intersectionalities, shape present-day Kashmir. Through the protracted conflict, the experience of massified violence, [securitization](#), and [social](#) and [actual](#) death have scarred individual and collective life across generations. The four phases of Indian rule in Kashmir (1949-89; 1990-2002; 2004-19; and since August 2019) have progressively heightened the precarity of life. These conditions render a life of rights impossible. The deployment of brutality and the evisceration of entitlements exist on the edge of legality, and threaten the erasure of a people.

Where to from here, in the pursuit of justice?

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