

SUBMISSION on Human Rights in South Asia: A Focus on Kashmir

To:

Congressman Eliot L. Engel, Chairman
Hearing on Human Rights in South Asia of October 22, 2019
House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation

From:

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Table of Contents

<i>Methodology and Representation</i>	2
<i>India Today: A Majoritarian State</i>	2
<i>The Siege: August 5, 2019</i>	3
<i>Summary of Fact-finding Reports</i>	5
<i>Kashmir Lockdown: A Partial Timeline of Violations</i>	7
<i>Articles 370 and 35A</i>	9
<i>Consent of the Governed</i>	10
<i>Context</i>	10
<i>Impunity Laws</i>	11
<i>Violence and Crimes: The Long Record</i>	14
<i>Kashmiri Resistance and Human Rights</i>	19
<i>Recommendations</i>	20
<i>Appendices</i>	22
<i>Endnotes</i>	23

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
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Methodology and Representation

I am honored to have the opportunity to address this distinguished panel.

I submit the following observations for consideration related to United States policy with respect to the Government of India. I do so mindful of the political and policy boundaries that mediate issues of national sovereignty. I make this submission with the assumption that actions to uphold human rights, civil liberties, and democratic governance by the United States Government contribute significantly to international stability in ways that are beneficial globally as well as to United States domestic policy and practice.

I am a Citizen of India and a Permanent Resident of the United States. I make this submission today from my own research, the work of civil society organizations in Kashmir, the Indian State's record in Jammu and Kashmir acquired via the Right To Information Act, the research and analysis undertaken by international institutions, and secondary sources. I do not claim to represent Kashmir or Kashmiris even as I am grateful for the privilege of learning from victimized-survivors there. I make this submission as a scholar of South Asia and the post/colonial present, with an ethical imperative to render visible the human rights violations and attendant injustices in Kashmir that I have witnessed, investigated and studied.

I note that, given the need for concision, the submission reflects only a few fragments of the overwhelming totality of issues facing Kashmir.

I wish to thank the research associates and research assistants whose brilliant and generous labor have been indispensable in formulating this submission and colleagues for their invaluable guidance. I am grateful to them and understand the risk of reprisal requires that they remain anonymous.

India Today: A Majoritarian State

The 2014 and 2019 elections have led to the repositioning of India as a majoritarian state.¹ This new era combines nationalism, authoritarianism, majoritarianism,² minoritization³ and populism. The Hindu nationalist movement's absolute majority in the Lok Sabha, the lower house of parliament, has been distinguished by the disproportionate influence consecrated within one politician, incumbent prime minister Mr. Narendra Modi. Unapologetically more pro-corporate and pro-upper caste in its composite of policies than ever before, this government has "normalized the use of anti-minority rhetoric, routine assertions of the imminent danger posed by internal as well as external enemies to the nation, and a systematic deployment of false claims and partisan facts. The vision of a Hindu majoritarian polity held by the... [Hindu nationalist organizations] and the Bharatiya Janata Party (BJP)⁴ combines cultural nationalism and political strategies aiming at flagrant social dominance by the upper castes, rapid [unequal] economic development, cultural conservatism, intensified misogyny, and a firm grip on the instruments of state power."⁵

Hindu majoritarianism – the cultural nationalism and political assertion of the Hindu majority – sanctifies India as intrinsically Hindu and marks the non-Hindu as its adversary. Race and nation are made synonymous, and Hindus – the formerly colonized, now governing, elite – are depicted as the national race.

The contemporary ascendance of Hindu nationalist dominance to establish a majoritarian state in India under Mr. Modi's leadership has "rendered porous the associations between the government and ultra-nationalist groups. In India today, a plethora of organizations and outfits disburse violence, intimidation and the enforcement of morality

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

and majoritarian 'standards.'⁶ Vital to Hindu nationalism's bloodline in the formation of a 'Hindu nation' is the growth of the nationalist cadre. "Between March 2015 and March 2016, Rashtriya Swayamsevak Sangh (RSS) shakhas (branches, centers or cells) in India witnessed 'the highest growth since 1925,' with 56,859 RSS shakhas reportedly operational across India in 2016."⁷ Ultra-nationalist groups seek to weaponize and militarize society through "organization, vigilance and a capacity for violence."⁸ "This form of vigilante violence, or the threat of it, is executed through the capillaries of the RSS-led Sangh Parivar's vast [Hindu nationalist organizational] network, and generally reinforces already existing caste, gender, class, and communal-racial attitudes prevalent among upper caste Hindus and aspirational lower caste groups."⁹

The legacy of Brahmanism organizes the supremacy of Hindus and Hinduness in India. Ethnic, minority, and marginalized groups have been subject to the social and economic violence of Brahminism through which they are forced to frame their political and cultural aspirations within the dominant imagination of the nation-state. India is rendered synonymous with Hindutva (Hindu principles),¹⁰ as nationalist Hinduism casts Hindus as a race. "The result is a broad nationalist and communal majoritarianism that targets liberal elites, castigated as excessively emancipated, immoral, westernized and pro-minority, and of course minority communities. Persistently gender/hetero-normative and deeply xenophobic, these inequitable relations between majority and minority/Othered can no longer be viewed as an aberration or a fringe phenomenon."¹¹

"The expanse of power captured by the BJP and the Sangh Parivar incrementally authorized the co-production and conjoining of Hindu nationalism with nationalist Hinduism."¹² "The BJP's plan is focused using the existing provisions of law and administrative decrees to impose a more restrictive but not fully authoritarian regime."¹³ "The exception to this norm lies in unleashing... the full force of India's illiberal security state in the tribal belts, in the Northeast and in Kashmir."¹⁴

The Siege: August 5, 2019

The nullification of Article 370 has been a long-standing priority for Hindu nationalists and a key mandate of the BJP's election platform as early as 1989.¹⁵

Early August: Thousands of Indian troops were deployed in Jammu and Kashmir in addition to the hundreds of thousands already stationed there. A Hindu pilgrimage was cancelled. Tourists were asked to leave. Schools and colleges were closed. Communication services; telephones and the internet, were suspended. Local political leaders were placed under house arrest.

Anticipated: Given the statements made by the Home Minister prior to August 5, it was anticipated that Article 35A of the Indian constitution, would be overturned.^{16 17}

What actually happened: On August 5, the administration of Prime Minister Modi sought to nullify Article 370 of the Indian constitution, a 70-year-old provision that had given autonomy to the state of Jammu and Kashmir. The immediate justification used for the siege was the February 14 suicide bombing by a young Islamic male militant from Pulwama, who blew up a convoy of trucks carrying paramilitary forces in southern Kashmir.¹⁸ The move to nullify Article 370 signaled the dissolution of the right of Kashmiris to consent over their present and future. The Indian government effectively sought to nullify Article 370 and revoke 35A of the Indian Constitution, and to disestablish the state of Jammu and Kashmir, and divide it into separate union territories. Union territories are smaller administrative units under the direct control of the central government in India.

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

August 5, 2019 ushered in a new dimension in the governance of Kashmir via the autocratic breach of India's constitution. Various news media and civil society reports have documented the inhumane treatment and torture of children, the elderly, and women; illegal detentions, including mass detentions; the denial of the basic needs of life, the curtailment of freedom of speech and movement, the falsification of social facts and their amplification by the state,^{19 20} and the destruction and closure of sacred places.

These actions also attest to New Delhi's escalating Islamophobia. Dominant discourse portrays the Kashmiri Muslim as an "enemy," with allegiance to an entity other than India, the intimate and viral "Other" who can never be fully trusted. Kashmiri women are seen as needing to be "saved" from Kashmiri men. The "Kashmiri Muslim" is portrayed as a monolithic subjective identity, in which religion is the primary marker. The conflict is positioned as essentially religious in character. Islam, Muslims, and violence are interpreted as coextensive with one another, and "democracy" is disassociated from Islam.

On October 18, 2019, a press statement from Amnesty International on "arbitrary detentions and beatings in Jammu and Kashmir – new testimony," stated that:²¹ AI had conducted 21 interviews in over the last 6 weeks in Jammu and Kashmir, with detainees, their lawyers, local journalists, medical professionals and political leaders, and that:

- Each detainee interviewed stated they have been "beaten and threatened," establishing "a pattern of authorities using excessive force and intimidation."
- There is "a pattern of the Indian authorities arbitrarily detaining activists, politicians and even children if they are thought to hold dissenting opinions." In most instances, lawyers and family members had not been informed of the reasons for the arrest and the location of the detained person.
- Some individuals reported that state forces had ransacked their homes, "intentionally damaging property and threatening families."

"Kashmiri children among prisoners in India crackdown." Quote (from video):

"I was kept in a solitary cell. I had to fold/lift my legs, as the cell was very small. There were snakes. When I started shouting, a doctor used to come, inject something that made me unconscious."²²

"Don't beat us, just shoot us': Kashmiris allege violent army crackdown.":

- Two brothers alleged that they were woken up and taken to an outside area where nearly a dozen other men from the village had been gathered. Like everyone else we met, they were too afraid of reprisals to reveal their identities.²³
- "They beat us up. We were asking them: 'What have we done? You can ask the villagers if we are lying, if we have done anything wrong?' But they didn't want to hear anything, they didn't say anything, they just kept beating us," one of them said.
- "They beat every part of my body. They kicked us, beat us with sticks, gave us electric shocks, beat us with cables. They hit us on the back of the legs. When we fainted, they gave us electric shocks to bring us back. When they hit us with sticks and we screamed, they sealed our mouth with mud. We told them we are innocent. We asked why they were doing this? But they did not listen to us. I told them don't beat us, just shoot us. I was asking God to take me, because the torture was unbearable."

Minors and other detainees have reportedly been released on bond-like agreements, whereby members of a family or neighborhood were commanded by state or armed forces personnel to offer certain undertakings, in lieu of the release.²⁴ On October 21, The Wire reported that: "As a condition of release, detainees are being made to sign an undertaking that they will 'not make any comment(s) or issue statement(s) ... related to recent events in the state of Jammu and Kashmir' for one year."²⁵ "People are also afraid to approach the courts lest the extra-legal detention is converted into legalized detention."²⁶

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
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Meanwhile, the Government of Jammu and Kashmir is seeking input from State Service workers on the Union Territory they would like to be assigned to; either Jammu and Kashmir or Ladakh. The Circular No.42-GAD of October 11, 2019, stated that:

- After a government worker has been assigned to a particular Union Territory, the Lieutenant Governor of Union Territory of Jammu and Kashmir may reassign a worker to the other, depending on any “deficiency in the service.”
- The Government will take into account the preference of the worker, but ultimately the prerogative is the Government’s as to the final assignment of the worker.

Following August 5, insurgents and government forces have vied for influence over local communities. Through posters and public announcements, insurgents have “detailed the dos and don’ts for citizens during the shutdown,” such as opening businesses only after 6 pm.²⁷ Government forces responded with threats for people who followed the directives of the militants, while militants were searching private vehicles at checkpoints. This is generally occurring in all districts across South Kashmir. Kashmiris have reported that “the communications blackout has made it easier for the militants to operate without the fear of being traced through mobile phones.”²⁸

Non-local workers have been killed in Kashmir by unidentified persons, including a brick kiln worker from Chhattisgarh, an apple trader from Punjab, and a truck driver from Rajasthan.²⁹

Community members state that, Kashmiri businesses, especially apple traders, have been disenfranchised by the Indian government. With the shutdown, apple traders are limited in their options to sell their apples. If a trader sells fruit to the government, even at the risk of angering militants, the lockdown means that they “have no power to negotiate the prices.”³⁰ The *Washington Post* reported that apple growers are seeing “losses... in the millions of dollars and the business might suffer its worst year since the beginning of the insurgency.”³¹

In Shopian, local community members worry about detentions, warrantless arrests and custodial torture. Community members state how cries of pain of a torture victim were broadcasted via a mosque’s speaker system, and how government forces raided their home and destroyed property and mixed food with kerosene.³²

Summary of Fact-finding Reports

The reports of fact-finding visits undertaken by persons and teams from India during August 9 and October 7 attest to the breakdown, fear, humiliation, helplessness, violence, rage, sadness, emptiness, isolation and despair experienced by Kashmiris following August 5, 2019.

Report of visit to Jammu and Kashmir from August 9-August 13, 2019 by Jean Drèze, Kavita Krishnan, Maimoona Mollah, and Vimai Bhai. *Kashmir Caged: A Fact-Finding Report, National Confederation of Human Rights Organizations* (Aug. 14, 2019).³³

Summary of issues and concerns:

- Witnessed:
 - o Lockdown had “crippled economic life.”
 - “The streets of Srinagar were empty, and all institutions and establishments were closed (shops, schools, libraries, petrol pumps, government offices, banks). Only some ATMs and chemists’ shops – and all police stations – were open.”

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

- “intense and virtually unanimous anger in Kashmir against the Indian government’s decision to abrogate Articles 370 and 35A, and also about the way this has been done.”
- “The words we heard over and over from people about the Government decisions on J&K were ‘zulm’ (oppression), ‘zyadti’ (excess/cruelty), and ‘dhokha’ (betrayal).”
- “widespread anger against the Indian media,” as Kashmiris witness the “Indian TV claim that Kashmir welcomes the Government decisions.”
- One young man in Sopore said: “This is bandook ki khamoshi (the silence at gunpoint), kabristan ki khamoshi (the peace of the graveyard).”
- Report that “at least 600 political leaders and civil society activists are under arrest.”
- Raids:
 - “Hundreds of boys and teens are being picked up from their beds in midnight raids. The only purpose of these raids is to create fear. Women and girls told us of molestation by armed forces during these raids.”
- Discussed the mass protest on August 9, 2019, of an estimated 10,000 people:
 - “forces responded with pellet gun fire”
 - “We met two victims of pellet gun injuries in SMHS hospital in Srinagar. The two young men (Waqar Ahmad and Wahid) had faces, arms and torso full of pellets. Their eyes were bloodshot and blinded. Waqar had a catheter in which the urine, red with blood from internal bleeding, could be seen. Their family members, weeping with grief and rage, told us that the two men had not been pelting stones. They had been peacefully protesting.”
- BJP spokesperson explains why Kashmiris did not need to express support for the nullification of 370:
 - BJP spokesperson on Kashmir affairs, Ashwani Kumar Chrungoo said “In Bihar when Nitish Kumar imposed prohibition, he didn’t ask the alcoholics for their permission or consent. It’s the same here.”

Report of visit to Kashmir from September 25-30, 2019 and Jammu from October 6-7, 2019 by Anirudh Kala, Brinelle D’Souza, Revati Laul, Shabnam Hashmi. *#KashmirCivilDisobedience: A Citizen’s Report* (Oct. 12, 2019).³⁴

Summary of issues and concerns:

- Found that the current non-violent civil disobedience movement is evidence of collective trauma:
 - “People in Kashmir are no longer interested in an interaction with the Indian state. That space is now dead. From those who have been hardliners to separatists demanding a union with Pakistan or azadi to those siding with India – they have all reacted to the current political situation as a big, abominable trauma. The collective shock, fear of reprisal has however turned them into silent protestors” (5).
- Trauma:
 - “A young law student...said the anger and frustration of her entire generation is not knowing where to take it all. That this time more than ever, she is at a complete loss. Beyond the dramatic outpourings, she says, people like her experience an emptiness” (18).

Report of visit to Kashmir from October 5-9, 2019 by Nitya Ramakrishnan and Nandini Sundar. “*Go back to India and cover every statue of Gandhi so that he doesn’t have to face this shame*”: Kashmiris mark the 150th anniversary of Gandhi’s birthday with Satyagraha. Sabrang (Oct. 14, 2019).³⁵

Summary of issues and concerns:

- Spoke to individuals in Srinagar, Shopian/Pulwama, and Sopore/Kupwara (estimated 78 people)
 - Not one person expressed happiness over the nullification of Article 370
 - “One shopkeeper in Srinagar said that 370 had been so hollowed out that it made little difference, but “still, it was our identity.” Regardless of their specific views, however, everyone felt they had lost their identity, and had been humiliated by not being consulted on their own future.”

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
 From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

- Judicial system:
 - “The High Court is hardly functioning. Lawyers told us that some 300 habeas corpus petitions had been filed but the court gave generous time to the government by which time the petitions became infructuous. There were hardly any private lawyers.”
- The report covers economic losses during the lockdown.
 - Report that shops are open, but only from 7am-9am or so.
 - They “were told that a vegetable seller in Soura who kept open all day found his shack burnt down, a milk man was given a “last warning” for keeping his shop open half day, an apple grower who sold his fruit found six trees cut overnight.”
- Detentions:
 - “Small children, some as young as six years, are being picked up and kept for a day to several days or asked to report morning to evening for several days. Most often there is no record of their detention.”
 - “Children are picked up on charges of playing resistance taraanas through mosque loudspeakers or pelting stones.”³⁶

Kashmir Lockdown: A Partial Timeline of Violations

Timeline: For a more detailed timeline of the Kashmir Lockdown from August 2-October 18, 2019, see Appendix, #1.

July-August

- Additional deployment of tens of thousands more soldiers in the region: one figure placed the additional deployment at 46,000 soldiers, according to the European Parliament.^{37, 38} Another news source reported that Government of India deployed 10,000 to Jammu and Kashmir as of July 27, in addition to the 40,000 already deployed earlier in connection with the Amarnath Yatra (an annual pilgrimage).^{39 40 41}
- Physical and Psychological Torture: Associated Press interviewed at least 200 persons in Kashmir since August 5 and reported that government forces were carrying out night raids; beating civilians with gun butts, chains, and sticks; using electric shock; destroying food items; forcing Kashmiris to eat dust and drink dirty water; killing livestock; or threatening to “marry” (read: sexually assault) Kashmiri women; and have arrested approximately 3,000 persons.^{42, 43} As reported by The Hindu, a magistrate speaking to AFP on condition of anonymity said at least 4,000 people were arrested.⁴⁴
- Five United Nations rights experts issued a statement on August 22 calling the Kashmir communications blockade a “collective punishment” and expressed concern at the information they have received on night raids, arrests of journalists and human rights defenders, disappearances of detained persons, the use of excessive force against protesters.^{45, 46}
- Press restrictions: Due to communication restrictions, some journalists had to file their stories with USB sticks carried onto airplanes.^{47 48}
- Shutdown of public transportation.
- Clampdown on freedom of expression.

August 2, 2019

- Deployment of more soldiers: The Hindu reported an additional 25,000 troops were directed to Jammu and Kashmir.^{49 50}

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
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August 5, 2019

- Human Rights Watch reported that the government “imposed broad restrictions on freedom of movement and banned public meetings.”^{51 52}
- The “government ordered closure of all education institutions including colleges, universities and engineering institutions.”^{53, 54} Approximately 200 primary schools re-opened on August 19, though some parents expressed safety concerns and kept their children home after that time.^{55 56}

August 8, 2019

- On Thursday (August 8), the Indian authorities warrantlessly detained and airlifted 25 Kashmiri leaders to a jail in Uttar Pradesh, including President of the Kashmir High Court Bar Association, Mian Qayoom, and Mubin Shah of the Kashmir Chamber of Commerce. On Friday, the government authorities airlifted another 20 Kashmiri leaders as “potential troublemakers” to be incarcerated in Uttar Pradesh.^{57, 58}

August 9, 2019

- Tens of thousands of peaceful protesters marched in Srinagar when Indian soldiers open fired on them, resulting in at least 5-6 persons injured, some with eye wounds.^{59 60} In a stampede, a 14-year-old young girl was almost trampled.
- The *New York Times* reported that in some areas, residents are required to have curfew passes to be outside of their homes, even for medical emergencies.^{61 62}
- A youth (aged 16) was near his home, where there was no protest, when Indian troops shot tear gas and pellets at him, injuring him in the head. Medical personnel reported that the youth is likely to lose sight in both eyes, if he lives. Another minor from Bemina was also struck by a pellet shell.^{63 64}

August 10, 2019

- The Times (UK) reported on food, medicine, and gasoline shortages, and ATMs running low on cash, as well as disarray at the Srinagar airport as Kashmiris arrived in large numbers and waited for hours to book a flight out of the region.^{65 66}

August 13, 2019

- A government soldier shot a marble into a 6-year old’s eye with a slingshot. Associated Press reported that slingshots and marbles have been used in the past against protesters.^{67 68}

September 1, 2019

- The Hindu reported on a new policing tactic in Srinagar to hamper protests: warrantlessly detaining youths for short periods of time (one day to two weeks) in a “revolving door” fashion. Reportedly, a youth that can prove he had no connections to any clashes is ordered to report to a police station in the morning and leave at 7pm, without a warrant. Reportedly, this tactic has been used on an estimated 1,500 youths.^{69 70}

September 6, 2019

- Police reported that a youth had died from stone-related injuries during a clash, but his medical records showed that the youth had injuries to his skull and eye from pellets.^{71 72}

September 22, 2019

- Alleged beating of minor by soldiers, reportedly leading of suicide of minor: A 15-year old youth from Pulwama was allegedly beaten at an Army camp, after which he took poison on September 17 and died shortly after.^{73 74}

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
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- The Washington Post reported on apple farmers caught between government pressure to harvest and continue business as normal and militant threats against harvesting. Militants beat and shot the legs of the members of an apple-farming family.^{75 76}

October 3, 2019

- Close to 100 journalists held a protest in central Srinagar to demand an end to press restrictions by the government. Several reporters stated they have not been allowed to journey to certain areas in the region or report on certain topics. Journalists also expressed apprehension for their own privacy and security at using the government-established “media facilitation center”-- where there is internet connectivity—to file their stories.^{77 78}

October 17, 2019

- The Jammu and Kashmir’s upper house of the Assembly, the Legislative Council, was formally abolished on October 17 in accordance with the Jammu and Kashmir Reorganization Bill.^{79 80}

Articles 370 and 35A

Article 370

The Constitution of India included Article 370 as it came into effect in 1949.⁸¹ Special autonomy under Article 370 of the Constitution of India limited the authority of the Indian Constitution over Jammu and Kashmir.⁸² Article 370 accorded special status to Jammu and Kashmir, underwriting its autonomy and excepting the specific powers allocated to the central government of India as per the conditions stipulated in the Instrument of Accession (see Appendix, #2).⁸³ The first provision states that Jammu and Kashmir would be exempt from all constitutional provisions pertaining to governing states of the Union. Instead, Jammu and Kashmir would have its own constitution.⁸⁴ According to Article 370(1)(b), the Indian legislature could only enact laws concerning communications, defense, and foreign affairs, consistent with the terms of the Instrument of Accession.⁸⁵ The president of India could extend other provisions of the Constitution of India to Jammu and Kashmir, but only if the provisions related to subjects listed in the Instrument of Accession.⁸⁶

Article 370 could therefore be understood as the product of the State of Jammu and Kashmir negotiating its “terms of membership with the Union” of India, representing a “solemn compact” between the two.⁸⁷ Neither the central government of India nor the government of Jammu and Kashmir could amend or terminate Article 370 unilaterally; the two parties must come to a consensus, following the terms provided in the article itself.⁸⁸

Not long after adoption of the constitution, the government of India began qualifying the protections in Article 370, all of which extend to Jammu and Kashmir through the “central government’s authority to dismiss elected state governments and appropriate the latter’s legislative powers.”⁸⁹ Between 1954 and 1994, a total of 47 presidential orders under Article 370 applied 260 of the 395 articles of the Constitution to Jammu and Kashmir.⁹⁰ The first presidential order, in 1954, extended the Indian legislature’s ability to enact laws on all of the subjects included in the Union list to Jammu and Kashmir, as opposed to only the three subjects listed in Article 370(1)(b), in line with the Instrument of Accession.⁹¹ Subsequent presidential orders “extended the arm of most laws of the Indian republic” to Jammu and Kashmir, leaving “virtually no central Indian institution (for example, administrative agencies, economic enterprises, banks) that does not extend to Kashmir.”⁹² Especially significant were the presidential orders in 1964-1965, in which articles of the constitution of India were extended to Jammu and Kashmir that allowed the central government to dismiss state governments, replace governors with new ones elected by Delhi and take over state legislative powers.⁹³

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
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Article 35A

On 27 August 2017, Panun Kashmir (Our Own Kashmir)—a Pandit organization founded in 1991,⁹⁴ demanded the revocation of article 35A.⁹⁵

Unlike Article 370, which has been eroded over time through presidential orders, Article 35A had remained unchanged until August 5, 2019.⁹⁶

The 1954 presidential order also added Article 35A to the Constitution of India, under Article 370.⁹⁷ Article 35A enables the Jammu and Kashmir legislature to define permanent residents and to guarantee “special rights and privileges” to those permanent residents, including rights to acquire immovable property, to settle in Jammu and Kashmir, and to work in certain government positions.⁹⁸ Known as the Permanent Residents Law, Article 35A prohibits those from outside of Jammu and Kashmir from purchasing land and permanently residing in the state, and from occupying state government jobs, or receiving educational scholarships.⁹⁹

Consent of the Governed

The erosion of Article 370 indicates a disregard for the right of Kashmiris to be governed according to the fundamental democratic principle of **consent**.^{100 101 102 103}

Over decades, in suppressing insurgencies and human rights violations in Assam, Manipur, Central India, and Punjab, the State of India has claimed to be defending the integrity of the Union. With respect to Kashmir, however, as a newly formed state in 1948, India publicly acknowledged to the international community that Kashmir’s accession would ultimately be decided by a plebiscite. While that plebiscite was never established, as early as 1954, then Prime Minister Jawaharlal Nehru proclaimed that Kashmir had been fully incorporated into the Union of India. Nehru’s stance was reflected thereafter through the continued erosion of Article 370 of the Indian Constitution.

How can the collective consent of the people of Kashmir be assumed, as Prime Minister Nehru did in 1954?

Subjected to a near-constant state of militarized suppression for decades, as Kashmiris have been, and in active and continual dissent, as Kashmiris have been, how can the Indian State take for granted the collective consent of the Kashmiri people?^{104 105}

Context

The conflict in Kashmir spans colonial, (post)colonial and decolonial time and involves issues of history, identity, territory and resources. Since 1947, Kashmir remains a flashpoint between India and Pakistan, well before the BJP emerged onto the national scene. Continued nuclearization by India and Pakistan and India’s recent status as the world’s largest importer of arms have escalated tensions in the region.¹⁰⁶

India, Pakistan and China retain possession over the territory of Jammu and Kashmir.¹⁰⁷ India-administered Jammu and Kashmir includes the Muslim-majority Kashmir valley and the Hindu Pandit-majority area of Jammu. Pandits are a local minority, among others. In recent history, the conflict has been ongoing since 1931, with the establishment of the All India Kashmir Committee and the July uprising, and thereafter since October 1947.

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
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The UN Resolution 47, passed in 1948, called for a plebiscite to decide Kashmir's future. In 2014, the Office of the High Commissioner of Human Rights under the leadership of Judge Navanethem Pillay stated that (2014: n.a.), "the final status of Jammu and Kashmir has not yet been agreed upon by the parties."¹⁰⁸

Following the Gawakadal killings in Srinagar in January 1990, Jammu and Kashmir was declared a disturbed area by the state government and a state of emergency was imposed.¹⁰⁹ By mid-1990, reportedly 100,000 Indian troops were stationed in Kashmir with approximately 300,000 troops on guard at the mountain passes to Pakistan.¹¹⁰ That same year, the Indian government enacted the Armed Forces (Jammu and Kashmir) (Special Powers) Act, 1990.¹¹¹ AFSPA is among the impunity laws deployed in Kashmir that allow soldiers to question persons, raid houses, make arrests without bringing charges, overlook custodial violence, permit protracted detentions without due process, and even shoot and kill based on unverified suspicion, citing "national security," while being immune from prosecution. All of these actions are deemed 'acts of service', and rewards and promotions are given to personnel for killing presumed insurgents.¹¹²

The incorporation of Jammu and Kashmir into India in 1947 has been accompanied by local demands for enhanced autonomy, federation and a people's self-determination movement.¹¹³ The period between 1947 and 1987 saw the emergence of a people's movement through non-violent action. Local and armed resistance in Kashmir began in 1988.¹¹⁴ Indian forces reacted to militant bombings in 1990 by killing hundreds of unarmed protestors. Threats and perpetration of sexual violence against men have been reported, starting in the 1990s.¹¹⁵ By the end of 2002, the number of Indian military, paramilitary and police deployment in Kashmir had reportedly increased to 700,000.¹¹⁶ The armed insurgency in Kashmir abated between 2004 and 2006 (see Appendix, #3).

It is noteworthy that militants have used coercion against victimized-survivors, including spouses of the involuntarily disappeared, termed "half-widows,"¹¹⁷ including seeking to prohibit them from pursuing cases for compensation or other engagement or negotiations with state institutions.¹¹⁸

A peace process between India and Pakistan was initiated in 2004, with reciprocal multitrack diplomacy initiatives in Kashmir.¹¹⁹ Dialogues, events, programs, plans and exercises on demilitarization and conflict resolution in and between the two governments, Delhi and Srinagar, and civil society, kept open channels of communication, even as they have frequently ended in political impasse and produced sparse long-term effect.

Governor's Rule (per section 92 of the Jammu and Kashmir Constitution, 1956) and President's Rule (the termination of the state government) has been imposed in Jammu and Kashmir on numerous occasions since 1970. Recently, Jammu and Kashmir was placed under Governor's Rule between June-December 2018, and thereafter, remained under President's Rule since December 2018.¹²⁰

Impunity Laws

Laws that authorize impunity and provide immunity to individual perpetrators are deployed in Jammu and Kashmir. The Armed Forces (Jammu and Kashmir) (Special Powers) Act, 1990 (AFSPA), the Jammu and Kashmir Disturbed Areas Act, 1990, and the Public Safety Act, 1978 (PSA), amended 1990—authorize human rights violations and provide immunity to individual perpetrators.

The Armed Forces (Jammu and Kashmir) (Special Powers) Act, 1990 (AFSPA)¹²¹ was originally enacted in 1958 and has been adapted to apply to different internal conflict areas. In Jammu and Kashmir, AFSPA functions the same way as in other internal conflict areas,¹²² "to enable certain special powers to be conferred upon members of the

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

armed forces in the disturbed areas in the State of Jammu and Kashmir.”¹²³ Human Rights Watch has noted that, “Army and paramilitary forces deployed in the state by the federal government are protected by the immunity provisions of the Criminal Procedure Code of 1973.”¹²⁴

The Jammu and Kashmir Disturbed Areas Act, 1990, works as an adjunct to AFSPA and includes identical clauses to AFSPA, including Section 6 of AFSPA (requiring central government sanction/authorization to prosecute). The Disturbed Areas Act was enacted in 1990 by a Governor’s Act.¹²⁵ However, at the time, Jammu and Kashmir was under governor’s rule, therefore, the central government is responsible for this Act.¹²⁶ The Disturbed Areas Act was repealed and replaced in 1992 with a President’s Act.¹²⁷

The Public Safety Act, 1978 (PSA), was amended in 1987, 1990, and 2012, and enacted in Jammu and Kashmir to maintain the “security of the State” and the “public order.”^{128 129 130} PSA allowed detention for up to two years without charge or trial. Through the 2012 amendment, reportedly, the two-year maximum was reduced to one year, and the one year maximum was reduced to six months. Further, minors could no longer be detained under the PSA.¹³¹

These laws allow soldiers to question persons, raid houses, silence political dissent and make arrests without bringing charges, overlook custodial violence, permit protracted detentions without due process, and even shoot and kill based on unverified suspicion, citing “national security,” while being immune from prosecution. Section 7 of AFSPA states that, “no prosecution, suit or other legal proceeding” can be brought against any officer with special powers, with respect to “anything done or purported to be done in the exercise of the powers conferred by this Act,” unless with previous sanction (authorization) for prosecution.¹³² Indian forces personnel have stated that “any move to revoke AFSPA in Jammu and Kashmir would be detrimental to security and would provide a boost to the terrorists.”¹³³

Allegations of serious human rights violations have been routinely denied and the requisite government sanction (authorization) required for prosecution refused, while those who have been sanctioned have been pending trial for years. In response “to an RTI application,” the “integrated Headquarters of MoD [Ministry of Defense] (Army) in April 2012 revealed that 44 cases had been received during 1990 and 2011 for sanction for prosecution under AFSPA from Jammu and Kashmir Government. The Centre denied sanction in thirty-five of the cases while nine were ‘under process in MoD/integrated headquarters of MoD (Army).’” Furthermore, “in one case, the Army conducted a court-martial and convicted and punished a soldier with dismissal and ten years’ imprisonment.”¹³⁴

The mandate of the Indian forces reportedly extends beyond conventional parameters. For example, certain units of the Indian forces have collaborated with Hindu nationalist groups to implement development programs such as Operation Sadhbhavana, started in the late 1990s. In response to armed militancy by Muslim groups, village defense committees (VDCs), constituted in Jammu as civilian “self-defense” units with memberships comprising of predominantly Hindu and Sikh men and former servicemen, have been operationalized by Indian forces and supported by the state.¹³⁵

The Jeevan Reddy Committee Reviewed the Armed Forces Special Powers Act (2005), and:

- **Recommended that AFSPA should be repealed.**
- Conducted several public hearings in different internal conflict areas and found that AFSPA had become “a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness.”¹³⁶

The Justice Hegde Commission’s Report (2013):

- Focused on AFSPA in Manipur
- **Criticized the misuse of AFSPA**, using the conditions set in *Naga v. India* as a guideline for acceptable conduct and legal process:

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

- Reported that the continued operation of the AFSPA in Manipur is making a “mockery of the law.”¹³⁷
- Stated: “Though the Act gives sweeping powers to the extent of killing a suspect with protection against prosecution, etc., the Act does not provide any protection to citizens against possible misuse of these extraordinary powers.”¹³⁸
- The Commission was not given any evidence of a monitoring system to review use/abuse of the Act by the government.¹³⁹

The Committee on Amendments to Criminal Law (Justice Verma Committee) Report (2013):

- Objective of the report was to look into possible changes to criminal law in relation to sexual assault and violence.
- In reference to internal conflict areas, including Kashmir, the report says, “we notice that **impunity for systematic or isolated sexual violence in the process of Internal Security duties is being legitimized by the Armed Forces Special Powers Act.**” The report recommended immediate review of AFSPA’s use in internal conflict areas.¹⁴⁰

The Supreme Court case: *Naga People’s Movement for Human Rights vs. Union of India* (1998):

- Upheld the constitutionality of AFSPA.
- Even as the Apex Court applied certain conditions to its use: (a) acceptable conduct of officers (use of minimal force, etc.), (b) a refusal to grant sanction under Section 6 is subject to judicial review, and (c) **a declaration under Section 3 is to be for a “limited duration” and must be reviewed every 6 months.**¹⁴¹

The impunity legislation in force in Jammu and Kashmir results in intersecting layers of human rights violations against the civilian population. The impunity legislation authorizes human rights abuses such as the use of disproportionate force in the form of extrajudicial killings, arbitrary detention and the denial of fair trial rights, forcible search and seizure, and curtailments of freedoms of expression, opinion, and assembly. It further provides legislative impunity by barring any legal challenges, effectively providing cover for a range of other abuses, including fake encounter killings, “short-term” disappearances, prolonged detention, torture, the destruction of private property, and gendered and sexualized violence. Due to the legislation’s “blanket immunity” clauses,¹⁴² state forces of India are shielded from all formal legal challenges for any actions ostensibly taken under the impunity laws. While the immunity clauses do allow victims to file cases against officials acting under the impunity laws, this can only be done if they can secure authorization for prosecution from the government, referred to as a sanction [authorization] for prosecution under the law. However, due to a lack of political will, the government rarely gives sanctions.

The above indicates that the state of India is failing to fulfill its ancillary obligations to investigate and provide a remedy to human rights violations. As such, therefore, each impunity law operational in Jammu and Kashmir have been reportedly functioning as a form of *ex ante* amnesty law, authorizing state forces to violate rights with impunity.

Article 2 of the ICCPR defines the scope of the legal obligations of State parties.¹⁴³ The Human Rights Committee reminds State parties of the “interrelationship between the positive obligations imposed under the article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3.”¹⁴⁴ With respect to art. 26 of the Vienna Convention on the Law of Treaties, State parties are required to give legal effect to the treaty obligations they incur in good faith.¹⁴⁵ This means that in addition to “effective protection” of ICCPR rights, State parties are also required to “ensure that individuals have accessible and effective remedies to vindicate those rights.”¹⁴⁶

The Human Rights Committee specifically highlights the imperative to ensure “administrative mechanisms” are in place “to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

effectively through independent impartial bodies.”¹⁴⁷ **AFSPA—both in principle and by the behavior it enables—** does not meet these requirements, as it **violates multiple articles of the ICCPR...** and goes beyond the contingencies of the situation, besides being discriminatory on the basis of social origin.”¹⁴⁸

With respect to torture specifically, according to the HRC, “Article 7 should be read in conjunction with article 2, paragraph 3, of the Covenant,” and States parties should “indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by article 7 as well as appropriate redress.”¹⁴⁹ Moreover, complaints must be investigated “promptly and impartially by competent authorities so as to make the remedy effective.”¹⁵⁰ The Committee also specifically noted that amnesties are “generally incompatible with the duty of States to investigate” acts of torture and to ensure that torture does not occur in their jurisdictions in the future.¹⁵¹

Despite India’s obligations under the ICCPR, in October 2019, India’s incumbent home minister reportedly stated that “Western” human rights standards cannot be “blindly” applied to India.¹⁵²

Violence and Crimes: The Long Record

Through the protracted conflict, atrocities committed against the civilian population of Jammu and Kashmir include dispossession, displacement, enforced disappearances, rape, torture, extrajudicial executions and their burial in unknown and mass graves (see Appendix, #4). Curfews and illegal arbitrary and custodial detentions have been regularized (see Appendix, #5). Every street, neighborhood, public building and private establishment, forest and field, and road and alleyway has been securitized. Open firing on protesters turn personal and political grievances into military matters. Kashmiris cite the creation of a “collaborator class” that aids in their subjugation.

The collapse of the non-military political economy and trade restrictions have compounded class inequalities among disenfranchised, land-poor groups, including Bakarwals, Gujjars and Hanjajs. The denial of land rights and absence of land reforms have taken away various means of subsistence from laborers. A working paper on transitional justice in Kashmir notes that the conflict “has affected important sources of livelihood (for example, tourism). It is estimated that the state lost twenty-seven million potential tourists between 1989 and 2002, totaling [a loss of] US \$3.6 billion in... tourism revenue.”¹⁵³

The Indian government reports that 47,000 have been killed, excluding the number of enforced disappearances.¹⁵⁴ Between 50,000 and 70,000 people have reportedly died since 1989, in the estimation of non-governmental sources, including from extrajudicial or fake encounter executions.¹⁵⁵ An accurate account of the number of deaths is unavailable. More than 8,000 have reportedly been involuntarily disappeared.¹⁵⁶

Between 2008 and 2010, each summer witnessed massive civilian protests. State forces personnel reportedly characterized the protests, overwhelmingly non-violent, and some involving stone pelting, as “agitational terrorism,” and Internet-based protests as “cyber-terrorism.” Approximately 671,000 troops administered Kashmir, while official figures recorded the presence of approximately 500 to a 1,000 militants.

Between 2011 and 2017, reportedly 400,000¹⁵⁷ to 600,000¹⁵⁸ Indian military, paramilitary, and police were administering Kashmir.¹⁵⁹ In 2016, more than a hundred Kashmiri civilians were killed¹⁶⁰ —comparable to the summer of 2010.¹⁶¹ Of the nearly to 6,000 injured, more than 1,100 were blinded by pellet guns.¹⁶²

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

In 2008, Kashmiri human rights lawyer Parvez Imroz and I co-founded the International People's Tribunal on Human Rights and Justice in Kashmir (IPTK). In undertaking work for the Tribunal, between mid-2006 and early 2011, I have travelled through Kashmir's cities and countryside, from Srinagar to Kupwara. I have walked through the graveyards that hold Kashmir's dead, and have met with grieving families. I have listened to the testimony of a mother who sleepwalks to the grave of her son, attempting to resuscitate his body. I have met with 'half-widows', women whose husbands have been 'disappeared'. Half-widows do not qualify for state support, such as the pensions offered to 'widows'. Women have been forced disproportionately to assume the task of caring for disintegrated families and to undertake the work of seeking justice following disappearances and deaths, within the prevalently patriarchal culture characteristic of South Asia.

Kashmir's population lives with recurrent trauma and social death,¹⁶³ according to local psychiatrists, and with a very high rate of suicidal behaviors.¹⁶⁴ In 2014, the Institute of Mental Health and Neurosciences, the sole government-run hospital for psychiatric care in the Kashmir Valley, treated approximately 120,000 to 130,000 patients, 70 percent of whom were women. A 2015 report stated that "nearly 1.8 million adults (45 percent of the adult population) in the Kashmir Valley show symptoms of significant mental distress."¹⁶⁵ Further, between April 2018 and March 2019, approximately 366,906 persons sought psychiatric care at a government hospital in Srinagar.¹⁶⁶

In Jammu and Kashmir, in addition to Muslims, the Hindu Pandit community has been impacted, along with a small group of Sikhs and Christians.¹⁶⁷ The protracted conflict has caused loss of life of the Indian forces and its impact on their families has been enormous.¹⁶⁸

The Pandit Community

Kashmiri Pandits were especially impacted by the armed militancy by Muslim groups in the 1990s. Reportedly between 209 and 765 Kashmiri Pandits were killed in the conflict.¹⁶⁹¹⁷⁰ Alexander Evans (2005) notes that 95 percent of Pandit residents of the Kashmir Valley were displaced or left in 1990, approximately 150,000 to 160,000 persons, while a US Central Intelligence Agency report suggests that a total number of 300,000 Pandits were displaced in the conflict.¹⁷¹ ¹⁷² The right of return of Pandits and their reparation and healing remain imperative and urgent.¹⁷³

Gendered and Sexualized Violence

Nationalist violence combines both militarization and patriarchy. The body is signified as cultural property, and through targeting the individual, sexualized violence targets the political and cultural identity of subjugated groups. Only on the rarest of occasions does a female victim of gendered or sexualized violence succeed in bringing her case through the judicial system. The failures of the judicial system are systemic in preventing, investigating, and prosecuting sexual violence and in providing effective redress to female victims.

In Kashmir, "there have been reports of women and girls abducted and brought to soldiers' camps, where they were held for sexual slavery and often killed."¹⁷⁴ Third- gender and transgender youths have been threatened with rape. Many have been forced to witness the rape of women and girl family members. I received testimony from the family of a mother who was reportedly commanded to watch her daughter's rape by army personnel. She pleaded for her child's release. They refused. She then pleaded that she could not watch and asked to be sent out of the room or else killed. The soldier put a gun to her forehead, stating that he would grant her wish, and shot her dead before they proceeded to rape her daughter.¹⁷⁵

Example: Kunan Poshpora, 1991: Located in the northwestern corner of the Kashmir Valley, in Kupwara District, the twin villages of Kunan and Poshpora are approximately ninety kilometers from Srinagar. On February 23, 1991 at approximately 11:00 p.m., villagers reported that approximately 125 soldiers of the Fourth Rajputana Rifles and the Sixty-Eighth Mountain Brigade cordoned off the villages and forcibly removed the male villagers from their homes

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

and detained them in two houses. While army personnel interrogated and tortured the men, small groups of soldiers allegedly raided most of the village homes and gang raped between 23 and 100 women. In court documents, women from Konan Poshpora narrated the incidents of sexualized violence in graphic detail. They described groups of up to eight soldiers raping girls and women ranging in ages from eight years old to 70 years old. The soldiers also allegedly gang raped a woman who gave birth four days after the attack. Most of the women reported that the soldiers smelled of alcohol or were drinking alcohol while they gagged and bound their victims before gang raping them. After forcing villagers to sign "No Objection Certificates," the soldiers left Konan Poshpora at approximately 9:00 a.m. the morning of February 24, 1991. On February 27, 1991, villagers reported the attack to army official headquarters located approximately five kilometers from Konan Poshpora. According to army officials, the villagers did not file a complaint.

Example: Shopian, 2009: On May 29, 2009, Asiya Jan and Neelofar Jan were subjected to rape, reportedly by more than one perpetrator, and murdered. Asiya and Neelofar, Muslim women residents of Shopian town, in Shopian district, were 17 and 22 years of age respectively. This event staggered Kashmir, impelling women and men to the streets. Security personnel stoned homes and businesses. In response, civilians engaged in intermittent stone pelting. Security forces responded with armed violence. Rumors, reportedly circulated by security personnel, denigrated Asiya Jan and Neelofar Jan, presenting the rape as a "sexual encounter." An inquiry commission appointed by the chief minister and headed by a retired justice, Muzaffar Jan, noted that Asiya Jan and Neelofar Jan had been raped, and that their murder had been committed to conceal the rapes. The report speculated about Shakeel Ahmad's involvement in the case. The Commission noted, "the involvement of some agency of Jammu and Kashmir police, in the present incident, cannot be completely ruled out. The Commission did not identify the perpetrators or investigate the chain of command via which the investigative process was reportedly subverted, and evidence and testimony reportedly falsified. Police, and not CRPF personnel, were placed under scrutiny. The police are understood as "locals" [read: Muslims]. The CRPF is recognized as an "Indian" force, progressively trained to function in corresponding capacity to the military.

Example: Abduction, Rape, and Murder of Asifa Bano, Age 8, January 10-17, 2018. Asifa Bano was a Muslim girl from the historically marginalized Bakarwal Gujjar community.¹⁷⁶ She disappeared on January 10, 2018 and her body was discovered on January 17, showing evidence of torture and rape.¹⁷⁷ The chargesheet filed by the Crime Branch reportedly noted that Asifa Bano was abducted, sedated, raped repeatedly by multiple Hindu men, and then killed, all as part of a reported conspiracy to force the Bakarwal community to leave the region.¹⁷⁸ In June 2019, six of the seven accused, including multiple police officials and reportedly powerful Hindu men of the area, were convicted.¹⁷⁹

Torture

Srinagar, 9 January 2011: Amid the disquiet of winter, I listen to torture survivors recounting their life stories. 'I am neither a stone-pelter nor a politician. I protest unfreedom,' Bebaak tells me.¹⁸⁰ Nineteen years old, he participated in street protests in the summers of 2009 and 2010. 'The police said I would be arrested unless I stopped going to rallies.'

In 2010, Bebaak was detained for more than ten days in violation of habeas corpus. While in custody, he was tortured: struck repeatedly and violently, and denied medical treatment. Other youths in custody at that time were waterboarded. Some were forced to remove their clothes, then threatened with sodomy. Officials attempted to coerce Bebaak into admitting that he had thrown stones and destroyed police property. Refusing to admit to crimes he had not committed, Bebaak was locked up in isolation, where he was beaten again. He recounts how, taking turns, two officers heled him down while a third struck him with a baton, the butt of a rifle, and an iron chain, and he says: 'They only stopped when they were tired.'

Bebaak and other youths I spoke with stated that the physical attacks were accompanied by verbal abuse: 'Your "race" is deranged. You are criminals. You are thieves. Your mother is a whore. Your sister will be raped by your

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

people who are crazed. You will never see azadi.' 'In the jail, in the dark, as I lose consciousness', Bebaak says, 'I think, "We Kashmiris are a people, not a race. Our struggles against India's brutalities do not make us criminals." Since 1990, reportedly 671 security camps have been operational in Kashmir. Countless people have been tortured in interrogation centers: verbally abused, beaten, waterboarded, had their body parts crushed, mutilated, and paraded naked, hung upside down, had petrol injected into their anuses, burned and branded with metal prods, raped, starved, sleep deprived, humiliated, electrocuted, raped, sodomized, and psychologically harmed and tortured. The 2019 torture report by the Association of Parents of Disappeared Persons (APDP) and Jammu Kashmir Coalition of Civil Society (JKCCS) documented an extensive list of forms of torture.¹⁸¹

Of the 432 cases reviewed in the report, more than 300 were civilians and 27 were minors when they were subjected to torture.¹⁸² Victimized-survivors live with psychosocial, post-traumatic stress disorders (PTSDs), including health complications, disabilities (including amputations and loss of eyesight or hearing or bodily functions), as well as psychological injuries after being tortured,¹⁸³ all of which have long-term impact on the individual's life, family and community life, livelihood, participation in culture and society and general well-being.

Two recent reports (2018 and 2019) from the Office of the United Nations High Commissioner for Human Rights on Kashmir also highlighted the cases of torture:

- In August 2016, college lecturer Shabir Ahmad Mangoo, 30 years old, died shortly after being beaten severely in army custody. After public pressure, a special investigation team was established, but there are no updates on the progress of this case.¹⁸⁴
- In April 2017, army personnel abducted and tied Farooq Ahmad Dar of the Jammu Kashmir Liberation Front (JKLF) to the front of an army vehicle, beat him unconscious, then bound him to the hood of a jeep to parade him through villages for approximately 28 kilometers (approximately 17.4 miles) during election season, effectively using him as a human shield.¹⁸⁵ A month later, in May 2017, the Indian forces gave an award to the soldier who ordered this mistreatment of Mr. Dar.¹⁸⁶
- Further, in 2019, 29-year-old school principal Rizwan Pandit of Awantipora died in police custody in the evening between March 18 and 19, 2019. His family reported to journalists that his body bore signs of torture.¹⁸⁷

Torture is an intrinsic component of governance in Kashmir and its widespread use is understood by many Kashmiris as "a tactic employed to break people's will,"¹⁸⁸ that is perpetrated with reportedly absolute impunity. Not a single case of torture has been prosecuted in a civilian court in Kashmir since the 1990s.^{189,190} Lacerations on the skin and mutilations of the body are the forensic and figurative markers of hate.

Unknown, Unmarked and Mass Graves

Between November 2006- November 2009, I was involved in documenting human rights abuses in Kashmir.

Based on investigative research in fifty-five villages in three districts, we published a report, BURIED EVIDENCE: Unknown, Unmarked, and Mass Graves in Kashmir in December 2009, documenting the existence of 2,700 unknown and unmarked graves, including mass graves, that contained more than 2,943 bodies.¹⁹¹

The conventional and recognized cemeteries that hold Kashmir's dead are maintained and cared for by local people and organizations. Alongside these cemeteries are other clandestine graveyards, often unnamed, unmarked, undecorated. They exist amid habitations, next to schools and homes, by the roadside and town square, in prayer grounds and forests, at the edges of fields across rural and urban space. The graves largely lack epitaphs while some have numeric markers. They are often of varying sizes and irregularly placed.

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

Unknown, Unmarked and Mass Graves Investigated by IPTK

District	Graves documented by IPTK	Unnamed graves ¹⁹² (Of those documented)	Graves with two bodies	Graves with more than two bodies
Baramulla <i>33 villages investigated</i>	1122 w. 1321 bodies	1013 90.3 percent	140	17 [Total 76+ bodies]
Kupwara <i>14 villages investigated</i>	1453 w. 1487 bodies	1278 87.9 percent	8	4 [Total 30 bodies]
Bandipora <i>8 villages investigated</i>	125 w. 135 bodies	82 65.6 percent	6	2 [Total 6 bodies]
Total 3 districts <i>55 villages</i>	Total 2700 w. 2943+ bodies ¹⁹³	Total 2373 87.9 percent	Total 154 w. 308 bodies	Total 23 w. 112+ bodies

(Chatterji and Parvez et al., BURIED EVIDENCE, 2009: 11)

Atta Mohammad was the gravedigger and caretaker of unknown graves at one of the graveyards we investigated: Chehal Bimyar in Baramulla,¹⁹⁴ the largest district in Kashmir with respect to population and area and a place with a heavy military presence.¹⁹⁵ In June 2008, Atta Mohammad, then 68, stated to me that he had buried 203 bodies on a hillside adjacent to the Jhelum River between 2002-2006. The bodies were delivered to him by the police, primarily after dark. Mohammad said that the bodies he buried appear in his dreams, in graphic detail:

“I have been terrorized by this task that was forced upon me. My nights are tormented, and I cannot sleep, the bodies and graves appear and reappear in my dreams. My heart is weak from this labor. I have tried to remember all this... the sound of the earth as I covered the graves... bodies and faces that were mutilated... mothers who would never find their sons. My memory is an obligation. My memory is my contribution. I am tired, I am so very tired.”

(Chatterji and Parvez et al., BURIED EVIDENCE, 2009: 18)

Police personnel brought many of the bodies to Chehal from Sopore, Tangmarg, Gulmarg, and Boniyar. In instances where the number of bodies brought by security personnel exceeded the initial injunction given by security personnel regarding the number of graves to be prepared, more than one body was buried in each grave. Further, when the killings took place in certain conditions, the bodies involved in those killings were buried together.

Acknowledgement and articulation of events that precipitate ‘unknown’ death are forbidden. The circumstances and events connected to each grave and graveyard bear complex relations to coercion and violence as narrated by Mohammad. Local residents largely undertook the burials while professional gravediggers undertook the task of burial in a few villages. Prior to the delivery of bodies to the “secret graveyards,”¹⁹⁶ security forces personnel selected local male residents or professional gravediggers, usually those respected within the local community, and asked that graves be prepared to bury the dead.

The graveyards were prevalently constructed on local religious or community owned or used land and dug by local residents at the coercion of security personnel. The persons preparing the graves were usually informed in advance of the number of bodies to be buried. Professional gravediggers and local residents who were forced to become gravediggers and caretakers were directed to dig the graves but were largely not supervised by security personnel

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

during the process of digging or burial. In the process of soliciting their labor, gravediggers and caretakers were routinely intimidated and not remunerated for their services.¹⁹⁷

In Islamic religious ethos and the Shari'at,¹⁹⁸ death, and care of the dead, is interpreted as a directive to the living, linked to atonement and forgiveness. Gravediggers and caretakers attempted burial of the corpses in accordance with such tradition. Local community members and gravediggers that prepared the graves routinely constructed one grave per body. When permissible, they offered Ṣalāt (prayer) prior to burial. At times, they planted flowers on the graves.

In BURIED EVIDENCE, of those buried in the twenty-seven hundred unknown graves, records were available for only forty-nine bodies that were buried and for one body that had been drowned.¹⁹⁹ All forty-nine were recorded as militants or foreign insurgents by Indian forces.²⁰⁰

Through our research, it was found that of the forty-nine bodies that had been killed in fake encounters, forty-one were identified to be local civilians, one was identified as a local militant, and seven were unidentified. None were identified as foreign insurgents and all those identified were male.

The State Human Rights Commission of the Government of Jammu and Kashmir authenticated our findings in July 2011, leading to the first formal acknowledgment of the existence of unknown and unidentified graves.²⁰¹

Between 2011 and 2016, additional unmarked graves have been identified by local organizations, reportedly bringing the total to approximately 6700 graves,²⁰² and require verification and documentation.

It is dangerous to speak of these graves and to visit or memorialize them, and to seek justice. Some among those attempting to do so, such as family members, civil society activists, lawyers and journalists, have reportedly been charged under the AFSPA and PSA.

Kashmiri Resistance and Human Rights

Impelled by impunity laws, a compromised judicial system and the protracted militarization, human rights violations and crimes have created conditions that are akin to collective internment within Kashmir since 1989-90. More than a generation of children have been deprived of their childhood. Governing Kashmir requires that Kashmiri demands for justice be depicted as a threat to India's integrity. Militarized governance in Kashmir is regularized as necessary to national security. The apparatus of governance negates the rights and freedoms of Kashmiris as cycles of violence repeat themselves.

Contemporary relations of power between the majoritarian Indian state and Kashmiris position the former as righteous protectors of the national domain and the latter as imposters on their land. This relation of the Indian state to Kashmir evidences stereotypical, feudal-colonial dynamics of domination. Majoritarian discourse in India has stigmatized Kashmiris and local and indigenous resistance in Kashmir is associated with terrorism and portrayed as uniformly affiliated with Pakistan. A survey of the literature indicates that large segments of civil society and political constituencies in Kashmir identify India as an occupying force and read the process of Kashmir's incorporation into India as an annexation. Dissent and resistance within Kashmir are deemed organic by Kashmiris and linked to a call for self-determination, identified as a long-standing demand predating 1947, even as its form and pathway have remained undefined.

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

During the armed militancy in the 1990s, local and cross-border militancy received support from Pakistan, including from the misogynist Inter-Services Intelligence (ISI), which reportedly ended in 2002, following pressure from the United States.²⁰³ However, foreign machinations are not evidenced in the massive call to local dissent by Kashmiri civil society since 2004-06, and through the summer of 2009, 2010, 2016, 2018, and following August 5, 2019, despite the lockdown, for example. By the Indian state's own admission, incidents of armed militancy that have taken place and may reportedly be linked to foreign groups or institutions, have abated (see Appendix, #3). Yet, Kashmiri dissent remains pathologized by institutions of state and majoritarian segments of Indian society, and are responded to with sanctions, and the normalization of violence, reprisal and brutality.

Civilian resistance in the present, Kashmiris tell us, are performed through everyday acts; question-posing, writing, speech-acts, enacting civil disobedience, throwing a stone, participating in a funeral procession, opposing rape, being transfixed through fear, performing a job, dreams of hope, *talking* of taking up the gun, dispelling claustrophobia, going to a hospital, seeking to emigrate, standing around, mourning, being transposed in a chance/(fake) encounter.

Kashmiris state that following August 5, 2019, they are afraid of their forcible incorporation into the Union of India by Hindu nationalists. Many are apprehensive that inhumane conditions, extreme brutality and the negation of human rights by institutions of state could foster an armed uprising within Kashmir.

Human rights violations and crimes by state institutions and forces target civilians in Kashmir as a method in containment. Human rights violations and the states of exception that sustain them, cannot be addressed without demilitarization. Demilitarization of Kashmir is repeatedly discoursed as an issue between India and Pakistan. Further, the fraught relations and historical animosity between the two states continue to cast a long shadow over Kashmir. Kashmiris, across civil society, political parties, gender, age, occupation, class, sexuality, ability, ethnicity and affiliation, stipulate that they be recognized as legitimate and principal stakeholders in any and all matters pertaining to Kashmir's future.

Recommendations

Premise:

- If the stand of the ruling party in India is that the resolution of the Kashmir issue will be attempted through demographic changes made possible by the abrogation of Article 35A and the nullification of Article 370 of the Indian constitution, many in Kashmir fear that the intent of demographic change may be culturally, and potentially physically, genocidal. The international community must engage in protecting the rights of Kashmiris and in amplifying their voices.
- The rights of Kashmiris must not be held conditional to the resolution of conflict between India and Pakistan.
- The international community must engage in the de-escalation of the conflict between India and Pakistan.

It is imperative:

- To immediately establish human rights and respect human dignity in Kashmir.
- To immediately and unconditionally release all those held without charges and without trails or on falsified charges in Kashmir.
- To immediately stop reprisal of human rights defenders, academics, journalists in Kashmir.
- To immediately lift the communication blockade, and ensure freedom of speech, assembly and movement in Kashmir.

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
 From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

To establish human rights and respect human dignity in Kashmir, it is imperative:

- To end the military governance of Kashmir and demilitarize Jammu and Kashmir.
- To terminate all impunity laws.
- To allow independent investigations and monitoring by international human rights institutions into long-standing human rights abuses and crimes.
- To implement the substantive components of the right to a remedy.²⁰⁴
- That India and Pakistan ratify Conventions pertaining to the sanctity of life and human rights.
- That states with diplomatic relations with the Government of India ensure that human rights, civil liberties and rule of law are respected and adhered to.
- To ensure that bilateral and multilateral projects involving Jammu and Kashmir be assessed for their human rights implications.
- To recognize Kashmiris as the legitimate and principal stakeholders in any and all matters pertaining to Kashmir's future and their right to determine and govern their destiny.

...

"We are under siege. We were trying to fathom what was happening, and why. We lay awake through the night. Isolation is a cage in which we live."

"There is the continuous civil shutdown against the collapse of Article 370. All shops and offices are shut during the day. Open only during certain hours in the morning. There is fear of escalation of violence. State violence, yes. Insurgent violence as well. People are struggling very much but there seems to be no clarity on the future. The communication blockade is severe. It has badly impacted the economy and psyche of the people. The economic loss is massive. An atmosphere of fear and unchecked reprisal has resulted in the silencing of people. The future is very uncertain."

"To imagine a different time is a challenge. To feel is devastating. My words: the wounded skin of my brother's back, the asthma ridden pain-filled gasp-my mother's breath, the empty streets, the incessant foreboding, the bullets lodged in the wall next to our home, my sister's tears, our rage, the soldier's sadistic gaze, the state's violent denials, the eyes of a boy blinded by pellets, the streaks of blood on the steps of a shop, the smell of anguish. My words are silent. In the silence, I can hear the screams."

(Messages from Kashmir, August-September 2019)²⁰⁵

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

Appendices

Please see appended document containing the appendices.

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

Endnotes

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3 "Minoritization is the social, political, and economic exclusion and targeting of non-dominant peoples and groups through dehistoricization, marginalization, and stereotypification," Chatterji et. al, *Conflicted Democracies*, op cit., p. 45.

4 "Nationally, Jana Sangha (People's Organization) was founded as a political party in 1951, and later transitioned into the Bharatiya Janata Party (Indian People's Party) in 1980. The BJP emerged as a major opposition party, and in 1996 as the single largest party in a 'hung' parliament. The BJP acquired power in New Delhi as part of the 24-party National Democratic Alliance in 1998. In May 2004, the BJP-led government completed its five-year term and was defeated in the parliamentary elections with the Congress Party receiving the dominant share, but not the majority, of the votes" (Chatterji, Angana P. *Violent Gods: Hindu Nationalism in India's Present; Narratives from Orissa*, 2009: 38-39).

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SUBMISSION

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SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

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<https://oxfordre.com/asianhistory/view/10.1093/acrefore/9780190277727.001.0001/acrefore-9780190277727-e-184>. Accessed on 8 Sep. 2019.

93 Rai, Mridu. "Kashmir: From Princely State to Insurgency." Oxford Research Encyclopedia of Asian History. 26 Apr. 2018.

<https://oxfordre.com/asianhistory/view/10.1093/acrefore/9780190277727.001.0001/acrefore-9780190277727-e-184>. Accessed on 8 Sep. 2019.

94 Duschinski, Haley. "Survival is Now Our Politics': Kashmiri Pandit Community Identity and the Politics of Homeland." In *Kashmir: History, Politics, Representation*, edited by Chitralekha Zutshi. New York: Cambridge University Press, p. 184.

95 Press Trust of India. 2017. "Kashmiri pandits demand homeland, revocation of Art 370." *Economic Times*, August 27.

<https://economictimes.indiatimes.com/news/politics-and-nation/kashmiri-pandits-demand-homeland-revocation-of-art-370/articleshow/60246865.cms>

96 "Kashmir special status explained: What are Articles 370 and 35A?" *Aljazeera* (5 Aug. 2019).

<https://www.aljazeera.com/news/2019/08/kashmir-special-status-explained-articles-370-35a-190805054643431.html>.

97 CONSTITUTION OF INDIA, appendix I, part III.

98 Rai, Mridu. "Kashmir: From Princely State to Insurgency." Oxford Research Encyclopedia of Asian History. 26 Apr. 2018.

<https://oxfordre.com/asianhistory/view/10.1093/acrefore/9780190277727.001.0001/acrefore-9780190277727-e-184>. Accessed on 8 Sep. 2019.

99 It has been popularized that 35A excludes female residents of Jammu and Kashmir and their children from property rights if they marry a non-resident. However, at least one interpretation of case law seems to show that Kashmiri women who marry non-Kashmiris do not lose residency rights. https://www.business-standard.com/article/pti-stories/j-k-women-marrying-non-natives-don-t-lose-residency-rights-expert-119012201079_1.html. That "women lose property rights when they marry a non-Kashmiri" argument appears to be a strawman issue is being circulated by a Hindu nationalist-affiliated NGO petitioning the Supreme Court: <https://www.news18.com/news/india/rss-linked-ngo-wants-constitution-bench-to-hear-plea-to-scrap-article-35a-in-kashmir-1834761.html>

100 Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," *Yale Journal of International Law* 16, no. 1 (Winter 1991):

180. During the American and French revolutionary movements, self-determination arose as a right of a people against a non-representative government, regardless of the territorial integrity of the state. According to Brilmayer, "[b]oth the right of secession and the right to rebel against non-representative local leaders derived from the rejection of a supposedly feudal, territorial sovereignty principle. The territorial principle was supplanted by a principle of government by the consent of the governed."

101 Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," *Yale Journal of International Law* 16, no. 1 (Winter 1991):

181-182. Movements for decolonization during the post-World War II period sought to apply the principle of self-determination and its principles were reflected in various UN instruments, including the UN Charter, General Assembly Resolution 1514, General Assembly Resolution 2625, and in human rights treaties, including the ICCPR and the ICESCR.

102 Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," *Yale Journal of International Law* 16, no. 1 (Winter 1991):

182. In elaborating on the notion of consent of a collective people, international law primarily relies on the principle of self-determination. Even as anti-colonial movements utilized the principle to attain independence from their colonial powers, resulting post-colonial states often "showed little inclination to extend to their minority groups those same self-determination rights."

103 International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171. India was no exception. When it ratified the ICCPR and ICESCR, India reserved on article 1 in both covenants, declaring that it understands self-determination to "apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of a people or nation—which is the essence of national integrity. In other words, India excused itself from assuming responsibility for respecting any present or future claims to self-determination coming from within its own proclaimed 'Union,'" see <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-4.en.pdf>.

104 Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," *Yale Journal of International Law* 16, no. 1 (Winter 1991):

187, 191. According to Brilmayer, "tacit consent can be attributed to a state's inhabitant's only when the state has legitimate power over its territory," and that a major flaw in the typical understanding of self-determination is that it insufficiently focuses on the history of a people's claim to a territory.

105 Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," *Yale Journal of International Law* 16, no. 1 (Winter 1991):

192. Moreover, "ethnic identification keeps the historical grievance alive," as it passes the sense of initial wrongdoing through generations, either through heritage or continued experiences of wrongdoing. If India's power over Kashmir has been illegitimate since Kashmir's conditional and limited accession in 1947, can consent at any point thereafter be attributed to the people of Kashmir?

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

106 <https://economictimes.indiatimes.com/news/defence/india-worlds-largest-importer-of-major-arms-in-the-last-four-years/articleshow/57244332.cms?from=mdr>

107 Taken from: Chatterji at al., 2016: 124-133. Regional wars have been fought between India and Pakistan over Kashmir, during 1947-1948, and in 1965, 1971, and 1999. India governs the largest land area of Jammu and Kashmir, including the Kashmir Valley, Jammu, Ladakh, and a major segment of the Siachen Glacier. India holds the largest fragment of Jammu and Kashmir, including the Kashmir Valley, Jammu, Ladakh, and a major portion of the Siachen Glacier. Pakistan controls Azad Kashmir and northern areas of Gilgit and Baltistan. China controls Aksai Chin and the Shaksgam Valley.

108 Chatterji, Angana P., Shashi Buluswar, Mallika Kaur, *Conflicted Democracies and Gendered Violence: The Right to Heal: Internal Conflict and Social Upheaval in India*, New Delhi: Zubaan, 2016, p. 124-133.

109 Reuters. 1990. "Shoot-to-Kill Order Issued in Troubled Kashmir." *Toronto Star*, July 6. ProQuest document 436233935.

110 McGirk, Tim. 1990. "Kashmir Valley Under Siege; Indian Army Tries to Crush Rebel Bands." *The Ottawa Citizen*, July 23. ProQuest document 239476874.

111 The Armed Forces (Jammu and Kashmir) Special Powers Act, cl. 3, No. 21 of 1990, INDIA CODE. Section 3 – "Disturbed areas": Either the Governor of J&M or the Central Government can determine that an area (including the entirety of J&M) is a "disturbed area." To qualify, the area must be in "such a disturbed and dangerous condition" that armed forces are required to prevent a) terrorist activities, or b) "activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession" from India, or insulting the National flag, the Indian National Anthem, and the Constitution.

112 United Nations, Human Rights Council. Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/19.58.Rev.1 (2 March 2012), available from https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Rev1_en.pdf, p. 65.

113 Taken from: Chatterji at al., 2016: 124-133.

114 Taken from: Chatterji at al., 2016: 124-133. (Bastick, Grimm, and Kunz, 2007; Kazi, 2011).

115 Furthermore, "sexual violence committed by Pakistani security forces against Kashmiri detainees in Azad Kashmir has also been reported" (Asia Watch and Physicians for Human Rights, 1993).

116 Taken from: Chatterji at al., 2016: 124-133. (Global Security, 2002). Taken from: Chatterji at al., 2016: 124-133. (Bastick, Grimm, and Kunz, 2007: 97; HRW, 2006).

117 See: Zia, Ather. 2019. *Resisting Disappearance: Military Occupation and Women's Activism in Kashmir*. Seattle: University of Washington Press.

118 Taken from: Chatterji at al., 2016: 124-133. (APDP, 2011). Including burqas (enveloping outer garment worn by women in accordance Islamic culture and tradition), and issued diktats against reproductive choice, including abortion (HRW, 1993; Bhargava, Reifeld, and Chenoy, 2005). Since the early years of the conflict, certain militant groups have sought to enforce dress codes on women in the guise of religious propriety. Conflict-induced conservatism also stigmatized the use of contraception while a 2002 study noted the impact of deteriorating healthcare on stillbirths.

119 Taken from: Chatterji at al., 2016: 124-133. In 2007, the troop count (not including police personnel) was reportedly 337,000.

120 <https://economictimes.indiatimes.com/news/politics-and-nation/president-rule-in-jk-to-be-extended-for-6-more-months/articleshow/69759938.cms>.

121 The Armed Forces (Jammu and Kashmir) Special Powers Act, cl. 4, No. 21 of 1990, INDIA CODE. Section 4 - "Special powers": applies to any officer in the armed force (commissioned or non). In a disturbed area, he has the ability to (a) with as much warning "as he may consider necessary," to fire upon and even cause death to "any person who is acting in contravention of any law or order" in force prohibiting the assembly of 5/more persons or carrying of weapons or fire-arms, (c) arrest, without warrant, any person who has committed a cognizable offense or against whom a "reasonable suspicion" exists, (d) "enter and search" any premises, using force and without warrant to recover any person believed to be wrongly confined or any property reasonably suspected to be stolen property or contain arms, (e) stop, search and seize any vehicle, with force, "reasonably suspected" to be carrying a person who is a proclaimed or suspected offender of a cognizable offense, or any person carrying arms "believed to be unlawfully held by him."

122 Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958 (Government of India, Ministry of Home Affairs, 2005), 10. Human Rights Watch, *Getting Away with Murder: 50 Years of the Armed Forces (Special Powers) Act* (New York: Human Rights Watch, 2008), 5.

123 The Armed Forces (Jammu and Kashmir) Special Powers Act, No. 21 of 1990, INDIA CODE.

124 Human Rights Watch, "Everyone Lives in Fear": Patterns of Impunity in Jammu and Kashmir," 2006, 28.

125 Jammu and Kashmir Disturbed Areas Act, No. 4 of 1992, INDIA CODE. "Because of continued abatement and support from across the border to the militants it was felt that additional measures be taken to curb the militancy effectively and in a shortest possible time."

126 Jammu and Kashmir Disturbed Areas Act, cl 6., No. 4 of 1992, INDIA CODE.

127 Jammu and Kashmir Disturbed Areas Act, No. 4 of 1992, INDIA CODE.

128 Jammu and Kashmir Public Safety Act, cl. 8, Act No. 6 of 1978, INDIA CODE. Section 8 - Detention: authority to detain an individual if "preventing him from acting in any manner prejudicial to... (i) the security of the State or the maintenance of the public order." "Acting in any manner prejudicial to the maintenance of public order" means:

- (i) promoting, propagating, or attempting to create, feelings of enmity or hatred or disharmony on grounds of religion, race, caste, community, or region;

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

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- (ii) making preparations for using, or attempting its use, or using, or instigating, inciting, or otherwise abetting the use of force where such preparation, using, attempting, instigating, inciting, provoking or abetting, disturbs or is likely to disturb public order;
 - (iii) attempting to commit or committing, or instigating, inciting, provoking or otherwise abetting the commission of mischief within the meaning of section 425 of the Ranbir Penal Code where the commission of such mischief disturbs, or is likely to disturb public order;
 - (iv) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more, where the commission of such offence disturbs, or is likely to disturb public order.”
 - Section 18(b): pre-trial detention can be up to 2 years “in the case of persons acting in any manner prejudicial to the security of the State.” The max is up to 1 year “in the case of persons acting in a manner prejudicial to the maintenance of public order” (Jammu and Kashmir Public Safety Act, cl. 18(b), Act No. 6 of 1978, INDIA CODE). In the 2012 amendment, the 2-year max was reduced to 6 months, the 1-year max was reduced to 3 months, and minors could no longer be detained under the PSA (Jammu and Kashmir Public Safety Act, cl. 18(b), Act No. 6 of 1978, INDIA CODE).
 - The 2012 Amendment also created an Advisory Board, which confirms the detention orders, but this is not a public hearing.
 - Section 21 - Immunity clause: “No suit, prosecution or any other legal proceeding shall lie against any person for anything done or intended to be done in good faith in pursuance of this Act.”
- 129 Amnesty International, A “Lawless Law:” Detentions under the Jammu and Kashmir Public Safety Act (London: Amnesty International, 2011), 6:
- Estimates that 8,000-20,000 people have been detained under this law from 1990-2010.¹²⁹
 - “[A]uthorities are using the PSA to secure the long-term detention of political activists, suspected members or supporters of armed groups and a range of other individuals against whom there is insufficient evidence for a trial or conviction - to keep them ‘out of circulation.’”¹²⁹
 - “The rate of conviction for possession of unlawful weapons – one of the most common charges brought against alleged supporters or members of armed groups – is 0.5 per 100 cases.”¹²⁹
 - “There is no provision for judicial review of detention in the PSA; and detainees are not permitted legal representation before the Advisory Board, the executive detaining authority that confirms detention orders.”
 - All studied cases of alleged illegal periods of detention and the use of torture to obtain confessions. The immunity clause then protects officials from being prosecuted for human rights violations.¹²⁹
 - “Despite the significant reduction in the number of members of armed groups operating in the region in recent years, there appears to be little change in the state’s reliance on the use of administrative detention without trial—overwhelmingly through the PSA.”¹²⁹
- 130 Human Rights Watch, *Everyone Lives in Fear: Patterns of Impunity in Jammu and Kashmir* (New York: Human Rights Watch, 2006), 107:
- Under PSA detentions, at least 45,000 alleged militants were in jail without trial in 2006. Many had been waiting 10 or more years without being tried.¹³⁰
 - In some cases HRW cites, individuals were “disappeared” for days or weeks before being formally detained under the PSA.¹³⁰
 - HRW also reported inordinate delays in hearings, including those of habeas petitions.¹³⁰
- 131 <https://www.loc.gov/law/foreign-news/article/india-state-of-jammu-and-kashmir-amends-public-safety-act/>
- 132 The Armed Forces (Jammu and Kashmir) Special Powers Act, cl. 7, No. 21 of 1990, INDIA CODE. Section 7 – Impunity: “No prosecution, suit, or other legal proceeding” can be brought against any officer with special powers, with respect to “anything done or purported to be done in the exercise of the powers conferred by this Act,” unless with previous sanction of the Central Government.
- 133 “Army opposes Omar’s plans to revoke AFSPA,” *The Times of India*, February 26, 2009.
- 134 Jaleel, Muzamil. 2014. “In revised rape law, J&K lets troops retain shield.” *Indian Express*, November 24. <https://indianexpress.com/article/india/politics/in-revised-rape-law-jk-lets-troops-retain-shield/>
Quotes from: Jaleel, 2011 and taken from: Chatterji at al., 2016; citing HRW, 2011; Greater Kashmir, 2011; Jaleel, 2011.
- 135 Chatterji, Angana, Shashi Buluswar, and Mallika Kaur (eds). 2015. *Conflicted Democracies and Gendered Violence: The Right to Heal*. Berkeley: Armed Conflict Resolution and People’s Rights Project. p. 124;
- Freedom House. 2002. “Indian Kashmir – 2002.” *Freedom in the World 2002*. <https://freedomhouse.org/report/freedom-world/2002/indian-kashmir>;
- UI-Haq, Shuja. 2013. “Kishtwar riots: Village Defence Committees accused of attacks, but the guns stay.” *India Today*, September 16. <https://www.indiatoday.in/featured/story/kishtwar-riots-village-defence-committees-accused-of-attacks-211217-2013-09-16>
Taken from: Chatterji at al., 2016: 124-133; Freedom House, 2002; UI-Haq, 2013. “
- 136 Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958 (Government of India, Ministry of Home Affairs, 2005), 75.
- 137 Justice Hedge Committee Report (2013), 92 (on file with the author).
- 138 Justice Hedge Committee Report (2013), 92 (on file with the author).
- 139 Justice Hedge Committee Report (2013), 93 (on file with the author).
- 140 Justice J.S. Verma et al., Report of the Committee on Amendments to Criminal Law (January 23, 2013), 149.
- 141 Naga Peoples’ Movement of Human Rights v. Union of India (1998) 2 SCC 109.
- 142 Attar Rabbani, “Jammu & Kashmir and the Armed Forces Special Powers Act,” *South Asian Survey* 18, no. 2 (2011): 267.
- 143 UN Human Rights Committee, General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, ¶ 3, May 26, 2004.

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

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- 144 UN Human Rights Committee, General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, ¶ 8, May 26, 2004.
- 145 Vienna Convention on the Law of Treaties art. 26, 23 May 1969, 1155 U.N.T.S 331. UN Human Rights Committee, General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, ¶ 3, May 26, 2004.
- 146 Vienna Convention on the Law of Treaties art. 26, 23 May 1969, 1155 U.N.T.S 331. UN Human Rights Committee, General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, ¶ 15, May 26, 2004.
- 147 Vienna Convention on the Law of Treaties art. 26, 23 May 1969, 1155 U.N.T.S 331. UN Human Rights Committee, General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, ¶ 15, May 26, 2004.
- 148 Attar Rabbani, "Jammu & Kashmir and the Armed Forces Special Powers Act," *South Asian Survey* 18, no. 2 (2011): 268.
- 149 UN Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), ¶ 14, Mar. 10, 1992.
- 150 UN Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), ¶ 14, Mar. 10, 1992.
- 151 UN Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), ¶ 14, Mar. 10, 1992.
- 152 "Western Standards on Human Rights Can't Be Blindly Applied to India: Amit Shah." *The Wire* (Oct. 13, 2019). <https://thewire.in/politics/western-standards-on-human-rights-cant-be-blindly-applied-to-india-amit-shah>.
- 153 Mahapatra, Debidatta Aurobinda. 2010. "Mapping Transitional Justice in Kashmir: Drivers, Initiatives, and Challenges." *Oxford Transitional Justice Research – Research Article 3*, 1-19. Centre for Criminology, University of Oxford, Oxford.
- 154 Taken from: Chatterji at al., 2016: 124-133. (HRW, 2006:1; Scott-Clark, 2012). Human Rights Watch. 2006. "Everyone Lives in Fear": Patterns of Impunity in Jammu and Kashmir. <https://www.hrw.org/sites/default/files/reports/india0906web.pdf>, p. 1.
- 155 Taken from: Chatterji at al., 2016: 124-133. (HRW, 2006:1; Scott-Clark, 2012). Human Rights Watch. 2006. "Everyone Lives in Fear": Patterns of Impunity in Jammu and Kashmir. <https://www.hrw.org/sites/default/files/reports/india0906web.pdf>, p. 1.
- 156 Taken from: Chatterji, Angana, Shashi Buluswar, and Mallika Kaur (eds). 2015. *Conflicted Democracies and Gendered Violence: The Right to Heal*. Berkeley: Armed Conflict Resolution and People's Rights Project. p. 124-133; The International People's Tribunal on Human Rights and Justice In Kashmir. 2009. *Buried Evidence: Unknown, Unmarked and Mass Graves in Indian-administered Kashmir*. <http://www.kashmirprocess.org/reports/graves/BuriedEvidenceKashmir.pdf>, p. 10.
- 157 Kashmir Observer. 2016. "Nuclear-Armageddon in the Making in South-Asia:The most Dangerous Place on Earth." *Kashmir Observer*, April 11. ProQuest document 1779805963.
- 158 Pagnamenta, Robin. 2014. "We can't Protect our Daughters from the Marauding Soldiers: As Kashmiris Vote in the Troubled Indian State, Robin Pagnamenta Sees Villagers Bloodied and Beaten by Troops." *The Times*, May 7. ProQuest document 1521290252.
- 159 Taken from: Chatterji at al., 2016: 124-133.
- 160 Pagnamenta, Robin. 2014. "We can't Protect our Daughters from the Marauding Soldiers: As Kashmiris Vote in the Troubled Indian State, Robin Pagnamenta Sees Villagers Bloodied and Beaten by Troops." *The Times*, May 7. ProQuest document 1521290252.
- 161 BBC. 2016. "Kashmir clashes over militant Burhan Wani leave 30 dead." *BBC*, July 11. <https://www.bbc.com/news/world-asia-india-36761527>
- 162 Gowen, Annie. 2017. "For Kashmiri Teen Hit in the Eye by a Police Pellet, 'Life is Over'." *The Washington Post*, December 12. ProQuest document 1975472493.
- 163 Social death (slavery): Králová (2015) (including clinical, biological, medical conditions): Orlando Patterson (1982).
- 164 Taken from: Chatterji at al., 2016: 124-133. (Bashir, 2014).
- 165 Doctors Without Borders. 2016. "MSF scientific survey: 45% of Kashmiri population experiencing mental distress." <https://www.msfindia.in/msf-scientific-survey-45-kashmiri-population-experiencing-mental-distress/>
- 166 Wallen, Joe. 2019. "Kashmir: how conflict and stigma are creating a mental health crisis." *The Telegraph* (UK), May 16. <https://www.telegraph.co.uk/global-health/climate-and-people/kashmir-conflict-stigma-creating-mental-health-crisis/>
- 167 National Herald. 2019. "From the Kashmir Valley: The trauma of Pandits, Sikhs and Christians." *National Herald*, October 14. <https://www.nationalheraldindia.com/india/from-the-kashmir-valley-the-trauma-of-pandits-sikhs-and-christians>
- 168 For example, thirty- four soldiers committed suicide in Kashmir in 2008; fifty-two fratricidal killings took place between 2004 and 2009. Between January and early August 2010, sixteen soldiers committed suicide, and two died in fratricidal killings.
- 169 Chatterji, Angana, Shashi Buluswar, and Mallika Kaur (eds). 2015. *Conflicted Democracies and Gendered Violence: The Right to Heal*. Berkeley: Armed Conflict Resolution and People's Rights Project. p. 124.
- 170 Taken from: Chatterji at al., 2016: 124-133. (Chatterji, Imroz et al., 2009: 35n92; Kaur Sarkaria, 2009). Militant groups in Kashmir have committed various forms of violence against civilians, including targeted violence against people of Hindu descent, government employees, and suspected government informers (HRW, 1993). Besides extortions, kidnapping, and executions, militants also committed gendered violence, including forced marriage and rape, often in acts of retaliation against families of suspected informers or rival militant groups (HRW, 1993; Gupta, 2006). A 1992 incident against a Hindu family, involving rape and murder, resulted in protests by five thousand women against the violence; no militant group claimed responsibility (Baweja, 1992; HRW and Physicians for Human Rights, 1993). Civilian fear of reprisal by the militants reportedly led to the low reporting of the violence perpetrated by militants (HRW, 1993).

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

171 Essa, Azad. 2011. "Kashmir: The Pandit question." Al Jazeera, August 1.

<https://www.aljazeera.com/indepth/spotlight/kashmirtheforgottenconflict/2011/07/2011724204546645823.html>

172 Taken from: Chatterji at al., 2016: 124-133. Some of the displaced reportedly received compensation starting in 1990, which included continued salaries for Pandit government servants who left the Kashmir Valley, while others received compensation years later, for example, for the destruction of property (Kaur Sarkaria, 2009). In 2008, a compensation package for internally displaced Hindu Pandits reportedly included rations, cash relief of 1,000 Indian Rupees per month, per individual with a maximum of 4,000 Indian Rupees per month, per family. At least 2.9 billion Indian Rupees was reportedly set aside for fifty-two hundred and forty-two units of housing, available to displaced Pandits at a subsidized rate (Internal Displacement Monitoring Centre, 2008:150).

¹⁷³ See as well: Misri, Deepti and Mona Bhan. 2019. "Kashmiri Pandits must reimagine the idea of return to Kashmir." Al Jazeera, August 10.

<https://www.aljazeera.com/indepth/opinion/kashmiri-pandits-imagine-idea-return-kashmir-190810183932740.html>

174 Taken from: Chatterji at al., 2016: 124-133. (Bastick, Grimm, and Kunz, 2007: 97; Aso Asia Watch and Physicians for Human Rights, 1993; HRW, 1999). Reportedly, drug, money, and human trafficking have taken place at certain times along the border areas.

¹⁷⁵ Chatterji, Angana. 2011. "The Militarized Zone." In Kashmir: The Case for Freedom. New York: Verso, p. 110.

176 Roychowdhury, Adrija. 2018. "The Bakarwals: Behind Kathua rape and murder, a persecuted tribe that's both Muslim and Hindu." Indian Express, April 13. <http://indianexpress.com/article/research/kathua-gang-rape-murder-bakarwal-muslims-jammu-kashmir-5136293/>

177 Haq, Inamul. 2018. "Defining Kathua Rape and Murder Case." Kashmir Reader, April 18. <https://kashmirreader.com/2018/04/18/defining-kathua-rape-and-murder-case/>

178 Suja-ul-Haq. 2018. "Kathua Rape-Murder: Accused Wanted To Drive Bakarwals Away, Suspected Them Of Cow Slaughter." India Today, April 11. <https://www.indiatoday.in/india/story/kathua-rape-murder-chargesheet-accused-wanted-to-drive-bakarwals-away-suspected-them-of-cow-slaughter-1209543-2018-04-11>

179 Islah, Mufti. 2018. "Constable Arrested, Sub-Inspector Detained for Botching Up Probe in Kathua Rape-Murder." News18, March 8.

<https://www.news18.com/news/india/kashmir-police-officers-arrested-for-botching-up-probe-in-kathua-rape-murder-1683527.html>

180 Personal communication, January 2011. Name withheld for reasons of security. Srinagar is the summer capital of the state of Jammu and Kashmir. Bebaak: The word means 'Outspoken' in Urdu. Real name withheld for reasons of security, and certain information omitted or left vague.

181 Association of Parents of Disappeared Persons (APDP) and Jammu Kashmir Coalition of Civil Society (JKCCS). 2019. Torture: Indian State's Instrument of Control in Indian-administered Jammu & Kashmir. <http://jkccs.net/wp-content/uploads/2019/05/TORTURE-Indian-State%E2%80%99s-Instrument-of-Control-in-Indian-administered-Jammu-and-Kashmir.pdf>, p. 13.

182 Association of Parents of Disappeared Persons (APDP) and Jammu Kashmir Coalition of Civil Society (JKCCS). 2019. Torture: Indian State's Instrument of Control in Indian-administered Jammu & Kashmir. <http://jkccs.net/wp-content/uploads/2019/05/TORTURE-Indian-State%E2%80%99s-Instrument-of-Control-in-Indian-administered-Jammu-and-Kashmir.pdf>, p. 14.

183 Association of Parents of Disappeared Persons (APDP) and Jammu Kashmir Coalition of Civil Society (JKCCS). 2019. Torture: Indian State's Instrument of Control in Indian-administered Jammu & Kashmir. <http://jkccs.net/wp-content/uploads/2019/05/TORTURE-Indian-State%E2%80%99s-Instrument-of-Control-in-Indian-administered-Jammu-and-Kashmir.pdf>, p. 13-14.

184 Office of the United Nations High Commissioner for Human Rights. "Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan." June 14, 2018. <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>, p. 26.

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187 Office of the United Nations High Commissioner for Human Rights. "Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019." July 8, 2019.

https://www.ohchr.org/Documents/Countries/PK/KashmirUpdateReport_8July2019.pdf, p. 28.

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191 Taken from: Chatterji at al., 2016: 124-133. (Chatterji, Imroz et al., (2009: 11-15). Further, 154 graves contained two bodies each and 23 graves contained more than two cadavers. Within these 23 graves, the number of bodies ranged from 3 to 17.

¹⁹² Unnamed at/during the time of our investigations.

¹⁹³ w.: with. For district and village details, see section entitled "'Exhumed Truths': Kupwara, Baramulla, and Bandipora Districts."

SUBMISSION

Hearing on Human Rights in South Asia, October 22, 2019, House Foreign Affairs Subcommittee On Asia, the Pacific and Nonproliferation
 From: Angana Chatterji, Center for Race and Gender, University of California, Berkeley

194 In Chehal Bimyar, Baramulla District, we located 132 graves and 205 bodies. 63 graves with 2 bodies each = 126

5 graves with 3 bodies each = 15

64 graves with 1 body each = 64

Total = 205 bodies

Of these, 126 graves were unnamed

In addition to the 203 bodies buried by Atta Mohammad, in November and December of 2008, two other cadavers were buried in Chehal while he was away from his village, one whose right leg was fractured.

195 Baramulla housed 29 Indian army camps in 2009, many containing interrogation centers. Numerous allegations and reports of torture in these camps have been recorded. In Baramulla, only 245 instances of disappearances had been confirmed between 1989 and 2006.

196 As we were reliably informed.

197 Gravediggers: We refer to professional gravediggers; Caretakers: We refer to those who were forced into grave digging.

198 Shari'at, Shari'a, Islamic law.

199 Taken from: Chatterji at al., 2016: (Chatterji, Imroz et al., 2009: 11-15). These bodies were from, and had been killed and buried in, numerous districts. Of them, thirty-nine were of Muslim descent; four were of Hindu descent; seven were not determined. Of these fifty bodies, thirty bodies were exhumed, one was recovered from a lake, and all thirty-one were identified as male, and all thirty-one were of Muslim descent. Post-exhumation, thirty were identified as local civilians, one was identified as a local militant, and none were identified as foreign insurgents.

200 Taken from: Chatterji at al., 2016: (Chatterji, Imroz et al., (2009: 15, 69-83). The above was established through exhumation records, identity cards, witness testimonials, and Jammu and Kashmir High court petitions and orders.

201 The conflict in Kashmir has precipitated a social-scape where the killings of men (it is largely men who have died) "have rendered vulnerable women, children, and other gender identified groups" (Chatterji, Imroz et al., 2009: 11).

202 <http://kashmirilife.net/6700-mass-graves-kashmir-navlakha-50664/>

203 Burke, Jason. "'Betrayal' of confused jihadis: Pakistan's shadowy spy agency, the ISI, has run thousands of militants into Kashmir and is now responsible for reining them in." The Guardian, June 8. <https://www.theguardian.com/world/2002/jun/09/india.kashmir>, and later, terror groups such as the Taliban (and Lashkar-e-Toiba), reportedly emboldened by the breakdowns in Afghanistan, have infiltrated across the Line of Control (between India and Pakistan) into Kashmir, see: See section titled "Conflict in Western Pakistan and the Afghan Insurgency" in Kronstadt, K. Alan. CRS Report for Congress: Pakistan-U.S. Relations. October 18, 2007. Congressional Research Service.

https://www.everycrsreport.com/files/20071018_RL33498_c9565ce65235dc0074e8de01f0b6be64964029e1.pdf, p. 10.

204 To enact the right to justice, the right to truth, the right to reparations, and the guarantee of non-recurrence.

205 As conveyed to Angana P. Chatterji in September and October 2019, names withheld.