



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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August 30, 2019

To
Justice (Retd.) H.L. Dattu
Chairperson
National Human Rights Commission
Manav Adhikar Bhawan
Block-C, GPO Complex, INA
New Delhi – 110 023

Respected Sir,

Sub: HRD Alert - India - Urgent Appeal for Action – Jammu and Kashmir: Gross violation of basic human rights since August 4, 2019, millions of people arbitrarily detained and illegally arrested, complete clampdown on fundamental freedom of expression, association and assembly – Regarding

Greetings from Human Rights Defenders Alert - India!

Summary of the Submission

This submission pertains to gross violation of basic and fundamental human rights in the Jammu and Kashmir (J&K) since August 4, 2019. On August 4, 2019, mobile phone networks, landline connectivity and internet services were shut down in the state. The attempt was to completely isolate the people by cutting off flow of communication and information. While for visitors there were clear orders of the government to vacate the valley via the government advisory, this move to detain the residents of Jammu and Kashmir (J&K) in their houses came without any notice to the public and was completely arbitrary. There were strict restrictions on the movements of journalists, media reporters and publishers, resulting in a virtual blackout. Kashmir Valley was placed under curfew, with severe restrictions on freedom of movement and ban on assembly of more than four people. In Srinagar, which is the largest city and capital of J&K, armed forces laid steel barricades, roadblocks, and razor wire on roads and intersections to cut off neighbourhoods. Leaders of almost all major political groups, including three former Chief Ministers of J&K, were placed under house arrest. No information was provided to the political leaders or ordinary citizens about the reasons of the lockdown other than the August 2, 2019, order citing terror threats.

As the valley was struck with unprecedented fear and panic, the intentions of the government began to become clear. Mr. Amit Shah, Minister of Home Affairs, on August 5, 2019, introduced a resolution in the Indian Parliament, abrogating Article 370

of the Indian Constitution and revoking the special status of J&K, it enjoyed since the formation of the Constitution via Article 370. This was a unilateral decision taken by the Government of India without any consultation with the people of Kashmir. In addition, Jammu & Kashmir Reorganisation Bill, 2019, was also laid in the Parliament, bifurcating the State of J&K into Union Territory of Ladakh and the Union Territory of J&K. These were passed in the Indian Parliament, are legislations now and effectively took away the autonomy of the people of Kashmir. This move also, takes away J&K's federal powers, enjoyed by other Indian states. As a union territory, J&K will be directly controlled by the Government of India. This submission is based on the reports by credible media sources and other confidential sources of information. It is divided into four sections –

- Factual Background of the Kashmir Lockdown
- Situation in Lockdown Kashmir
- Legal Background to Kashmir's Annexation to India
- Violation of Domestic and International Laws and Treaties

Some of the issues covered in this submission are –

Arbitrary Detention: As a state party to the International Covenant on Civil and Political Rights, India is obligated to ensure the principles of legality and the right to liberty and security. The right to liberty and security includes the right not to be subjected to arbitrary arrest or detention, the right to know the reasons for one's detention and charges, if any, the right to be brought before a judge within a reasonable time following arrest or detention, and the right to appeal to a court of law to review the arrest or detention. While close to eight million people are arbitrarily detained in their houses since August 4, 2019, senior political leaders including three former chief ministers, the President of the Bar Association, business persons, human rights defenders, journalists, lawyers etc. have been put under forceful and illegal detentions or arrested.

Free Assembly: On 4 August, Section 144 of the Criminal Procedure Code (CrPC) was imposed across Jammu and Kashmir, thereby restricting any assembly of five or more persons. Some of the news reports suggest it is way overboard than Section 144 as it is a complete lockdown. Since July 2019, close to 50,000 additional security personnel have been stationed in the state of J&K. Denial of free assembly had grossly affected the Eid celebrations on August 12, 2019.

There have been reports of civilian protestors being shot with pellet guns, resulting in injuries to bystanders as well. Residents are reported to have been beaten up by the police for trying to buy necessities. Witnesses have stated that tens of thousands of peaceful demonstrators were moving through the streets of Srinagar when Indian forces opened fire and launched tear gas shells.

Free Expression: Due to the information and communication lockdown that was imposed on 4 August, a day prior to the announcement of Government's decision to end the autonomous status of J&K, reporters have not been able to report from the State or within the State. Protestors are reported to have been fired upon with pellet guns. The police is also reported to have opened fire including pellets and tear gas on protestors shouting slogans against the Indian Government's decision to scrap Article 370. The anger of the Kashmiris has been completely silenced due to the communication blockade.

Threats to HRDs: HRDs in Kashmir Valley are at a greater risk of arrests under fabricated charges through misuse of draconian laws, severally curtailing their ability to continue their work and intervening and communicating on issues of human rights violations. Given the severe restriction of media in the Kashmir Valley, news concerning HRDs is very rare but some unconfirmed sources at present have mentioned about their arrests and being taken to prisons in other states. The recent amendments to the central anti-terror legislation in the country, the Unlawful Activities (Prevention) Act, 1967, to allow the government to declare individuals as terrorists, without a trial in a court of law or any other transparent process, puts HRDs at greater risk.

The current lockdown in the Kashmir Valley has gravely affected life and liberty. All educational institutions in the region are reported to have been shut down. The curfew restrictions have made it impossible for people to procure food and medicines. People have been unable to make calls to ambulance services. There are also reports of people dying due to medical emergencies. There are reports of life saving drugs like insulin not being available.

Meanwhile Kashmiri residents living across India are suffering tremendously on account of the communication lock down in Kashmir imposed by the Indian government. There have been reports of discrimination faced by Kashmiri residents in availing accommodation. Kashmiri students have been hit severely, as they are unable to contact families and pay fees, making survival away from home difficult and exposing them to risk. All means to contact family members trapped in Kashmir have been shut down, resulting in panic and grief.

It is important to mention here that a fact-finding mission was undertaken in Kashmir Valley by Jean Drèze, Renowned Economist, Kavita Krishnan, All India Progressive Women's Association (AIPWA), Maimoona Mollah, All India Democratic Women's Association (AIDWA) and Vimal Bhai, National Alliance of People's Movements (NAPM), between August 9-13, 2019. They released a report titled 'Kashmir Caged' at the Press Club of India on August 14, 2019. Excerpts from their report are –

- *There is 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.*
- *To control this anger, the government has imposed curfew-like conditions in Kashmir. Except for some ATMs, chemists' shops and police stations, most establishments are closed for now.*
- *The clampdown on public life and effective imposition of curfew have also crippled economic life in Kashmir, that too at a time of the BakrEid festival that is meant for abundance and celebration.*
- *People live in fear of harassment from the government, army or police. People expressed their anger freely in informal conversation, but no-one was willing to speak on camera.*
- *The Indian media's claims of a rapid return to normalcy in Kashmir are grossly misleading. They are based on selective reports from a small enclave in the centre of Srinagar.*
- *As things stand, there is no space in Kashmir for any sort of protest, however peaceful. However, mass protests are likely to erupt sooner or later.*

- *Is the situation in Kashmir “normal” and “peaceful”? The answer is an emphatic NO. One young man in Sopore said: “This is bandookkikhamoshi (the silence at gunpoint), kabristan ki khamoshi (the peace of the graveyard).”*
- *The newspaper Greater Kashmir had one (front) page of news and a sports page at the back: the two inside pages were full of cancellation announcements of weddings or receptions!*
- *Between 5-9 August, people had suffered for lack of food, milk, and basic needs. People had been prevented even from going to hospitals in case of sickness.*
- *The Government claim is that only Section 144 has been imposed, not “curfew”. But in reality, police vans keep patrolling Srinagar warning people to “stay safe at home and not venture out during the curfew”, and tell shops to close their shutters. They demand that people display “curfew passes” to be allowed to move about.*
- *All of Kashmir is under curfew. Even on Eid, the roads and bazaars were silent and desolate. All over Srinagar, mobility is restricted by concertina wires on streets, and massive paramilitary deployment. Even on Eid, this was the case. In many villages, azaan was prohibited by the paramilitary and people were forced to do namaaz prayers at home rather than collectively at the mosque as it usual on Eid.*
- *Some 10,000 people protested in Soura (Srinagar) on 9 August. The forces responded with pellet gun fire, injuring several. We attempted to go to Soura on 10 August, but were stopped by a CRPF barricade. We did see young protestors on the road that day as well, blockading the road.*
- *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.*
- *On 6 August, a graphic designer for the Rising Kashmir newspaper, Samir Ahmad, (in his early 20s) had remonstrated with a CRPF man near his home in the Manderbag area of Srinagar, asking him to allow an old man to pass. Later the same day, when Samir opened the door to his house, CRPF fired at him with a pellet gun, unprovoked. He got 172 pellets in his arm and face near the eyes, but his eyesight is safe. It is clear that the pellet guns are deliberately aimed at the face and eyes, and unarmed, peaceful civilians standing at their own front doors can be targets.*
- *At least 600 political leaders and civil society activists are under arrest. There is no clear information on what laws are invoked to arrest them, or where they are being held.*
- *A very large number of political leaders are under house arrest - it is impossible to ascertain how many. We tried to meet CPIM MLA Mohd Yusuf Tarigami - but were refused entry into his home in Srinagar, where he is being under house arrest.*
- *In every village we visited, as well as in downtown Srinagar, there were very young schoolboys and teenagers who had been arbitrarily picked up by police or army/paramilitary and held in illegal detention. We met a 11-year-old boy in Pampore who had been held in a police station between 5 August and 11*

August. He had been beaten up, and he said there were boys even younger than him in custody, from nearby villages.

- 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. Parents feared meeting us and telling us about the “arrests” (abductions) of their boys. They are afraid of Public Security Act cases being filed. The other fear is that the boys may be “disappeared” - i.e killed in custody and dumped in mass graves of which Kashmir has a grim history. As one neighbour of an arrested boy said, “There is no record of these arrests. It is illegal detention. So if the boy “disappears” - i.e is killed in custody - the police/army can just say they never had him in custody in the first place.”
- Kashmiri TV channels are completely closed and unable to function.
- Kashmiri newspapers that carry the barest mention of protests (such as the one on Soura) are made to feel the heat from the authorities.
- Foreign press reporters told us that they are facing restrictions on their movement by the authorities. Also, because of the lack of internet, they are unable to communicate with their own main offices.
- When we visited Press Enclave in Srinagar on 13 August, we found the newspaper offices closed and the area deserted except for a few stray journalists, and some CID men. One of the journalists told us that papers could not be printed till at least 17 August, because they have run out of newsprint which comes from Delhi.

Submission

Factual Background of the Kashmir Lockdown

1. On **July 24, 2019**, the Ministry of Home Affairs (MHA) had a press release¹ titled ‘Security Situation Improves in Jammu and Kashmir’. In the said release, the security situation is stated to have improved during the period January 1, 2019 – July 14, 2019, corresponding to the same period in 2018. The release also mentions –

“For a peaceful resolution of the Kashmir issue the Government is always open to talks within the framework of the Constitution of India.”

2. On **July 25, 2019**, in complete contradiction to Point 1, the MHA issued an order² clearing the deployment of 100 additional companies of the Central Armed Police Forces (CAPFs) in J&K, to strengthen the counter-insurgency (CI) grid and maintain law and order situation in the state. This additional deployment included 50 companies of CRPF, 30 companies of SSB and 10 companies each of BSF and ITBP. This deployment was in addition to the

¹Press Information Bureau, Delhi, “Security Situation improves in Jammu and Kashmir”, 24 Jul, 2019, available at <http://pib.gov.in/PressReleaseDetail.aspx?PRID=1580081>

²Mudasir Ahmad, “Deployment of Additional Troops: Kashmiris suspect ‘Sinister’ Motives”, The Wire, 27 Jul, 2019, available at <https://thewire.in/government/kashmir-additional-troops-rumours-valley>, MHA order vide No: III-11018/1/2019-G/P-II dated July 25, 2019

40,000 additional central paramilitary forces deployed for the 45-day Amarnath yatra between July 1, 2019 – August 15, 2019³.

Kashmir valley is one of the most militarized zones in the world. India maintains roughly 5,00,000 soldiers in Kashmir. There are additionally about 90,000 troops of the Jammu and Kashmir police stationed in the Kashmir valley. These are figures before the current deployment of additional troops.⁴

3. On **July 27, 2019**, Senior Divisional Security Commissioner of Railway Protection Force (RPF) through circular/notice No – C-12/RPF/SA/BDGM/ issued orders⁵ for precautionary security measures. The order suggested that local Kashmiri staff shift their families to the homes of their relatives or to their native places. Point 7 of the said circular/notice stated –

“Nobody should keep their family or relative in Kashmir Valley who may have come for Amarnath Yatra. They should be sent back to their native place for safety reasons by 28.07.2019. Administration will not hold any responsibility for eventuality.”

All employees were asked to stock ration for at least four months, store drinking water for seven days and fill vehicles fully to deal with the issue of law and order for a long period as there is a "forecast of deteriorating situation" in Kashmir.

4. On **July 30, 2019**, Mr. Satya Pal Malik – the Governor of J&K, addressed reporters stating that everything was normal and asked people not to pay attention to any rumours⁶.
5. On **August 2, 2019**, J&K Governor issued a security advisory, ordering pilgrims to curtail their stay in the valley in the interest of safety and security⁷.

“Keeping in view the latest intelligence inputs of terror threats, with specific targeting of the Amarnath Yatra, and given the prevailing security situation in the Kashmir Valley, in the interest of safety and

³Peerzada Ashiq, Vijaita Singh, “Home Ministry nod for moving 10,000 security forces to Kashmir”, The Hindu, 27 Jul, 2019, available at <https://www.thehindu.com/news/national/other-states/home-ministry-nod-for-moving-10000-security-forces-to-jk/article28726547.ece>

⁴Sanjib Kumar Baruah, “Boxed inside Kashmir Valley with 1:30 security-civilian ratio”, Money Control, 07 Aug, 2019, available at <https://www.moneycontrol.com/news/india/boxed-inside-kashmir-valley-with-130-security-civilian-ratio-4303011.html>

⁵Furquan Ameen, “The story so far: Troops in Kashmir, rumours in the air”, The Telegraph, 04 Aug, 2019, available at <https://www.telegraphindia.com/india/the-story-so-far-troops-in-kashmir-rumours-in-the-air/cid/1695770>

⁶“The story so far: Troops in Kashmir, rumours in the air”, The Indian Express, 31 Jul, 2019, available at <https://indianexpress.com/article/india/situation-in-jk-normal-dont-pay-attention-to-rumours-governor-satya-pal-malik-5865322/>

⁷Shaswati Das, “Terror alert in Kashmir valley forces govt to curtail Amarnath yatra”, LiveMint, 03 Aug, 2019, available at <https://www.livemint.com/news/india/j-k-home-department-curtails-amarnath-yatra-in-sudden-terror-alert-1564743356769.html>

security of the tourists and Amarnath Yatris, it is advised that they may curtail their stay in the valley immediately and take necessary measures to return as soon as possible."

Thereafter, the frequency of flights from the valley was increased, facilitating non-residents and pilgrims to evacuate the valley. All educational institutions were shut down, examinations cancelled, disallowing any public or political activity in the region. The government under the veil of threat suspicions vacated the amaranth pilgrims as well as other non-residents of Kashmir from the valley. Since then, there were also strong rumours going up that the Central Government is planning to revoke the special status of the valley.⁸

6. On **August 4, 2019**, mobile phone networks, landline connectivity and internet services were shut down in the valley⁹. The attempt was to completely isolate the valley by cutting off flow of communication and information. While there were clear orders of the government to vacate the valley via the government advisory, this move to detain the residents of J&K in their houses came without any notice to the public and was completely arbitrary. There were strict restrictions on the movements of journalists, media reporters and publishers, resulting in a virtual blackout. Kashmir Valley was placed under curfew,¹⁰ with severe restrictions on freedom of movement and ban on assembly of more than four people.¹¹ In Srinagar, which is the largest city and capital of J&K, armed forces laid steel barricades, roadblocks, and razor wire on roads and intersections to cut off neighbourhoods.¹² Leaders of almost all major political groups, including three former Chief Ministers of J&K, were placed under house arrest.¹³ No information was provided to the political leaders or ordinary citizens about the reasons of the lockdown other than the August 2, 2019, order citing terror threats.
7. As the valley was struck with an unprecedented fear and panic, the intentions of the government began to take shape. Mr. Amit Shah, Minister of Home Affairs, on **August 5, 2019**, introduced a resolution in the Indian Parliament,

⁸Furquan Ameen, "The story so far: Troops in Kashmir, rumours in the air", The Telegraph, 04 Aug, 2019, available at

<https://www.telegraphindia.com/india/the-story-so-far-troops-in-kashmir-rumours-in-the-air/cid/1695770>

⁹Karishma Mehrotra, "Phone lines down in Kashmir lockdown, people unable to contact kin in Valley", The Indian Express, 07 Aug, 2019, available at

<https://indianexpress.com/article/india/phone-lines-down-in-kashmir-lockdown-people-unable-to-contact-kin-in-valley-5883837/>

¹⁰Aijaz Hussain, "India Imposes a Security Lockdown and Shuts Down the Internet on Parts of Kashmir", Time, 05 Aug, 2019, available at <https://time.com/5643872/india-kashmir-security-lockdown/>

¹¹"India: Basic Freedoms at Risk in Kashmir", Human Rights Watch, 06 Aug, 2019, available at <https://www.hrw.org/news/2019/08/06/india-basic-freedoms-risk-kashmir>

¹²Aijaz Hussain, "India Imposes a Security Lockdown and Shuts Down the Internet on Parts of Kashmir", Time, 05 Aug, 2019, available at <https://time.com/5643872/india-kashmir-security-lockdown/>

¹³Aakash Hassan, "Kashmir Dispatch 1 | Food and Fear a Struggle as Kashmiris Grapple With the New Normal on Day 4 of Lockdown", News18, 09 Aug, 2019, available at <https://www.news18.com/news/india/srinagar-despatch-food-and-fear-a-struggle-as-kashmiris-grapple-with-the-new-normal-on-day-4-of-lockdown-2263465.html>

abrogating Article 370 of the Indian Constitution and revoking the special status of J&K, it enjoyed since the formation of the Constitution via Article 370. In addition, Jammu & Kashmir Reorganisation Bill, 2019, was also laid in the Parliament, bifurcating the State of J&K into Union Territory of Ladakh and the Union Territory of J&K. Both these were passed in the Indian Parliament.

This effectively took away the autonomy of the people of Kashmir. J&K was under Governor's rule when the unilateral changes were made. The Governor is an appointee of the Government of India and the Governor dissolved the legislative assembly of J&K in November 2018.¹⁴ Indian Government bifurcated the State of J&K into Union Territory of Ladakh and Union Territory of J&K. This effectively even takes away J&K's federal powers, enjoyed by other India states. As a union territory, J&K will be directly controlled by the Government of India.

8. Following the controversial announcement in the Indian Parliament, at around noon on **August 5, 2019**, Section 144 Cr.P.C was introduced in Kashmir and few parts of Jammu as well¹⁵. Political leaders of Kashmir, People's Democratic Party (PDP) President Ms. Mehbooba Mufti and National Conference (NC) Vice-President Mr. Omar Abdullah (both former chief ministers of J&K) were placed under house arrest¹⁶. By **August 6, 2019**, the Bill was passed in the both the houses of the Indian Parliament.
9. The unilateral change in Article 370 was made without any consultation with people of Kashmir, or its leadership or adequate consultations with the leadership in India, while the Kashmir Valley was put on lockdown and placed under an information blockade. This lockdown includes restrictions on movement, assembly, denial of access to internet and other forms of communication, as well as mass detentions of political leadership, activists and human rights defenders. The Indian Government imposed lockdown continues in Kashmir valley, resulting in mass incarceration of eight million people of Kashmir valley. There were news of protests against the move in Kargil area of Ladakh. The administration imposed a lockdown in Kargil, as well after that.
10. Meanwhile, Kashmiri residents living across India are suffering tremendously on account of the communication lock down in Kashmir imposed by the Indian government. There have been reports of discrimination faced by Kashmiri

¹⁴Hakeem Irfan Rashid, "Jammu & Kashmir Governor dissolves Assembly after rivals stake claim to govt formation", Economic Times, 22 Nov, 2019 available at <https://economictimes.indiatimes.com/news/politics-and-nation/jk-assembly-dissolved-amid-claims-for-power/articleshow/66739283.cms?from=mdr>

¹⁵"Jammu: Mobile internet snapped, Section 144 to be imposed from 6 am", India Today, 05 Aug, 2019, available at <https://www.indiatoday.in/india/story/jammu-mobile-internet-snapped-section-144-to-be-imposed-from-6-am-1577223-2019-08-05>

¹⁶Peerzada Ashiq, "Omar Abdullah, Mehbooba Mufti placed under house arrest; Section 144 imposed in Srinagar", The Hindu, 05 Aug, 2019, available at <https://www.thehindu.com/news/national/omar-abdullah-mehbooba-mufti-placed-under-house-arrest-section-144-imposed-in-srinagar/article28816384.ece>

residents in availing accommodation¹⁷. Kashmiri students have been hit severely, as they are unable to contact families and pay fees, making survival away from home difficult and exposing them to risk¹⁸. All means to contact family members trapped in Kashmir have been shut down, resulting in panic and grief¹⁹.

Situation in Lockdown Kashmir

11. The Indian Government turned the Kashmir Valley into a massive jail by converting hotels, guest house, private and government buildings into makeshift jails. As on August 7, 2019, the news reports suggest that as many as 400 politicians, aides, separatist leaders and human rights defenders (HRDs) were put under arrest²⁰. Former chief ministers Mr Omar Abdullah and Ms Mehbooba Mufti were put in separate cottages in Hari Niwas, and the government refused them any visits from their family members²¹. The move is seen as a suppression of freedom of expression and opinion, ensuring no voices are raised against the arbitrary move of the Indian Government. The prohibitory orders of the government had arbitrarily detained people in their own houses and supply of all essential goods and services were clamped. The restrictions have prevented people from calling for ambulances, accessing information or checking on family members. This has placed unreasonable and arbitrary restrictions on freedom of movement, assembly and association, and expression and opinion.

12. The siege in Kashmir is now close to four weeks. There are media reports suggesting that in some parts of the Kashmir Valley, there were attempts to protest against the abrogation of their special status²². The security personnel responded with tear gas and pellets to fight back, injuring 30 protestors²³. On

¹⁷ <https://www.thequint.com/news/india/kashmiris-denied-hotel-rooms-in-delhi-govt-orders-cited-oyo-initiates-inquiry?fbclid=IwAR3k9xAj4Pze535KnH2JWendImIDO45sEtbNvoC0Eas4MtK0Wt6DQqWTou>

¹⁸ <https://timesofindia.indiatimes.com/city/mumbai/cash-strapped-kashmiri-students-struggle-in-mumbai/articleshow/70720288.cms>

¹⁹ https://www.thequint.com/my-report/letters-to-kashmir-article-370-abrogation?fbclid=IwAR129r_cRHIsF3yoHgW7vntvw4FkEasSM3Xken9AevQiGY56JWPd3nE-oeU

²⁰ Kamaljit Kaur Sandhu, "Lockdown in Kashmir: 400 politicians, aides, separatist under arrest as Valley turns into massive prison", India Today, 07 Aug, 2019, available at <https://www.indiatoday.in/india/story/lockdown-in-kashmir-400-politicians-aides-separatist-under-arrest-valley-prison-1578055-2019-08-07>

²¹ "Kashmir Article 370: Omar Abdullah, Mehbooba Mufti arrested", India Today, 05 Aug, 2019, available at <https://www.indiatoday.in/india/story/kashmir-article-370-mehbooba-mufti-arrested-taken-to-guest-house-1577554-2019-08-05>

²² "Article 370: International media reports protests rocking Kashmir, Indian media looks the other way", National Herald, 12 Aug, 2019, available at <https://www.nationalheraldindia.com/india/article-370-international-media-reports-protests-rocking-kashmir-indian-media-looks-the-other-way>

²³ Devjyot Ghoshal, Fayaz Bukhari, "Thousands protest in Indian Kashmir over new status despite clampdown", Reuters, 09 Aug, 2019, available at <https://in.reuters.com/article/india-kashmir-370/thousands-protest-in-kashmir-over-new-status-despite-clampdown-idINKCN1UZ00O>

the day of announcement itself, one 17-year-old boy Akeel Ahmed was admitted to Srinagar's Shri Maharaja Hari Singh Hospital with injuries of 90 pellet guns on his torso, severely injuring his eyes²⁴. Media reports suggest more than 150 tear gas and pellet injury cases recorded at just two hospitals in Srinagar alone between August 5 and August 21, 2019²⁵.

13. Indian Government airlifted a fresh batch of 20 "*potential troublemakers*" from Srinagar to Agra. As per the official statement, these people have a history of being involved in separatist activities, alleged to be active members of separatist groups in Kashmir Valley²⁶. They were taken in a special IAF plane to Uttar Pradesh and lodged in Agra Central Jail. Zafar Shah, a senior advocate and Mubin Sharma, the Chairman of Kashmir Chambers of Commerce are amongst them. The move of the Indian Government is a clear sign towards stifling any opposition or dissent in the valley, thus threatening freedom of expression and opinion. Kashmir Valley today is an epic example of a 'Jackboot Democracy', no respect to fundamental freedoms enshrined in the Indian Constitution and the Universal Declaration of Human Rights (UDHR).
14. Media reports indicate that the authorities have arrested about 4000 people under the Public Security Act (PSA)²⁷. Some unconfirmed sources suggest almost 7000 people lodged in jails in various Indian states. PSA allows authorities to imprison someone for up to two years without charge or trial. These reports reveal that most of the people imprisoned have been flown out of Kashmir because the prisons have run out of capacity. Further, while authorities have declined to provide a tally of the total number of people arrested, they have confirmed that about 100 local politicians, activists and academics were detained in the last few days.²⁸

²⁴SafwatZargar, "Kashmir's First Casualty After Article 370: 17-Year-Old Drowns Fleeing CRPF", Huffington Post, 07 Aug, 2019, available at https://www.huffingtonpost.in/entry/kashmir-first-civilian-casualty-after-article-370-revoked_in_5d4ab624e4b0066eb70aaca3

²⁵ Devjyot Ghoshal and Fayaz Bukhari, "More than 150 Tear Gas, Pellet Injury Cases at Two Srinagar Hospitals", The Wire, available at https://thewire.in/rights/more-than-150-tear-gas-pellet-injury-cases-at-two-srinagar-hospitals/amp/?_twitter_impression=true

²⁶ Press Trust of India, "J&K govt. airlifts 20 more 'troublemakers' to Agra", The Hindu, 10 Aug, 2019, available at <https://www.thehindu.com/news/cities/kolkata/jk-govt-airlifts-20-more-troublemakers-to-agra/article28970803.ece>

²⁷ The PSA allows for administrative detention for up to two years "in the case of persons acting in any manner prejudicial to the security of the State," and for administrative detention of up to one year where "any person is acting in any manner prejudicial to the maintenance of public order". Under Section 8 of the PSA, a Divisional Commissioner or a District Magistrate - both executive authorities - may issue a detention order to prevent any person from acting in a manner prejudicial to the "security of the State or the maintenance of the public order". As per Section 22, "no suit, prosecution or any other legal proceeding shall lie against any person for anything done or intended to be done in good faith" under the PSA. The J&K government has not framed any rules or standard operating procedures, as required under Section 23 of the PSA, to be followed by the executive authorities who pass detention orders under the PSA.

²⁸ Agence France-Presse, "About 4,000 people arrested in Kashmir since August 5: govt sources to AFP", The Hindu, 18 Aug, 2019, available at <https://www.thehindu.com/news/national/about-4000-people-arrested-in-kashmir-since-august-5-govt-sources-to-afp/article29126566.ece>

15. Journalists are kept under tighter security by the state, disabling their access during the siege. Most English and Urdu language newspapers based in the main city of Srinagar have not published their editions since the lockdown²⁹, when authorities imposed a lockdown of the valley to deter any protests against the Indian government's decision to scrap the special status of J&K State. A journalist managed to give his statement describing the prevailing situation in Kashmir. He says:

"When they hear the word 'journalists', they (paramilitaries manning the roadblock) get [a] rash. They want to beat you.We have now stopped going out. We fear for our lives. I was told by forces on the road that journalists are not allowed to move. This country cannot call itself to be a democracy³⁰."

Media reports indicate that a local journalist Irfan Amin Malik was detained by the police on August 14, 2019.

16. The clampdown is observed to be unprecedented and has been universally condemned. The Special Rapporteur on Freedom of Expression at the United Nations, Mr. David Kaye, remarked:

"There's something about this shutdown that is draconian in a way other shutdowns usually are not. That's pretty extensive and one of my concerns would be – in part because this is happening in a democratic state – it could be seen as a new departure for many states that are thinking about how to clamp down on the flow of information³¹"

17. The clampdown has also evoked reactions from the international community. United Nations Secretary General Mr. Antonia Guterres issued a statement regarding the complete lockdown of J&K expressing –

"concerned over reports of restrictions on the Indian-side of Kashmir, which could exacerbate the human rights situation in the region", and called on "all parties to refrain from taking steps that could affect the status of Jammu and Kashmir.³²"

²⁹ "Kashmir journalists struggle to tell their stories amid clampdown", Al Jazeera, 08 Aug, 2019, available at <https://www.aljazeera.com/news/2019/08/kashmir-journalists-struggle-stories-clampdown-190806094953316.html>

³⁰ "Kashmir journalists struggle to tell their stories amid clampdown", Al Jazeera, 08 Aug, 2019, available at <https://www.aljazeera.com/news/2019/08/kashmir-journalists-struggle-stories-clampdown-190806094953316.html>

³¹ Rebecca Ratcliffe, "Kashmir: India's 'draconian' blackout sets worrying precedent, warns UN", The Guardian, 08 Aug, 2019, available at <https://www.theguardian.com/world/2019/aug/08/kashmir-communications-blackout-is-draconian-says-un-envoy>

³² "UN concern over Kashmir lockdown as hundreds reported arrested", Al Jazeera, 09 Aug, 2019, available at <https://www.aljazeera.com/news/2019/08/concern-kashmir-lockdown-hundreds-reported-arrested-190808200958052.html>

18. Eid celebrations³³ on August 12, 2019, was a low-key affair with the stringent curtailments on movement and assembly in the Kashmir Valley. Kashmir Valley residents were only allowed to visit their local mosque and any large congregation was banned. Given the communication blockade, people couldn't call up their relatives and homes, and students and professionals residing outside the Kashmir Valley, couldn't join their families in the valley.
19. There have been reports of civilian protestors being shot with pellet guns, resulting in injuries to bystanders as well.³⁴ Residents are reported to have been beaten up by the police for trying to buy necessities. Witnesses have stated that tens of thousands of peaceful demonstrators were moving through the streets of Srinagar, chanting freedom slogans and waving Kashmiri flags, when Indian forces opened fire.³⁵ Reports also suggest security personnel barging inside homes, threatening family members and picking up young boys, torturing them. In several cases, young boys are now admitted in hospital with severe pellet injuries³⁶.
20. Doctors have stated that they have been asked verbally by the authorities to keep admission related to clashes at a minimum and to discharge victims quickly, in order to keep the statistics down. The same has been confirmed by people who lost their family members³⁷. A young doctor Omar Salim, a urologist at the Government Medical College, was detained and disappeared immediately after he spoke about the health crisis in Kashmir. Omar had stated that the curbs and restriction are endangering lives especially those who needed dialysis and chemotherapy³⁸.
21. Leaders of the ruling party have come out with violent and misogynistic statements on Kashmiri women, following the government's decision on the constitutional status of the region.³⁹

³³ Azhar Farooq, Rebecca Ratcliffe, "Eid in Kashmir muted as India bans large congregations", The Guardian, 12 Aug, 2019, available at <https://www.theguardian.com/world/2019/aug/12/eid-in-kashmir-muted-as-india-bans-large-congregations>

³⁴ Ananya Bhardwaj, "Kashmir authorities say no pellet injuries, but here are 5 victims", The Print, 13 Aug, 2019, available at <https://theprint.in/india/kashmir-authorities-say-no-pellet-injuries-but-here-are-5-victims/276023/>, "Pellet Guns Used To Suppress Protests", Kashmir Times, 10 Aug, 2019, available at <http://www.kashmirtimes.com/newsdet.aspx?q=93523>

³⁵ Sameer Yasir, Suhasini Raj and Jeffrey Gettleman, "Inside Kashmir, Cut Off From the World: 'A Living Hell' of Anger and Fear", The New York Times, 10 Aug, 2019, available at <https://www.nytimes.com/2019/08/10/world/asia/kashmir-india-pakistan.html>

³⁶ "Ground Report: Agony and Casualties in the Valley in the Immediate Aftermath of Shutdown", The Wire, 23 Aug, 2019, available at https://thewire.in/rights/jammu-kashmir-srinagar-article-370/amp/?_twitter_impression=true

³⁷ Zubair Sofi, "Ghosts of Kashmir: Indian authorities refusing to issue death certificates for civilians killed in clashes, says families", The Independent UK, available at <https://www.independent.co.uk/news/world/asia/kashmir-india-death-certificates-jammu-protests-violence-modi-a9079371.html>

³⁸ Muzaffar Raina, "Kashmir doctor speaks up, whisked away", The Telegraph, 27 Aug, 2019, available at https://www.telegraphindia.com/india/kashmir-doctor-speaks-up-whisked-away/cid/1700525?ref=top-stories_home-template

³⁹ "BJP Bachelors Can Now Marry White-Skinned Kashmiri Women, Says MLA After Article 370 Move", News18, 07 Aug, 2019, available at

22. A former Indian Administrative Officer from Kashmir and politician Mr. Shah Faesal was detained at the New Delhi airport on August 14, 2019, when he was on his way to Istanbul, Turkey. He was arrested under the PSA and taken to Srinagar where he is reportedly under house arrest.⁴⁰
23. Pharmacists are reporting running short of life saving and emergency drugs⁴¹. The British journal Lancet has expressed profound concerns about the physical and mental health of Kashmiris, which they believe have been given insufficient attention so far⁴². Indian doctors and medical health professionals have voiced serious concerns over the grave situation of denial of access to health care to patients in Jammu and Kashmir, in a strong statement released by them⁴³.
24. The clampdown in Kashmir has affected the judiciary and justice mechanisms immensely. Between August 5 and August 26, 2019, out of the 288 cases heard by the J&K High Court in Srinagar, petitioners were not present in 256 cases and respondents were not present in 235 cases. In at least 38 cases the judges couldn't even receive the files. Orders issued in these cases are *"On account of restrictions on the movement of traffic in the State, counsel for the parties are not available. Record of the case has not been received. Interim orders, if any, to continue till further orders"* or *"No one has appeared on behalf of the parties when the matter is called out today. In the interest of justice, list again on (date specified). Interim orders to continue till further orders."*⁴⁴
25. Even the political representatives belonging to the opposition on several occasions were barred from visiting Kashmir. One of the recent such incident was on August 24, 2019, when a delegation of 12 political representatives from opposition parties in the Indian Parliament, including Rahul Gandhi, Ghulam Nabi Azad, D Raja, Sharad Yadav and others were sent back from Srinagar Airport⁴⁵.

<https://www.news18.com/news/india/bjp-bachelors-can-now-marry-white-skinned-kashmiri-women-mlas-shocker-on-article-370-2262103.html>

⁴⁰Former IAS officer Shah Faesal detained at Delhi airport, placed under house arrest in Kashmir", India Today, 14 Aug, 2019, available at <https://www.indiatoday.in/india/story/shah-faesal-detained-kashmir-unrest-delhi-airport-house-arrest-1580770-2019-08-14>

⁴¹ <https://thewire.in/rights/kashmir-life-saving-drugs-clampdown-continues>

⁴² https://www.thehindubusinessline.com/news/national/the-lancet-stands-by-editorial-on-kashmir/article29183701.ece?fbclid=IwAR2bEuqg8n9ohJydmvW4jdW0Obyabo_JfdGFtHXRiN0sp6CKyxE4b8nN7kE

⁴³ <https://www.thehindu.com/news/national/karnataka/doctors-voice-concern-over-health-of-patients-in-jammu-and-kashmir/article29225418.ece>

⁴⁴ Aprurva Vishanath, Kaunain Sheriff M, "In 'interest of justice', justice postponed in J&K High Court", Indian Express, 27 Aug, 2019, available at <https://indianexpress.com/article/india/in-interest-of-justice-justice-postponed-in-jammu-kashmir-high-court-5939711/>

⁴⁵ Rohini Chatterji, "Rahul Gandhi, Other Opposition Leaders Sent Back from Srinagar Airport", Huffpost, 24 Aug, 2019, available at https://www.huffingtonpost.in/entry/rahul-gandhi-opposition-leaders-kashmir_in_5d611730e4b0b59d25752b51?ncid=fbklnkinhpmg00000001

Violation of Domestic and International Laws and Treaties

26. The sudden recent clampdown in J&K by the government shows a complete disregard and contempt for human rights and has outraged the conscience of mankind. In the democratic setup of India, any limitation on the freedom of opinion, speech and expression, assembly and association and movement, is strictly against the spirit of the UDHR. We would like to draw attention to various provisions of UDHR applicable in the current siege:

a. Arbitrary Detention & Restriction on Freedom of Movement

- i. Article 9 of UDHR clearly sets out that no one shall be subjected to arbitrary arrest, detention or exile. Moreover, Article 13 ensures everyone the right to freedom of movement and residence within the borders of each State. However, the government through an arbitrary exercise of power, has in effect jailed the entire population of the Kashmir Valley.
- ii. There has been a clear attack on the free movement within the state. Through the imposition of an order under Section 144 of the Criminal Procedure Code, public gatherings of five or more persons are not allowed. The administration has also issued a security order banning public meetings, rallies and movement and closing schools. Although the authorities claimed that many schools were re-opened on August 17, 2019, reports stated that parents were reluctant to send their children to school because of the lack of information and continued blockage of the means of communication.⁴⁶
- iii. A curfew has been declared on the entire state, monitoring and deterring any kind of movement and continues to operate despite some relaxations in central parts of Srinagar. This has resulted in people being unable to even avail basic medical facilities. Residents are not even allowed outside their neighbourhoods. There is a system of curfew passes, however there are reports of the administration not issuing curfew passes to even its own employees, and of security personnel not even accepting government IDs as passes⁴⁷.
- iv. Roads in the region continue to be barricaded with spools of concertina wire and regular checkpoints with police and armed paramilitary personnel on patrol. With movement severely restricted, people in need of medical care, have found it difficult

⁴⁶ "More Schools Reopen But Attendance Remains Dismal in Valley for Third Day Since Relaxations" News18, 21 Aug. 2019, available at <https://www.news18.com/news/india/more-schools-reopen-but-attendance-remains-dismal-in-valley-for-third-day-since-relaxations-2278205.html>

⁴⁷ Muzamil Jaleel, Bashaarat Masood, Adil Akhzer, "Kashmir Valley has seen many a lockdown but why this time it is so different", The Indian Express, 07 Aug, 2019, available at <https://indianexpress.com/article/india/valley-has-seen-many-a-lockdown-but-why-this-time-it-is-so-different-article-370-kashmir-amit-shah-5884129/>

to access health care, reducing incoming patients at hospital.⁴⁸ Recent reports indicate that the state is running out of medicines, and that some persons even have died because of shortage of medicines and lack of readily available transport to emergency care in hospitals.⁴⁹ News reports suggest that while ambulances are allowed to move in the Kashmir Valley, drivers said they faced multiple checks by security forces, considerably delaying the journeys. An ambulance driver has narrated his experience at the curfew:

“I was stopped by forces at more than a dozen places,” said an ambulance driver from North Kashmir’s Kupwara district. Even though the government has given us curfew pass and there was a patient in the back, the CRPF [Central Reserve Police Force] and police personnel stopped us⁵⁰.”

- v. This is a complete disregard for the observations made in the Report of the Working Group on Arbitrary Detention which clearly and unequivocally states that placing individuals in temporary custody in protective detention or in international or transit zones in stations, ports and airports, house arrest, rehabilitation through labour, retention in recognized and non-recognized centres for non-nationals, may not only amount to restrictions to personal freedom of movement but also constitute the de facto deprivation of liberty. It also includes detention during armed conflicts and emergency situations, administrative detention for security reasons, and the detention of individuals considered civilian internees under international humanitarian law.
- vi. The European Court of Human Rights (EtCHR) in Buzadji v. the Republic of Moldova stated that house arrest amounts to 'deprivation of life' within the scope of Article 3 of European Convention of Human Rights (ECHR). In Khlaifia and Others v. Italy in 2015 it stated, even measures intended for protection or taken in the interest of the person concerned may be regarded as a deprivation of liberty.

⁴⁸SafwatZargar, “Kashmir ground report: A cancer patient struggles to reach hospital for chemo, others can’t get home”, Scroll.in, 10 Aug, 2019, available at <https://scroll.in/article/933393/in-kashmir-a-cancer-patient-struggles-to-get-to-hospital-for-chemotherapy-others-cant-get-home>

⁴⁹ “Valley Running Out of Medicines With No Fresh Supply Coming, Say Doctors”, News 18, 25 Aug 2019, available at <https://www.news18.com/news/india/kashmir-dispatch-11-valley-running-out-of-medicines-with-no-fresh-supply-coming-say-doctors-2282033.html>

⁵⁰SafwatZargar, “Kashmir ground report: A cancer patient struggles to reach hospital for chemo, others can’t get home”, Scroll.in, 10 Aug, 2019, available at <https://scroll.in/article/933393/in-kashmir-a-cancer-patient-struggles-to-get-to-hospital-for-chemotherapy-others-cant-get-home>

- vii. Thousands of people have been arrested or detained, many of whom are children⁵¹, in what the New York Times called the biggest mass arrest in recent history.⁵² This includes political leaders, activists, academics, polling agents, and many children. A recent Indian Express story reported a police officer describing the criteria for arrest as being “anybody who is greeted by more than 10 people in a mohalla (neighbourhood) is a potential mob mobiliser.. (and)...thus seen as a threat”.⁵³ Many persons have been picked up in night raids.⁵⁴ The authorities of Kashmir have not released official numbers of how many people have been detained, there is very little information about the conditions that people who have been detained are being held in. Reports put the number of persons detained as anything between 4000 and 7000, presumably under the PSA. There have been reports that jails are over-crowded and that hundreds of detainees have been housed in private properties, and flown out of the state on Indian Air Force planes to the cities of Lucknow, Varanasi and Agra.⁵⁵ Very few people have been able to approach the High Court of Jammu and Kashmir or the Supreme Court to file Habeas Corpus petitions.⁵⁶
- viii. BBC and other news agencies have reported widespread protests against the actions of the Central Government, including reports of retaliatory firing by security agencies.⁵⁷ Police authorities initially “categorically denied” the protests and that any firing has taken place, but later rolled back the denial, clarifying that pellets had been fired. The videos released by the BBC were verified by a fact-checking team at Washington Post.⁵⁸

⁵¹ Aditya Menon, “How Children are Being ‘Picked Up’ in Night Raids Across Kashmir”, The Quint, 28 Aug, 2019, available at <https://www.thequint.com/news/india/kashmir-situation-night-raids-children-article-370-srinagar-pulwama>

⁵² “India’s Move in Kashmir: More than 2000 round up with no Recourse” The New York Times, 20 Aug. 2019, available at <https://www.nytimes.com/2019/08/23/world/asia/kashmir-arrests-india.html>; “What’s Happening in Kashmir? Our Cameras Contradict India’s Official Story,” The New York Times, 10 Aug. 2019, available at <https://www.nytimes.com/video/world/asia/100000006676350/kashmir-india-article370.html?smid=tw-share>

⁵³ Muzamil Jaleel, “Three weeks on, politics vacuum in Kashmir Valley, little sympathy on street” Indian Express, 26 Aug. 2019 available at <https://indianexpress.com/article/india/jammu-kashmir-article-370-mehbooba-mufti-omar-abdullah-army-amit-shah-bjp-5936605/>

⁵⁴ TRT News, a Turkish Public Broadcast Agency report, reported on 20 Aug. 2019, available at https://www.youtube.com/watch?v=n_k9bXq9uGs.

⁵⁵ “Search for answers over Kashmir detentions,” BBC, 23 Aug. 2019, available at <https://www.bbc.com/news/av/world-asia-49448138/search-for-answers-over-kashmir-detentions>; also see “No space to hold detainees, private properties turn holding centers in Kashmir,” India Today 16 Aug. 2019, available at <https://www.indiatoday.in/india/story/kashmir-detained-political-leaders-terrorists-valley-1581468-2019-08-16>

⁵⁶ “India’s Move in Kashmir: More than 2000 round up with no Recourse” The New York Times, 20 Aug. 2019, available at <https://www.nytimes.com/2019/08/23/world/asia/kashmir-arrests-india.html>

⁵⁷ ‘They shot me and I fell to the ground’, BBC, Aug 12, 2019 <https://www.bbc.com/news/av/world-asia-49408355/kashmir-unrest-they-shot-me-and-i-fell-to-the-ground>

⁵⁸ “What’s really going on in Kashmir? | The Fact Checker,” The Washington Post, 23 Aug. 2019 https://www.washingtonpost.com/video/politics/whats-really-going-on-in-kashmir--the-fact-checker/2019/08/23/0da90989-1d0b-486b-8cc4-6a3233f55034_video.html

- ix. Despite the government's claims that the State has returned to normalcy, the continued repression and curtailment of movement is illustrated in the recent actions of the administration to prevent a party of Opposition leaders from even leaving the Srinagar airport.⁵⁹

b. Restricting Freedom of Assembly & Association

- i. The current siege in Kashmir is a clear restriction on the freedom of assembly and association on the residents of Kashmir. Article 20(1) of UDHR clearly sets out the right to freedom of peaceful assembly and association for everyone.
- ii. Moreover, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association strongly advocates that no one is criminalised for exercising the rights to freedom of peaceful assembly and of association, or is subjected to threats of, or actual, violence, harassment, persecution, intimidation or reprisals for exercising those rights. The right to freedom of assembly, including peaceful protest is a fundamental pillar of democratic governance and open societies, through which individuals and groups are able to express their opinions about issues of public interest. By exercising this right, in an enabling environment, individuals and groups are able to shape public debate and improve overall governance.
- iii. The government in the current situation is viewing at the exercise of this right as a threat to governance and public order. In the veil of 'preventing security threats', the government grossly violated this right. On August 4, 2019, government forces laid steel barricades and razor wire on roads and intersections to cut off neighbourhoods in Srinagar, the region's main city⁶⁰. The government issued a security order banning public meetings, rallies and movement and said schools would be closed. Authorities also suspended internet services on cell phones, a common tactic to prevent demonstrations from being organized and to stop news dissemination.

⁵⁹ "Opposition Leaders turned back from Srinagar airport," The Hindu, 24 Aug. 2019, available at <https://www.thehindu.com/news/national/what-is-govt-trying-to-hide-asks-congress-as-opposition-leaders-barred-entry-into-srinagar/article29243230.ece>

⁶⁰ "Article 370 powers gone, Lok Sabha passes J&K bifurcation bill: All you need to know", India Today, 07 Aug, 2019, available at <https://www.indiatoday.in/india/story/article-370-jammu-kashmir-ladakh-bifurcation-all-you-need-to-know-1578034-2019-08-07>

- iv. Since the lockdown, reports have emerged that Indian forces fired at and used tear gas to disperse protests in Srinagar.⁶¹ Over 150 people have been hurt by teargas and pellets.⁶²

c. Violation on Freedom of Speech & Expression & Freedom of Press

- i. Article 19 of the UDHR lays that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. One tactic that the government used while abrogating Article 370, is to impose a complete restriction on the freedom of speech and expression.
- ii. Even before the announcement scrapping Article 370 and 35A was made, the government had put the valley under a complete communication blockade. This is not only a clear violation of UDHR provisions, but also runs against the provisions laid down in ICCPR under Article 19(1) and (2).⁶³
- iii. The Kashmir Valley's connection with the inside and the outside world was cut—all internet connectivity, cellular, landline, and cable TV services have been snapped. The press wasn't welcome and is parked in a 1-sq-km area of Zero Bridge in the city. Reporters were holed up in their office from where they walk around to meet residents and then return. In the office building itself dozens of policemen have moved in, the corridors their temporary shelter, severely restricting work of these news agencies⁶⁴.

⁶¹ Azhar Farooq, Rebecca Ratcliffe, "Kashmir city on lockdown after calls for protest march", The Guardian, 23 Aug, 2019, available at <https://www.theguardian.com/world/2019/aug/23/kashmir-city-srinagar-india-lockdown-calls-protest-march>; see also KaranDeep Singh, Ahmer Khan, Neil Collier, and Ben Laffin, "What's Happening in Kashmir? Our cameras Contradict India's official story", New York Times, available at <https://www.nytimes.com/video/world/asia/100000006676350/kashmir-india-article370.html?action=click>ype=vhs&version=vhsheading&module=vhs®ion=title-area&cvview=true&t=0>; see also 'They shot me and I fell to the ground', BBC News, 20 Aug, 2019, available at <https://www.bbc.com/news/av/world-asia-49408355/kashmir-unrest-they-shot-me-and-i-fell-to-the-ground>

⁶² "Key hospitals in Indian Kashmir treat more than 150 tear gas, pellet injuries", Reuters, 23 Aug, 2019, available at <https://www.reuters.com/article/us-india-kashmir-injuries/key-hospitals-in-indian-kashmir-treat-more-than-150-tear-gas-pellet-injuries-idUSKCN1VD0F5>

⁶³Article 19.

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice

⁶⁴Muzamil Jaleel, Bashaarat Masood, Adil Akhzer, "Kashmir Valley has seen many a lockdown but why this time it is so different", The Indian Express, 07 Aug, 2019, available at <https://indianexpress.com/article/india/valley-has-seen-many-a-lockdown-but-why-this-time-it-is-so-different-article-370-kashmir-amit-shah-5884129/>

- iv. Committee to Protect Journalists released an article titled "*In Kashmir, obstruction, confiscated equipment, and hand-carrying stories and photos on flash drive*"⁶⁵, describing the plight of journalists in the region under the complete communication lockdown.
- v. The draconian situation in Kashmir due to a complete information blackout, is a direct and grave violation of the right of the people to know about the decisions that directly impact them significantly. The internet and telecommunication shutdowns are impairing and deterring the media from reporting on the aforesaid developments, and the residents of Kashmir are deprived of crucial information that is otherwise publicly available to the rest of India.
- vi. The United Nations Special Rapporteur on Freedom of Speech and Expression in a statement regarding the latest clampdown has opined: "*Communications are often blocked in Indian-administered Kashmir, but the current clampdown is unprecedented in a time of relative peace. Unlike previous instances, landline phones and cable TV have been cut off. A strict curfew also means people are unable to leave their homes during the day, while only limited movement has been allowed at night.... I can't recall a situation where there has been a total blackout of not only the two-way, multi-point communication systems that we are familiar with now - anything on the internet, WhatsApp etc - but also the one-direction communications like TV.*"
- vii. The State has thus has not only wrongly impinged upon the freedom of speech and expression of the residents of the region but has also completely disabled journalists and trampled over press freedoms in an arbitrary, unreasonable, and constitutes an abuse of the State power. In *Sakal Papers (Pvt) Ltd v Union of India* (1962) 3 SCR 842, the Supreme Court of India categorically observed that impinging upon freedom of newspapers or the press, either directly or indirectly is unconstitutional.
- viii. The jurisprudence highlighting the importance of protecting the freedom of press recognised internationally. In 2011, ECtHR via a decision in the case of *Cengiz and others v. Turkey* has reiterated that blocking access to portals which are important means of exercising the freedom to receive/impart information and ideas, fostering citizen journalism as political content is a clear-cut violation Article 10 of the ECHR. It went ahead to expand the application of Article 10 and extend it to the means of dissemination saying that any restriction imposed on such means

⁶⁵Kunal Majumder, Aliya Iftikhar, "In Kashmir, obstruction, confiscated equipment, and hand-carrying stories and photos on flash drive", Committee to Protect Journalists, 08 Aug, 2019, available at <https://cpj.org/blog/2019/08/in-kashmir-obstruction-confiscated-equipment-and-h.php>

necessarily interferes with the right to receive and impart information. The Court also reaffirmed that Article 10 guarantees not only the right to impart information but also the right of the public to receive it.

- ix. Also, previously in 2010 in the case of *Ahmet Yildn-mi v. Turkey* (application no. 3111/10) ECtHR established a direct link between access to internet and freedom of speech and expression, highlighting state responsibility. The relevant portion of the judgement said, *"In modern democracies, the Internet has acquired significant importance in terms of the exercise of fundamental rights and freedoms, especially the freedom of expression. Social media constitute a transparent platform ... affording individuals the opportunity to participate in creating, publishing and interpreting media content. Social media platforms are thus indispensable tools for the exercise of the right to freedom to express, share and impart information and ideas. Accordingly, the State and its administrative authorities must display considerable sensitivity not only when regulating this area but also in their practice, since these platforms have become one of the most effective and wide spread means of both imparting ideas and receiving information."*
- x. The government has conveniently ignored the international obligations of protecting free flow of speech and expression in the valley. The Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Resolution 7/36, recognises that the effective exercise of the right to freedom of opinion and expression is an important indicator of the level of protection of other human rights and freedoms, bearing in mind that all human rights are universal, indivisible, interdependent and interrelated. It also stresses on the need to ensure that invocation of national security, including counter-terrorism, is not used unjustifiably or arbitrarily to restrict the right to freedom of opinion and expression.
- xi. Via the Joint Declaration on Media Independence and Diversity in the Digital Age⁶⁶ issued in 2018, the following concerns were raised:
 1. Contemporary legal threats to freedom of expression and the media, including broadening and often ambiguous notions of national security, laws which unduly limit expression online, blocking of websites, the unprecedented number of journalists jailed for their work

⁶⁶The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information.

and the delegation of content regulation to online platforms;

2. Attempts to restrict the independence of public media by governments, politicians and/or officials, thus limiting opportunities for individuals to access to credible and trustworthy news sources which provide a variety of viewpoints;

Thus, it was laid down as a principle that states have a positive obligation to create a general enabling environment for seeking, receiving and imparting information and ideas (freedom of expression) through a wide array of measures laid.

27. Therefore, in light of the above national as well as international legal framework, the move of the Indian Government to keep the Kashmir Valley under a total communication blockade, people arbitrarily detained in their residences and, political representatives and human rights defenders under arrest, for close to four weeks now, is completely unconstitutional and violative of international human rights laws.

28. The arbitrary government actions in J&K has wide ranged implications on the life of the current residents of the region. The sudden clampdown has put an abrupt stop to the everyday lives of the people, disallowing them to freely carry out their businesses, education and other public as well as private activities. Some of the major implications which clearly contradict the international obligations of the country are listed below:

- a. **Right to Food:** With a complete shutdown in the valley, the access to buy and sell basic food supplies has been curtailed by the government. As situation began to shape up towards curfew, some people stocked up food as much as they could, surely not enough for the prolonged lockdown.

Dilwar Khan, a resident of Srinagar, who managed to reach Delhi for a medical emergency told reporters, *"The food grains, vegetables and other domestic items are almost out of stock in the houses. The situation is not good there as there is no sign of lifting the curfew yet. The major sufferers are school kids who now have to stay inside their houses."*⁶⁷

The UN Special Rapporteur of right to food describes that the right to food encompasses the right to have regular, permanent and unrestricted access to food, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food. In this respect, there also arises state obligation to refrain from any discrimination in access to food, as well as to means and entitlement for its procurement. The government by putting a long-stretched curfew in the area is tampering with free access to food, thus violating the right to food of the residents of the valley.

⁶⁷Ajay Kumar, "Kashmir Article 370 revoked: Valley faces shortage of essential items due to curfew", India Today, 08 Aug, 2019, available at <https://www.indiatoday.in/mail-today/story/kashmir-article-370-revoked-valley-faces-shortage-essential-items-due-curfew-1578458-2019-08-08>

- b. **Right to Education:** The first move of the government, was to segregate the residents and non-residents, by asking the non-residents to vacate the region. In an attempt to do so, followed by a complete shutdown, the government shut down all educational institutions, colleges and schools. They have remained shut since the entire episode of prepping up for the lockdown began. As per the director of National Institute of Technology, Srinagar (NIT, Srinagar), and a total of 950 students were sent back home foreseeing the curfew⁶⁸.

The General Comment Number 13 of the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) has laid down, that the responsibility of a state regarding right to education is that it must avoid measures that hinder or prevent the enjoyment of the right to education.

- c. **Access to Medicine and Life Saving Drugs:** Media reports suggest that access to medicine including lifesaving drugs have become an immense challenge. Doctors in the valley have confirmed the shortage of medicines especially in the rural areas. There are reports confirming death of patients because of shortage of medicines and it becoming increasingly inaccessible given the severe restrictions on movement.⁶⁹

29. HRDs in Kashmir Valley are at a greater risk of arrests under fabricated charged through misuse of draconian laws, severally curtailing their ability to continue their work and intervening and communicating on issues of human rights violations. Given the severe restriction of media in the Kashmir Valley, news concerning HRDs is very rare and some unconfirmed sources at present mentioning about their arrests and being taken to prisons in other states. It is pertinent to mention here the recent amendments passed by the Indian Parliament to the central anti-terror legislation in the country, the Unlawful Activities (Prevention) Act, 1967, to allow the government to declare individuals as terrorists, without a trial in a court of law or any other transparent process.⁷⁰ The UAPA is an extraordinary act that has been criticised in the past for how it dilutes basic safeguards of fair trial under criminal law and human rights law, including the presumption of innocence.⁷¹ The amendment exacerbates the

⁶⁸Adil Akhzer, "J&K: Classes suspended, hostels closed, hospitals tell staff to 'be stationed' .", Indian Express, 04 Aug, 2019, available at <https://indianexpress.com/article/india/jammu-kashmir-classes-suspended-hostels-closed-hospitals-tell-staff-to-be-stationed-5876309/>

⁶⁹ Kashmir Dispatch 11: People are Dying, Say Doctors as Valley Runs Out of Lifesaving Medicines amid Lockdown, News 18, 25 August, 2019, available at <https://www.news18.com/news/india/kashmir-dispatch-11-people-are-dying-claim-doctors-as-valley-runs-out-of-lifesaving-medicines-amid-lockdown-2282033.html>

⁷⁰Tarique Anwar, "UAPA Amendment: Gateway to Misuse Anti-Terror Law, Say Critics", NewsClick, 10, Aug, 2019, available at <https://www.newsclick.in/UAPA-amendment-gateway-misuse-anti-terror-law-critics>; Amnesty International India, "Central Government Claims On New UAPA Bill Misleading", 19 Jul, 2019, available at <https://amnesty.org.in/news-update/central-government-claims-on-new-uapa-bill-misleading/>

⁷¹Despite the provisions of United Nations Security Council Resolution No. 1456 which states that States must ensure that any measure taken to combat terrorism must comply with all their obligations under international law in particular international human rights, refugee and humanitarian law, India is yet to ensure these protections. The UN Special Rapporteur on counter-terrorism and human rights

reversal of this presumption. The Amendment also gives the National Investigating Agency (a centrally controlled investigative agency) the power to attach property when it is investigating offences under this section, without taking permission from the state governments. With the revocation of Article 370, this law becomes applicable to Jammu and Kashmir also. This increases the vulnerability of HRDs in the region, as India has a record of applying such legislations to target minorities and curb dissent.⁷²

Appeal

Given the massive crackdown on fundamental freedoms and basic human rights in J&K, and referring to **Section 2 (d)** of the Protection of Human Rights Act 1993, as amended from time to time, whereby it states *“human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”*, **Section 12 (a)(i)** of the Act on the Functions of the Commission where it states *“inquire, suo motu or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any court], into complaint of – violation of human rights or abetment thereof.”* We appeal that –

1. Hon'ble Commission may exercise **Section 17(ii) of the Act**, initiate an independent inquiry into the above-mentioned instances of grave violations of human rights.
2. We urge that for the purpose of inquiry, the Hon'ble Commission constitutes a special team having ample knowledge and experience in issues concerning human rights. The team may have representation of experts from the field of civil and political rights, issues concerning torture, arbitrary detention and illegal arrests, freedom of expression and journalism, human rights defenders, right to health, education and food etc. The team may not comprise of or limit to current and former bureaucrats, police officers and security personnel.
3. The inquiry may undertake a thorough and detailed visit of the Kashmir Valley, allow people to depose in written and oral before the Hon'ble Commission and inquire into the current situation of clampdown, specifically,

has noted that governments must guard against the use of terror related laws to halt the measure of civil society actors and human rights defenders.

⁷²Sruthisagar Yamunan, “Why changes to India’s anti-terror law letting individuals be designated terrorists are dangerous”, Scroll.in, 29 Jul, 2019, available at <https://scroll.in/article/931987/why-changes-to-indias-anti-terror-law-letting-individuals-to-be-designated-terrorists-are-a-problem>; “India must ensure the safety of human rights defenders in Jammu and Kashmir”, Frontline Defenders, 13 Aug, 2019, available at <https://www.frontlinedefenders.org/en/statement-report/india-must-ensure-safety-human-rights-defenders-jammu-and-kashmir>

- a. Arbitrary detention of citizens in their homes and camps
 - b. Illegal arrest of political leaders and human rights defenders under the PSA
 - c. Restriction on media in reporting and publishing
 - d. Cases of deaths caused by security personnel
 - e. Cases of torture inflicted by security personnel including use of pellets and tear gas used against individuals and protestors
 - f. Condition of schools and colleges
 - g. Condition of health centres and hospitals, including availability of medicines, lifesaving drugs and other treatment facilities
 - h. Condition of public distribution system and availability of food
4. Hon'ble Commission under **Section 12 (c) of the Act** may constitute a separate team to visit prisons and detention centres where Kashmiri people (political leaders, business persons, human rights defenders, students, etc) are arrested, and record their statements to ascertain if the basic guidelines and procedures on arrest and detentions were followed, grounds for arrest, the living condition in prisons.
5. Based on independent inquiry as mentioned in the above points, Hon'ble Commission may exercise **Section 20 (1) of the Act** and submit a special report in this matter, which is of urgency and importance and should not defer till the submission of the annual report.
6. In accordance with **Section 18 of the Act**, take appropriate measures against officials responsible for violation of human rights or abetment thereof or negligence in the prevention of gross violations of fundamental rights and human rights in J&K.

Looking forward to your immediate and prompt action

Yours Sincerely



(Henri Tiphagne)
National Working Secretary
Human Rights Defenders Alert - India