

San Francisco/Athens/London/Durban/Bergen 09.09.2019

Appeal for urgency resolution by the European Parliament on the human rights situation in Kashmir and India

To: The European Parliament Subcommittee for Human Rights (DROI)

Parlement européen
Bât. Altiero Spinelli
15G305
60, rue Wiertz / Wiertzstraat 60
B-1047 Bruxelles/Brussel

We welcome the deliberations by the European Parliament on the current human rights crisis in Kashmir.

We submit our concerns in the below brief and ask the European Parliament to enact an **urgency resolution** on the human rights situation in Kashmir resulting from the current political crisis. We support that such a resolution be extended to cover additional areas and the circumstances that have placed other persons and communities at risk in these parts of India, especially in the north east and central regions. We note that our concerns primarily relate to Kashmir and its relationship to India.

The signatories assume sole responsibility for the opinions expressed below.

For the purpose of readability, the brief is organized into sections with a hyperlinked table of contents embedded at the start of the brief. All references cited are in the endnotes.

[Table of contents](#)

The curfew and lockdown in Kashmir as violations of human rights 1
Urgent concerns for safety and health of Kashmiris 2
The dangers of escalating violence in Kashmir 3
The dangers for constitutional protection and rule of law 4
Urgency resolution 5
Signatories 5
Endnotes 6

[The curfew and lockdown in Kashmir as violations of human rights](#)

On Monday August 5th the Indian Parliament introduced changes in the Indian constitution regarding the state of Jammu and Kashmir, and tabled the Jammu and Kashmir Reorganization Bill (2019).¹ Following preparations reaching weeks back, curfew and lockdown were enforced across the state, and remains operational, extending strict military control over movement, closure of internet and telephone services, and the closure of various government services, universities, and schools.



The following days, both the Rajya Saba and Lok Sabha approved the nullification of Article 370 of the constitution, which had granted relative autonomy to the state of Jammu and Kashmir within the Indian Union, and the abrogation of Article 35A, which had limited the right to hold property in Jammu and Kashmir to permanent residents of the state.²

We maintain as a baseline evaluation that the measures imposed on the Kashmiri population under the current curfew and lockdown are indefensibly restrictive of their basic human rights. The lockdown constitutes a centrally organized violation of the rights of Kashmiris; the right to freedom of movement and assembly, the right to freedom of speech and expression, the right to the freedom of the press, the right to due process, and the right to physical, psychosocial and mental health.

Furthermore, we maintain that the harms suffered by the general population as a direct consequence of the escalation of the already harsh military rule since 05.08.19 far outweigh any reasonable estimate of harm that might have been inflicted upon them by violent insurgents in the absence of such measures. The curfew and lockdown have functioned as pre-emptive and collective punishments enacted with impunity on Kashmiris rather than as steps taken for their protection.³ In this instance, the main violator of the human rights of the Kashmiri population is the Indian government.

Historically, the primary violators of the human rights of Kashmiris are the governments of India and Pakistan, as is documented by the OHCHR in their reports of June 2018⁴ and July 2019⁵, and supported by extensive research undertaken by civil society organizations inside and outside Kashmir.⁶

In addition to this summary evaluation, we wish to draw the attention of EP DROI to some of the particular aspects of the situation that merits both urgent and sustained attention:

Urgent concerns for safety and health of Kashmiris

Since August 5, tensions have run high, and the Indian state forces have established effective and extensive control over Indian-administered Kashmir through the use of violent and psychological measures.

Civil society demonstrations have taken place with as many as 10,000 participants⁷ despite the lockdown, and despite the high risk of severe repercussions for those involved. There are credible reports of hundreds harmed by tear gas or pellet guns,^{8 9} multiple cases of mistreatment and torture,^{10 11} and at least four related deaths have been recorded.^{12 13}

Government sources have declared that approximately 4,000 persons¹⁴ have been incarcerated under the Public Safety Act (1978). This highly criticized legal provision allows the government to incarcerate persons for up to two years without charge or convictions. Such laws serve the purpose of silencing political expression under the pretext of preventing criminal acts. Many of the incidents reported are not described as responses to demonstrations or other forms of disturbance caused by the public, but as arbitrary raids, sometimes after dark, and seemingly motivated by the intention to terrorize the civilian population.

Most urgently, the lockdown deprives large segments of the population of the access to medications and medical services, leaving them without the means to contact assistance in emergency situations. Depletions of medicine from stores have been reported,¹⁵ and hospitals have reported that the number of angioplasty and other life-preserving surgeries have dropped to half the ordinary level or even lower.^{16 17 18}

The curfew and lockdown also imply that the numbers referred to in this section could not be properly verified. They represent what we consider to be conservative estimates. Larger numbers are being circulated in all the categories.



We maintain that the conditions of lockdown inside Jammu and Kashmir impel physical, psychosocial and mental trauma and are in violation of the International Covenant on Civil and Political Rights (ICCPR), as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR), both ratified by India in 1979, and that these measures cannot be justified under the guise of public order. We note that Human Rights Watch has stated that “the government has a responsibility to ensure security in Kashmir, but that means respecting the human rights of everyone, including protesters”.¹⁹

The dangers of escalating violence in Kashmir

The crucial difference between the current situation and other recent periods of curfew, however, is not the level of violence inflicted by military, militia, or police forces, but the occasion of what many Kashmiri and third-party observers consider a fraudulent use of the constitution.

The effective voiding of Article 370 is experienced by Kashmiris as especially provocative. Such a unilateral decision by the majoritarian²⁰ central government deprives Kashmiris of any constitutional warrant for their existing autonomy and their demands for self-determination, however the latter might be organized in practice, and regardless of what the long-term outcome would be of effective recognition of this right.

The abrogation of Article 35A is experienced as especially threatening, because it opens the door to the loss of Kashmiri ownership over economically, culturally, or politically important land and resources, and to an influx of non-residents to Kashmir. This may eventually result in demographic changes that could render the current native populations of Kashmir minorities in their homeland.²¹ This fear is strongly affected by the enormous demographic, economical, and political influence that can be exercised by India’s majority population in Kashmir, if the conditions so permit.

The security measures imposed are experienced as repressive, and as violations of basic human rights rather than as protection from extremist violence, by large segments of the population.²² The ongoing events are interpreted as a humiliation and an escalation of what the OHCHR describes as widespread and systematic human rights violations going on since 1990,^{23 24} These violations include probably more than 8,000 enforced disappearances,^{25 26 27 28} torture, pellet gun shootings of civilian protestors,^{29 30} gendered and sexualized violence,^{31 32} and extrajudicial killings and their burial in unknown and mass graves.³³

We maintain that there has been no considered accountability, justice and reparation for these crimes and, as such, the lack of consequences has enabled the very conditions in which Kashmiris finds themselves currently. Further, we find that human rights violations in Kashmir are facilitated by impunity laws that extend immunity to Indian forces from accountability.³⁴ These laws include the Public Safety Act (1978, PSA), the Disturbed Areas Act (1992) and the Armed Forces (Jammu and Kashmir) Special Powers Act (1990, AFSPA), which allow state forces to arrest individuals upon uncorroborated suspicion and to use deadly force during confrontations, and without significant risk of correction or prosecution, which requires governmental approval.

The large number of arrests carried out are a departure from recent practice and is likely to have significant political impact. Emergency legislation has for decades, been applied mainly to target militants and opponents of Indian rule in Kashmir and segments of the population that might support them. Following August 5, the arrests have also targeted mainstream politicians beyond any reasonable suspicion of supporting militancy, and even politicians branded by large sections of Kashmiri society as ‘collaborators’ or ‘traitors’. Included among them are former Chief Ministers of Jammu and Kashmir Omar Abdullah, Mehbooba Mufti, and Farooq Abdullah, the latter a current Member of Parliament, claiming he was barred from casting his vote against the nullification; the president of the Kashmir Bar Association, Mian Abdul Qayoom,³⁵ and Jammu and Kashmir People’s Conference leaders, Sajjad Lone and Imran Ansari.³⁶



Together with the effective voiding of Article 370 itself, these measures are being described as having “pushed people who never supported separatism into a corner.”³⁷ This shift in repressive strategy leads us to reasonably anticipate a broader and more unified opposition to the federal government. It also poses a serious risk that a broad spectrum of the opposition may shift towards accepting precarious strategies as the only route remaining for expressing and carrying out opposition.³⁸

We are reminded that the violent uprising of the late 1980s began in response to a similar situation, namely the common perception that elections of 1987 were fraudulent and manipulated by central players within India, and the subsequent boycott of the elections of 1989.³⁹

We assume, as other observers have done,⁴⁰ that there is a high risk that large-scale demonstrations may ensue once the lockdown is lifted. We also assume a considerable risk that armed militants may want to exploit such popular protest and any violent response to it from the military.

Given the enduring tensions across the line of control, it cannot be excluded that a large-scale conflict within Jammu and Kashmir might escalate into a conflict between the two nuclear powers, India and Pakistan.

The dangers for constitutional protection and rule of law

Several legal experts question the legality of the effective nullification of Article 370 and the abrogation of 35A of the Indian Constitution.^{41 42 43 44}

Members of the Indian Parliament, Former Speaker of the Jammu and Kashmir Assembly Mohammad Akbar Lone and retired Justice Hasnain Masoodi of Jammu and Kashmir High Court, the latter ruling in 2015 that Article 370 was a permanent feature of the Constitution⁴⁵, have presented one of eight⁴⁶ separate challenges to the legality of the effective nullification of article 370 that have thus far been registered at the Supreme Court of India.

It is anticipated that a protracted legal process will be required to handle these challenges, and regardless of what the final decision will be, one must expect it to be highly disputed politically.

The constitutional nullification of the independent status of Jammu and Kashmir on August 5, and the publication of the final National Register of Citizens (NRC) on August 31, implying that 1.9 million of the state of Assam’s inhabitants will be denied citizenship,⁴⁷ are political acts that deprive the affected of their civil rights in principle and in practice. In the first instance, an entire population is deprived of their rights as citizens of Jammu and Kashmir, and in the latter instance a segment of the population may be deprived of all their civil rights. These actions pose grave consequences for the human rights of the affected.

Further, such non-consensual interventions into constitutional rights and protections endanger both the immediate and the long-term protection of the human rights of the Indian population at large. Especially vulnerable are non-Hindu minorities, Adivasis and Dalits, but also those of Hindu descent who oppose such action.

Human rights complaints regarding Jammu and Kashmir that have been voiced at the UN have been either largely⁴⁸ or completely⁴⁹ ignored, or even vilified by state institutions in India. This disconcerting response to the work of international institutions further demonstrate how the above described actions not merely deprive certain populations of the protection of civil rights. It destabilizes the Indian state’s character as a constitutional democracy. It also stands to undermine the international human rights system and threaten India’s cooperative engagement with the very international institutions established to protect these rights.



Urgency resolution

Based on the above considerations, we ask the European Parliament to pass an

Urgency resolution calling upon the Government of India to

- respect the sanctity of life and immediately allow free travel for all citizens of Jammu and Kashmir to seek medical attention, free transport of all kinds of medical supplies, and restore communications allowing the population to contact medical services;
- immediately and unconditionally release from detention all those who have been arbitrarily detained or arrested under the PSA since August 5 without due process or verifiable charges;
- establish a committee with representatives from all sections of the political community and civil society in Jammu and Kashmir who have committed to peaceable cooperation, including all ethnicities and faiths, and especially including those particularly vulnerable to violence from one party in the conflict or another, to negotiate the process of a complete lifting of the curfew, with a definite deadline as close in time as possible;
- abstain from implementing any measures that would not have been warranted given the constitutional status of Jammu and Kashmir before the effective nullification of Article 370 and abrogation of Article 35A, until all avenues of legal determination have been exhausted.

We ask the European Parliament to offer the Government of India

- assistance to facilitate mediation in trilateral talks between representatives of the Kashmiri population, India and Pakistan, on how to end the lockdown, revoke emergency legislation, reinstate civilian rule, and secure the rule of law toward a just and permanent peace in all territories occupied⁵⁰ by either of the two states.

We also urge the European Parliament to

- support the continuation of the monitoring undertaken and the recommendations made by the UN Office of the High Commissioner of Human Rights with regards to Jammu and Kashmir;
- contribute to have the crisis and the state of exception in Kashmir discussed thoroughly and without politically motivated self-censorship at all relevant levels within the UN system.

Signatories⁵¹

Judge Dr. Navanethem Pillay, former UN High Commissioner for Human Rights, former Judge at the International Criminal Court, former Judge at the South African High Court, Commissioner of the International Commission Against the Death Penalty, South Africa

Dr. Angana Chatterji, Founding Co-chair, Initiative on Political Conflict, Gender and People's Rights, Center for Race and Gender, University of California, Berkeley, USA

Dr. Haley Duschinski, Associate Professor, Department of Anthropology, Director of the Center for Law, Justice & Culture, Ohio University, USA

Dr. Goldie Osuri, Associate Professor, Sociology, Director of Impact Engagement, Centre for Social Theory, Warwick University, United Kingdom

Senior Advisor Iver Ørstavik, Cand. Philol., Coordinator of Partnership for Human Rights Program, Rafto Foundation for Human Rights, Norway

Queries may be directed to Iver Ørstavik at + 47 470 96 755, Iver.Orstavik@rafto.no



Endnotes

¹ Text of the Bill:

<https://www.thehindu.com/news/resources/article28823852.ece/Binary/FullTextofJ&KReorganisationBill.pdf>

² New York Times 5.08.19, <https://www.nytimes.com/interactive/2019/world/asia/india-pakistan-crisis.html?mtrref=www.google.com&gwh=3A1F0FBDA1F4643AEFE849DA420FC284&gwt=pay&assetType=RE> GIWALL

³ UN News 22.08.19, <https://news.un.org/en/story/2019/08/1044741>

⁴ OHCHR report 14.06.18, <https://bit.ly/2BusFhb>

⁵ OHCHR report 08.07.19 <https://bit.ly/2k4SN5P>

⁶ E.g. Amnesty International 21.03.11 <https://www.amnesty.org/en/documents/ASA20/001/2011/en/>;

10.07.13 <https://www.amnesty.org/en/documents/asa20/032/2013/en/>;

01.07.15 <https://www.amnesty.org/en/documents/asa20/1874/2015/en/>;

Human Rights Watch 12.09.06, <https://www.hrw.org/report/2006/09/11/everyone-lives-fear/patterns-impunity-jammu-and-kashmir>;

International People's Tribunal on Human Rights and Justice in Kashmir (IPTK), 02.12.09,

<http://www.kashmirprocess.org/reports/graves/>

JKCCS 09.15, <http://jkccs.net/structures-of-violence-the-indian-state-in-jammu-and-kashmir/>

JKCCS 02.19, <http://jkccs.net/wp-content/uploads/2019/05/TORTURE-Indian-State%E2%80%99s-Instrument-of-Control-in-Indian-administered-Jammu-and-Kashmir.pdf>

References on danger to safety and health of citizens in Kashmir

⁷ India Today, 10.08.19, <https://www.indiatoday.in/india/story/thousands-protest-kashmir-new-status-clampdown-1579352-2019-08-10>

⁸ Reuters 23.08.19, <https://www.reuters.com/article/us-india-kashmir-injuries/key-hospitals-in-indian-kashmir-treat-more-than-150-tear-gas-pellet-injuries-idUSKCN1VD0F5>

⁹ Religion Unplugged, 02.09.19, <https://religionunplugged.com/news/2019/9/2/in-photos-estimated-50-injured-in-kashmirs-worst-protest-since-indias-crackdown>

¹⁰ Al Jazeera 04.09.19, <https://www.aljazeera.com/news/2019/09/kashmir-lockdown-stories-torture-arbitrary-arrests-190904122016072.html>

¹¹ BBC 29.08.19, <https://www.bbc.com/news/world-asia-india-49481180>

¹² Al Jazeera 04.09.19, <https://www.aljazeera.com/news/2019/09/kashmiri-teenager-dies-pellet-tear-gas-shell-wounds-hospital-190904181621345.html>

¹³ Independent 26.09.19, <https://www.independent.co.uk/news/world/asia/kashmir-india-death-certificates-jammu-protests-violence-modi-a9079371.html>

¹⁴ AFP in France24, 18.08.19, <https://www.france24.com/en/20190818-india-kashmir-4000-detained-region-stripped-autonomy>

¹⁵ The Wire 22.08.19, <https://thewire.in/rights/kashmir-life-saving-drugs-clampdown-continues>

¹⁶ The Quint, 06.09.19, <https://www.thequint.com/news/india/healthcare-crisis-grows-as-pm-scheme-halts-amid-jammu-and-kashmir-shutdown>

¹⁷ New York Times, 14.08.19, <https://www.nytimes.com/2019/08/14/technology/india-kashmir-internet.html>

¹⁸ Human Rights Watch, 20.08.19, <https://www.hrw.org/news/2019/08/30/kashmir-shutdown-raises-healthcare-concerns>

References on danger of and escalation of violence in Kashmir

¹⁹ Human Rights Watch, 06.09.19, <https://www.hrw.org/news/2019/08/06/india-basic-freedoms-risk-kashmir>

²⁰ The Guardian, Editorial, 23.05.19, <https://www.theguardian.com/commentisfree/2019/may/23/the-guardian-view-on-narendra-modi-landslide-bad-for-india-soul>

²¹ Arundhati Roy, New York Times, 15.08.19,

<https://www.nytimes.com/2019/08/15/opinion/sunday/kashmir-siege-modi.html>

²² This sentiment is reflected in nearly all reports coming out of Kashmir referring conversations with locals. See above, and below.

²³ <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

²⁴ APDP work <http://apdpkashmir.com/>



-
- ²⁵ JKCCS reports <http://jkccs.net/reports/>
- ²⁶ Outlook, 30.08.17, <https://www.outlookindia.com/website/story/after-a-decade-of-decline-enforced-disappearances-resurface-in-kashmir/300997>
- ²⁷ International People's Tribunal on Human Rights and Justice in Kashmir, 2009, <http://www.kashmirprocess.org/reports/graves/toc.html>
- ²⁸ New York Times, 22.08.11, <https://www.nytimes.com/2011/08/23/world/asia/23kashmir.html>
- ²⁹ JKCCS reports <http://jkccs.net/reports/>
- ³⁰ Amnesty International 01.02.18, <https://amnesty.org.in/losing-sight-kashmir-impact-pellet-firing-shotguns/>
- ³¹ Aljazeera, 24.12.16, <https://www.aljazeera.com/indepth/features/2016/10/kashmir-kunan-poshpora-rape-161020121136644.html>
- ³² JKCCS, 05.07.17, <https://jkccs.files.wordpress.com/2017/05/shopian-rape-and-murder-report.pdf>
- ³³ International People's Tribunal on Human Rights and Justice in Kashmir (IPTK), 02.12.09, <http://www.kashmirprocess.org/reports/graves/>
- ³⁴ OHCHR report 14.06.18, <https://bit.ly/2BusFHb>
- ³⁴ OHCHR report 08.07.19 <https://bit.ly/2k4SN5P>
- ³⁵ Al Jazeera 17.08.19, <https://www.aljazeera.com/news/2019/08/kashmir-key-political-leaders-arrested-india-august-5-190817155454403.html>
- ³⁶ The Wire, 05.08.19, <https://thewire.in/security/kashmir-curfew-internet-house-arrest>
- ³⁷ BBC 10.08.19, <https://www.bbc.com/news/world-asia-india-49294301>
- ³⁸ "When you discredit moderates, you will encourage radicals. When you reduce humanity to a spectacle, you create a dehumanized society." Kashmiri journalist Iftikhar Gilani in Al Jazeera, 06.08.19, <https://www.aljazeera.com/news/2019/08/india-kashmir-move-face-legal-challenges-experts-190806053650480.html>
- ³⁹ Sten Widmalm, The Rise and Fall of Democracy in Jammu and Kashmir, Asian Survey Vol. 37, No. 11 (Nov., 1997), pp. 1005-1030, https://www.istor.org/stable/2645738?seq=1#page_scan_tab_contents
- ⁴⁰ The Print, 06.08.19, <https://theprint.in/opinion/after-article-370-modis-first-test-in-jk-will-begin-once-curfew-is-lifted/272987/> and Business Insider, 28.08.19, <https://www.businessinsider.com/experts-major-uprising-in-kashmir-after-indias-crackdown-2019->
- ⁴¹ Al Jazeera, 06.08.19, <https://www.aljazeera.com/news/2019/08/india-kashmir-move-face-legal-challenges-experts-190806053650480.html>

References on danger for constitutional protection and rule of law

- ⁴² Aman Hingorani, Supreme Court Lawyer in India, Indian Express 01.09.19, <https://indianexpress.com/article/explained/kashmir-issue-art-370-solution-removing-it-dr-aman-hingorani-5954862/>
- ⁴³ Gautam Bhatia, Lawyer and Teacher at National University of Juridical Sciences, <https://www.bloombergquint.com/opinion/the-article-370-amendments-key-legal-issues>
- ⁴⁴ Soli Sorabjee, Former Attorney General, India Today, 06.08.19, <https://www.indiatoday.in/mail-today/story/kashmir-article-370-legal-eagles-split-on-repeal-of-35a-1577638-2019-08-06>
- ⁴⁵ India Today, 10.08.19, <https://www.indiatoday.in/india/story/national-conference-moves-supreme-court-challenging-presidential-order-on-article-370-1579444-2019-08-10>
- ⁴⁶ Public Interest Litigation Watch Group, 06.09.19, <https://pilwatchgroup.blogspot.com/2019/09/with-kashmiris-still-locked-up-supreme.html>
- ⁴⁷ Quartz India, 05.09.19, <https://qz.com/india/1702533/what-assams-nrc-says-about-citizenship-human-rights-in-india/>
- ⁴⁸ Human Rights Watch, 22.09.17, <https://www.hrw.org/news/2017/09/21/india-key-un-rights-recommendations-ignored>
- ⁴⁹ The Hindu, 21.05.19, <https://www.thehindu.com/news/national/india-cuts-off-un-panel-after-jammu-kashmir-report/article27190445.ece>
- ⁵⁰ On constitutional occupation, see The Conversation, 21.08.19, <http://theconversation.com/kashmiris-are-living-a-long-nightmare-of-indian-colonialism-121925>

⁵¹ * **Disclaimer:** The views expressed herein by particular signatories pertain to them and do not necessarily reflect the official positions of their affiliated institutions.