

ANNUAL REPORT
THREE YEARS AS A UNION TERRITORY:
HUMAN RIGHTS IN J&K
AUGUST 2021-JULY 2022



THE FORUM FOR HUMAN RIGHTS
IN JAMMU AND KASHMIR

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THE REPORT AND METHODOLOGY

The Forum for Human Rights in Jammu and Kashmir comprises an informal group of concerned citizens who believe that, in the prevailing situation in the former state of Jammu and Kashmir, an independent initiative is required so that continuing human rights violations do not go unnoticed.

The aim of the Forum is to highlight, report, and seek action. It will focus primarily on human rights protected by the constitutions of India and of Jammu and Kashmir, as well as those identified in international treaties/instruments which India has ratified. It will research evident violations, and may take *suo motu* notice of any violation, irrespective of whether or not a formal complaint is received.

The Forum for Human Rights in Jammu and Kashmir will receive information/materials on human rights violations to its email hrforumjk@gmail.com and through other means, and it may report/forward complaints to relevant authorities with recommendations for action. Please note that this is not an adjudicatory body.

This is the fourth report issued by the Forum.¹ It has largely been compiled from local first-hand accounts, government sources, media accounts (carried in well-established and reputed newspapers or television), and NGO fact-finding reports. The various sources listed above have been fact-checked against each other to ensure the information is as accurate as possible, and only that information has been carried that appears to be well-founded.

The members of the Forum for Human Rights in Jammu and Kashmir take allegations of inaccuracy, bias, or any other criticism founded in fact, very seriously. Criticism of this nature will be considered and responded to in real time.

¹ See August 2019-July 2020 Report at <https://indianculturalforum.in/2020/07/23/jammu-and-kashmir-the-impact-of-lockdowns-on-human-rights/>; the August 2020 – January 2021 report at <https://indianculturalforum.in/2021/02/15/a-landscape-of-intimidation-media-in-jammu-and-kashmir/>; and the August 2021 report at <https://indianculturalforum.in/2021/08/04/two-years-of-lockdown-human-rights-in-jammu-and-kashmir-2021/>.

MEMBERS OF THE FORUM

Co-Chairs:

Justice AP Shah, former Chief Justice of the Madras, and Delhi, High Court

Gopal Pillai, former Home Secretary, Government of India

Members:

Justice Ruma Pal, former judge of the Supreme Court of India

Justice Madan B. Lokur, former judge of the Supreme Court of India

Justice Bilal Nazki, former Chief Justice of the Orissa High Court

Justice Hasnain Masoodi, former judge of the Jammu and Kashmir High Court

Justice Anjana Prakash, former judge of the Patna High Court

Nirupama Rao, former Foreign Secretary, Government of India

Probir Sen, former Secretary-General, National Human Rights Commission

Amitabha Pande, former Secretary, Inter-State Council, Government of India

Moosa Raza, former Chief Secretary, Government of Jammu and Kashmir

Hindal Haidar Tyabji, former Chief Secretary, Government of Jammu and Kashmir

Shantha Sinha, former chairperson, National Commission for the Protection of Child Rights

Radha Kumar, former member, Group of Interlocutors for Jammu and Kashmir

Lieutenant-General H S Panag (retd)

Major-General Ashok Mehta (retd)

Air Vice-Marshal Kapil Kak (retd)

Colonel Yoginder Kandhari (retd)

Enakshi Ganguly, Co-founder and former Co-director, HAQ Centre for Child Rights

Ramachandra Guha, writer and historian

Anand Sahay, columnist

Shivani Sanghavi, lawyer and activist, human rights in conflict

INTRODUCTION AND EXECUTIVE SUMMARY

This Forum's last report, published in August 2021 on the second anniversary of Jammu and Kashmir's loss of statehood and military lockdown, noted that several human rights violations described in the previous two reports persisted. These included issues of arbitrary detention, prohibition on public assembly, and mass imprisonment. In the third year following the dilution of Article 370, the Forum is constrained to report that these human rights abuses continue unabated and that its recommendations remain unheeded.

Large numbers of political detainees taken into preventive detention on or after 4 August 2019 remain in jail as undertrials.¹ In further violation of their rights, a number of political prisoners were recently shifted from Kashmir to jails in Haryana, Uttar Pradesh, and New Delhi. Prison officials claimed that this move sought to prevent radicalization of other inmates and the misuse of jails for 'anti-national' activities.²

There has been no comprehensive official investigation or review of human rights violations committed by police personnel or the armed forces. Instead, there are plans to revive state-backed militia branded as 'Village Defence Groups' (VDG) by the Union Government in Jammu and Kashmir. This move comes despite allegations of gross human rights abuses by members of the VDG, including charges of rape and murder. Official data reveals that 221 criminal cases have been filed against VDG personnel so far.³

The August 2021 report recommended that judicial guidelines on the use of Section 144 of the Code of Criminal Procedure, 1973 ought to be strictly complied with. Nevertheless, arbitrarily imposed curfews continue to disrupt life and business in the region. Authorities use the provision as an automatic response in the face of any public order issue.⁴ Recently, in June 2022, curfews were imposed and internet services were cut in Srinagar, Kishtwar, and Bhandarwah after local protests were held against remarks made by former BJP spokesperson Nupur Sharma. Political leaders also condemned the repeated closure of Jamia Masjid in Srinagar for Friday prayers by the authorities.⁵

1 As per National Crime Records Bureau (NCRB) statistics, J&K has the highest ratio of undertrials in jails at 91%. See Deeptiman Tiwary, *76% prisoners are undertrials; ratio is highest in Delhi, J&K*, Indian Express, 4 May 2022. Available at: <https://indianexpress.com/article/india/76-per-cent-prisoners-are-undertrials-ratio-is-highest-in-delhi-jk-7900089/>.

2 *82 more Kashmiri, Pak prisoners shifted to jails in UP, Haryana*, Kashmir Life, 15 May 2022. Available at: <https://kashmirlife.net/82-more-kashmiri-pak-prisoners-shifted-to-up-delhi-haryana-292505/>.

3 Jehangir Ali, *Despite rights abuses, Union govt set to revive stated-backed civil militia in J&K*, The Wire, 4 March 2022. Available at: <https://thewire.in/security/jammu-and-kashmir-civil-milita-vgd>.

4 For example, Section 144 was employed in Famrote, Sangaldan, and Seripora areas in the Gool subdivision after civilian Amir Ahmad was killed in crossfire between security officials and militants. See *Hyderpora killings: Section 144 imposed in Ramban areas*, Greater Kashmir, 17 November 2021. Available at: <https://www.greaterkashmir.com/chenab-valley/hyderpora-killings-section-144-imposed-in-ramban-areas>.

5 *Shutdown in Srinagar over remarks made by ex-BJP spokespersons against Prophet, use of derogatory language in Bhandarwah*, Indian Express, 10 June 2022. Available at: <https://indianexpress.com/article/cities/srinagar/shutdown-srinagar-comments-against->

The Union Territory has also seen issues crop up on additional fronts. Recently, there was volatility in the Valley after the conviction of Jammu and Kashmir Liberation Front (JKLF) chief Yasin Malik in a terror funding case. Parts of Srinagar observed a spontaneous shutdown and there were clashes between protestors and security personnel reported in several areas of the city.⁶

There was a fresh blow to the freedom of press in the Valley after the Kashmir Press Club witnessed a ‘military style’ takeover by a group of journalists who broke into the club offices on 15 January 2022. These outsiders grabbed hold of the official seals and letterhead of the club as policemen cordoned off the premises. This group appointed themselves as interim management of the club. The move came after a de-registration certificate had been issued to the club on 29 December 2021. The subsequent re-registration of the club had been kept in abeyance by the authorities.⁷ The club had been both a material and spiritual safehouse for Kashmiri journalists reeling under constant harassment by the State. It had been used as a postal address for local journalists and as a site to exchange tip-offs about happenings in the Valley.⁸

The region’s economy continued to exhibit a strong downward spiral and there are fears that the middle and the lower classes are rapidly losing their purchasing capacity. Sales in the automobile sector, which are considered a reliable indicator of spending power, witnessed a fall of over thirty percent from last year. Public works in the Union Territory have slowed down as the authorities have found it difficult to identify contractors that are liquid enough to undertake them.⁹

The region has also been reeling under the impact of natural disasters. There were serious incidents of flash floods following cloudbursts in Amarnath and Budgam this year. The flood near the Amarnath caves on 8 July 2022 left 17 dead and 40 injured, with over 60 people still missing.¹⁰ Low-lying areas in Srinagar were flooded after incessant rains and rising water levels in the Jhelum river.¹¹

Scope and findings of the present report

For much of its recent history, the region has been subject to unilateral decision-making by New Delhi. The dilution of Article 370 took this trend to further extremes and drained

prophet-7962848/.

6 M. Saleem Pandit, *Yasin Malik life term: Protests amid shutdown in Srinagar areas*, The Times of India, 26 May 2022. Available at: <https://timesofindia.indiatimes.com/india/yasin-malik-life-term-protests-amid-shutdown-in-srinagar-areas/articleshow/91798274.cms>.

7 Ishfaq Tantry, *The Kashmir Press Club saw a government-backed takeover – not a war between factions*, Scroll, 22 January 2022. Available at: <https://scroll.in/article/1015625/the-kashmir-press-club-saw-a-government-backed-takeover-not-a-war-between-factions>.

8 Peerzada Ashiq, *Kashmir Press Club: A watchdog silenced*, The Hindu, 21 January 2022. Available at: <https://www.thehindu.com/opinion/op-ed/a-watchdog-silenced/article38299081.ece>.

9 Masood Hussain, *That sinking feeling*, Kashmir Life, 11 July 2022. Available at: <https://kashmirlife.net/that-sinking-feeling-vol-14-issue-15-296173/>.

10 *The Amarnath flood*, Kashmir Life, 20 July 2022. Available at: <https://kashmirlife.net/the-amarnath-flood-vol-14-issue-16-296658/>.

11 *Heavy rainfall triggers landslides and flash floods in parts of Jammu and Kashmir*, Scroll, 22 June 2022. Available at: <https://scroll.in/latest/1026702/heavy-rainfall-triggers-landslides-and-flash-floods-in-parts-of-jammu-and-kashmir>.

local political leadership of its power in the region. The move further fortified the Centre's ability to dictate events in the Union Territory. This continues to be the case at the time of publication, as Jammu and Kashmir remains under the administration of a lieutenant-governor.

The themes chosen for this edition of the report can be situated in the backdrop of the Centre's unilateral attempts to engineer changes in Jammu and Kashmir. The first part of this report continues the Forum's work of documenting human rights violations in the region. It highlights instances of violence against civilians at the hands of militants and security personnel and abuse of sedition and anti-terror laws against locals and journalists. The second section examines the political impact of the recent order of the Delimitation Commission which carried out a delimitation exercise for Parliamentary and Assembly seats in Jammu and Kashmir. This section is followed by an analysis of the recent attempt to manufacture grassroots democracy in the region through Panchayati Raj institutions. Finally, this report looks at the recent targeted killings of Kashmiri Pandits and the political decisions that may have precipitated the same.

The findings of the report are as follows:

1. Civilian casualties due to militancy in Jammu and Kashmir remain inordinately high. Since the publication of the Forum's last report, militants have been targeting local elected representatives, migrant workers, and Hindus in the Valley. These attacks have been difficult to predict and have created an atmosphere of fear and unrest. Security arrangements for these vulnerable groups have proved to be inadequate so far.
2. Anti-terror and sedition laws continue to be disproportionately employed against locals, political leaders, and journalists. There has been a severe clampdown on the freedom of press through police harassment, intimidation, and arbitrary detention. Journalists and opposition leaders remain under detention for extensive time periods as the Union Territory administration opposes their bail on flimsy grounds.
3. The Delimitation Commission's orders are not in consonance with accepted principles of allocation of seats. The criteria of population, which is the cardinal principle in this regard, has not been adhered to in the allocation of 47 assembly seats to Kashmir and 43 to Jammu. The present allocation dilutes the constitutional right of effective political representation and 'one person one vote' for voters in Kashmir.
4. The demarcation of Lok Sabha and Assembly seats in the Commission's orders also generates concerns of gerrymandering. Multiple seats have been redrawn with different configurations of Hindu and Muslim majority areas to create undue electoral advantages for the ruling Bharatiya Janata Party (BJP) and to the drawback of opposition parties in the region.
5. Attempts to engender grassroots democracy in Jammu and Kashmir have not been fruitful. Elected Panchayat representatives remain fearful of attacks by militants. There is no comprehensive security mechanism in place for Panchayat leaders across

the Union Territory. For Panchayat representatives who are on the militant hitlist, it has become impossible to discharge their duties as they have been confined in secure accommodations for extended periods of time, often in miserable conditions.

6. Panchayats have been unable to discharge development projects in their locality as leaders complain of interference in their work by an uncooperative bureaucracy. Local commissioners, administrators, and secretaries do not allow independent decision-making by Panchayat representatives. The administration also makes their jobs more difficult by taking unilateral decisions and by arbitrarily withholding permissions for public works.
7. The recent attacks against Kashmiri Pandits in the Valley have come in an environment of heightened disaffection between communities. This tension has been in part caused by the polarisation and fear-mongering promoted by the film *The Kashmir Files*. Growing communalization elsewhere in the country also raises alarms of retaliation by militants and further jeopardizes the security of the already vulnerable community of Kashmiri Pandits living in the valley.
8. The recent attacks have focused attention on the miserable conditions of Kashmiri Pandits living under tight security in transit camps across the Union Territory. Due to their confinement, Kashmiri Pandits have been unable to continue with their jobs and children have been unable to attend classes and exams.
9. There has been no progress in the implementation of the PM's employment package for Kashmiri Pandits in the Valley. Very few Kashmiri Pandit families have been granted accommodation as the proposed additional transit camps have yet to be constructed. The amount of financial relief granted to them has also not undergone any revision for a number of years and has caused great financial hardship to families.

RECOMMENDATIONS

Security and issues of law and order

1. Halt arrests of local journalists such as Fahad Shah on flimsy grounds and free those journalists who still remain in captivity, such as Aasif Sultan. As the Supreme Court recently noted in the case of Mohammad Zubair, journalists are facing a pattern where they get remanded in a new case just as they are about to get bail in another. This creates a vicious cycle of detention.
2. Similarly, either promptly charge and try political leaders who are still under detention or release them forthwith.
3. In light of targeting of local police by armed groups, minimize their involvement in counter-terrorism operations, which in any case ought to be undertaken only by specialist security forces. Retrain the bulk of the local police force for community policing.

Delimitation

1. Restore the statehood of Jammu and Kashmir and hold state Assembly elections in order to give effect to the third tier of governance.
2. Shelve the Delimitation Commission report given its severe flaws, and hold elections under the previously demarcated constituencies. This might require amending The Jammu and Kashmir Reorganisation Act, 2019, which is in any case under challenge before the Supreme Court. An amendment can easily be effected as the Parliament is currently in session.

Panchayati Raj

1. Empower elected panchayat officials by giving them authority over halqa projects that cost less than Rs. 3 lakhs, in order to respond to the felt need of the concerned community. Facilitate a self-audit system for such projects. The execution of the projects should be done through the involvement of local labour, as visualized in the Panchayati Raj Act, and involving a contractor only when technical compulsions make this an imperative.
2. Institutionalize regular interaction between elected Panchayat representatives with the authorities and encourage them to learn from local governance experience through interaction with experts and counterparts from other

states. While bureaucratic interface is required for Panchayati Raj, bureaucratic interference must be eschewed.

3. While providing individual security to the more than 30,000 elected panchayat officials may be impossible, since it would require over a lakh of security personnel, the current system of restricting them to hostel-like housing in Srinagar makes a mockery of their role. Recognise that the most effective security for Panchayat representatives comes from community support. Thus, refrain from actions or statements that might alienate the community and make Panchayat representatives vulnerable (for example – proclaiming that Panchayat representatives will replace existing political leaders and parties in the region is deeply resented in the Valley).

Kashmiri Pandits

1. As the Government's plan for the construction of 6000 additional transit accommodation units has only achieved a success rate of 17 percent, the project requires completion on a war footing. Moreover, there is an urgent need to build an additional few thousand housing units to enhance habitat security of Pandits.
2. The Government's ongoing efforts to transfer Pandit employees under the PM's package to relatively safer locations within the Valley must be stepped up but their demands for transfer to Jammu region would defeat the very purpose of Pandit relocation as part of their larger footprint in Kashmir.
3. Involve local community leaders in programs for reintegration of Kashmiri Pandits. Strengthen inter-community relations through communication and dialogue at village, block, and district level so as to reinvigorate trust and social bonds between the majority community and the Pandits.

LIST OF RIGHTS THAT CONTINUE TO BE VIOLATED

1. Right to habeas corpus, right to live in peace, right to protection against arbitrary arrest, illegal and/or preventive detention, custodial violence and injury, right to bail, right to fair and speedy trial.

The Constitution of India, Article 21: No person shall be deprived of his life or personal liberty except according to a procedure established by law. (Applies when a person is deprived of his life or personal liberty by the state as defined in Article 12). Includes:

Habeas corpus (*Maneka Gandhi v Union of India*¹², *Sunil Batra v Delhi Administration*¹³, *Francis Coralie Mullin v Administrator, Union Territory of Delhi and Others*¹⁴); Protection from injury (*Kharak Singh v State of Uttar Pradesh*¹⁵); Right against illegal detention (*Joginder Kumar v State of Uttar Pradesh*,¹⁶ *D.K. Basu v State of West Bengal*¹⁷); Right to bail (*Babu Singh v State of Uttar Pradesh*¹⁸); Right to speedy trial (*Hussainara Khatoon v Home Secretary, State of Bihar*,¹⁹ *A.R. Antulay v R.S. Nayak*,²⁰ *Anil Rai v State of Bihar*,²¹ *Zahira Habibullah Sheikh v State of Gujarat*²²).

The Constitution of India, Articles 22(4) and 22(5). Protection against arrest and detention in certain cases: Preventive detention must be no more than three months unless an Advisory Board comprising High Court judges or their equivalent determines that there is sufficient cause for extension of the detention period. Detainees should be given the earliest opportunity of making a representation against the order.

12 AIR 1978 SC 597. In this case, the Court discussed the inter-relationship between Article 14, 19 and 21 and held that procedures under Article 21 must comply with the principle of reasonableness and meet the challenges of Articles 14 and 19.

13 AIR 1980 SC 1579. In this case, the Court expanded the scope of the habeas corpus writ to address custodial torture and affirmed that the right to life under Article 21 meant something more than mere animal existence.

14 AIR 1981 SC 746. In this case, the Court reaffirmed the principle that the right to life cannot be restricted to mere animal existence.

15 AIR 1963 SC 1295. In this case, the question was whether surveillance of the petitioner who was accused of dacoity and subsequently released for lack of evidence violated his fundamental rights. Held, 'domiciliary visits' were violative of the petitioner's right to 'personal liberty' under Article 21.

16 AIR 1994 SC 1349. In this case, the Court held that no arrest can be made merely on the allegation of the commission of a crime and without a reasonable satisfaction reached after investigation as to the genuineness of the complaint. The Court also held that the rights of the arrested person under Articles 21 and 22 must be protected.

17 AIR 1997 SC 610. This case was regarding deaths of detainees in police lock-ups and custody.

18 AIR 1978 SC 527. In this case, the Court discussed the conditions to be satisfied to grant bail.

19 AIR 1979 SC 1369. In this case, the Court observed that the State has a constitutional obligation to provide speedy trial to the accused.

20 AIR 1992 SC 1701. In this case, the Court while holding that the right to speedy trial flows from Article 21 laid down guidelines for speedy trial.

21 AIR 2001 SC 3173. In this case, the Court reaffirmed that it was the policy and purpose of law to have speedy justice.

22 AIR 2006 SC 1367. In this case, the Court observed that the failure to provide fair hearing violates the minimum standards of due process of law.

The Universal Declaration of Human Rights, 1948 (to which India is a party), Article 8: right to an effective legal remedy; Article 9: protection against arbitrary arrest, detention or exile; and Article 10: fair and public hearing.

The International Covenant for Civil and Political Rights, 1966 (to which India is a party), specifies pre-trial detention only for narrow purposes such as to “prevent flight, interference with evidence, or the recurrence of the crime”. The Working Group on Arbitrary Detention of the UN Human Rights Council (of which India is a member) states that “any detention must be exceptional and of short duration and a release may be accompanied by measures intended only to ensure representation of the defendant in judicial proceedings”.²³

2. Right to freedom of speech and expression, right to peaceful assembly.

The Constitution of India, Article 19(1): All citizens shall have the right, (a) to freedom of speech and expression; and (b) to assemble peaceably and without arms. Article 19(2): any restriction on speech must have a proximate connection with a specific head set out in the article and must show a real and imminent risk of harm arising from the speech and not vague speculation about possible future harms: *Chintaman Rao and Others v The State of Madhya Pradesh*,²⁴ *Sakal Papers (P) Ltd., and Others v Union of India*,²⁵ *Shreya Singhal v Union of India*,²⁶ *Subramanian Swamy v Union of India*.²⁷

The Universal Declaration of Human Rights, 1948, Article 19: right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The Universal Declaration of Human Rights, 1948, Article 20(1): right to freedom of peaceful assembly and association.

3. Right to work, right to livelihood.

The Constitution of India, Article 19(4(g)): the right to practise any profession, or to carry on any occupation, trade or business.

The Constitution of India, Article 41: The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work. *State of*

23 Human Rights Council, ‘Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fifth session, 12–16 August 2019, Opinion No. 34/2019 concerning Vladimir Alushkin (Russian Federation), A/HRC/WGAD/2019/34, 20 September 2019, para 59, https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session85/A_HRC_WGAD_2019_34%20ADVANCEEDITEDVERSION.pdf

24 AIR 1951 SC 118. In this case, the Court observed that the restriction must have a reasonable relation to the object which it seeks to achieve.

25 AIR 1962 SC 305. In this case, the Court observed that the State cannot restrict one freedom even for the better enjoyment of another freedom

26 AIR 2015 SC 1523. This case was regarding the constitutional validity of certain provisions of the Information Technology Act, 2000 and whether the provisions violated the freedom of speech and expression. The Court held that mere fear of serious injury in the absence of reasonable ground to believe that injury is imminent cannot justify the suppression of free speech and assembly.

27 AIR 2016 SC 2728. This case was regarding the constitutional validity of Sections 499 and 500 of the Indian Penal Code (criminal defamation) and whether such provisions have a ‘chilling effect’ on the freedom of speech. The Court reaffirmed the principle that restrictions should not be excessive and that reasonableness would have to be adjudged based on the ultimate ‘impact’ on the right in question.

Maharashtra v Shobha Vitthal Kolte and Ors,²⁸ *Air India Statutory Corporation v United Labour Union & Ors*,²⁹ *M/S Zee Telefilms Ltd. & Anr v Union of India & Ors*,³⁰ *Samir Bhattacharya And Ors. v The State of West Bengal And Ors*,³¹ *Rishi Kumar v State Of U.P. And Ors*.³²

The Constitution of India, Article 21: the right to life includes the right to livelihood. *Delhi Development Horticulture Employees' Union v Delhi Administration, Delhi and Ors*.³³

The Constitution of India, Article 39(a): the right to an adequate means of livelihood, the right not to be deprived of a livelihood. *Olga Tellis v Bombay Municipal Corporation*.³⁴

Universal Declaration of Human Rights, 1948, Article 23(1): the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment; and Article 23(3): the right to just and favourable remuneration.

International Covenant on Economic, Social and Cultural Rights, 1966, Article 1(2): All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice. In no case may a people be deprived of its own means of subsistence); and Article 6(1): the right to work includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.

28 AIR 2006 Bom 44. In this case, the Court held that right to work as fundamental right could be considered fundamental right in those cases where there was legislative guarantee.

29 AIR 1997 SC 645. In this case, the Court observed that due to economic constraints, though right to work was not declared as a fundamental right, the right to work of workman, lower class, middle class and poor people is a means to development and source to earn livelihood.

30 AIR 2005 SC 2677. In this case, the Court observed that right to work, although is not a fundamental right but a right to livelihood, is within the terms of Article 21 of the Constitution of India.

31 1992 (1) CLJ 494. In this case, the Court drew light from a previous judgment that the right to life includes right to livelihood and observed that the right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment, the Court said, is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

32 2003 3 AWC 1770 All. In this case, the Court reiterated that instrumentality of the State should ensure the service security to its employees and that there should be an end to arbitrary termination of services of such employees. It further observed that Articles 14 and 21 of the Constitution of India conferred upon a citizen the right to work and dignity of person with means of livelihood.

33 AIR 1992 SC 789. In this case, the Court observed that there is no doubt that broadly interpreted and as a necessary logical corollary, the right to life would include the right to livelihood and, therefore, right to work.

34 AIR 1986 SC 180. In this case, the Court stated that the right to live and the right to work are integrated and inter-dependant and, therefore, if a person is deprived of his job as a result of his eviction from a slum or a pavement, his very right to life is put in jeopardy.

1

CIVILIAN SECURITY

Overall security assessment

Targeted killings have been a persisting phenomenon in Jammu and Kashmir, although the targeted groups are liable to change. For a long time, militants have targeted government employees, elected representatives, and police officers. Since the publication of this Forum's last report in August 2021, this category now also includes migrant labourers and Hindus. Attacks against Kashmiri Pandits and Panchayat representatives have been discussed in later sections of this report.

There have been approximately 128 civilian fatalities attributed to terrorism since the August 2021 report.³⁵ The corresponding statistic for the period between January to July 2021 was 125. However, although there has been a decline in civilian casualties, there has been an uptick in terrorist activity since the beginning of this year. As per officials, 62 incidents of terrorist activity have already been recorded this year. Security forces also claim to have killed 102 militants in 2022.³⁶

Moreover, official data reveals that the number of foreign militants active in Kashmir has gone up. At present, there are purportedly 172 militants active in Kashmir, out of whom 79 are foreigners. There were only two infiltration attempts, which were both foiled.³⁷

Since this Forum's last report in August 2021, there has been an encouraging downturn in ceasefire violations and cross-border shelling. No untoward incident has been reported in villages bordering the Line of Control (LoC) since a truce was agreed between India and Pakistan in February 2021.³⁸ Locals in these areas have been able to cautiously rebuild their lives and their homes. The truce has reportedly resulted from lengthy backchannel talks between officials on both sides. There is also belief that the present situation will give a fillip to cross-LOC trade and bus travel.³⁹

35 Datasheet – Jammu & Kashmir, South Asia Terrorism Portal. Available at: <https://www.satp.org/datasheet-terrorist-attack/fatalities/india-jammukashmir>.

36 Anees Zargar, *Over 100 militants killed in Kashmir in less than 6 months in 2022*, NewsClick, 14 June 2022. Available at: <https://www.newsclick.in/Over-100-Militants-Killed-Kashmir-Less-Than-6-Months-2022>; Rahul Tripathi, *Steep rise in terrorism in J&K compared to last year*, The Economic Times, 26 May 2022. Available at: <https://economictimes.indiatimes.com/news/defence/steep-rise-in-terrorism-in-jk-compared-to-last-year/articleshow/91797600.cms?from=mdr>

37 *79 foreign militants active in J-K against 93 locals, reveals official data*, The Kashmir Walla, 4 April 2022. Available at: <https://thekashmirwalla.com/79-foreign-militants-active-in-j-k-against-93-locals-reveals-official-data/>.

38 Mansoor Ahmed, *One year of crossfire at LoC*, Eurasia Review, 14 April 2022. Available at: <https://www.eurasiareview.com/14032022-one-year-of-ceasefire-at-loc-oped/>.

39 Sajid Raina, *Delicate truce along LoC border completes a year, Kashmiris on the border now seek a new normal*, Article 14, 30 March 2022. Available at: <https://article-14.com/post/delicate-truce-along-loc-completes-a-year-kashmiris-on-the-border-now-seek-a-new-normal-62432b41ed8ea>.

However, locals in villages adjoining the LoC have started feeling uneasy again after the change in government in Pakistan. This is particularly in light of new Pakistan Prime Minister Shehbaz Sharif's statement in his inaugural speech that he desired good ties with India but not before resolution of the 'Kashmir issue'.⁴⁰

Civilian casualties

There have been around 19 civilians killed since the start of 2022. Inspector-General of Police (IGP) Vijay Kumar recognized that more preventive measures need to be put in place to limit the possibility of such events from recurring.⁴¹

On 5 October 2021, 26-year-old Mohammad Shafi Lone was shot dead by a militant organization called The Resistance Front. Lone was able to call his father after the shooting, but his family could not save him after he was found lying in a paddy field near Shahgund in Bandipora.⁴² On the same day, Virender Paswan, a panipuri seller from Bihar, was also shot dead. The Islamic State Wilayah Hind, believed to be an offshoot of the Islamic State, claimed responsibility for the act.⁴³

Two government schoolteachers were shot dead by militants in the Eidgah area of Srinagar on 7 October 2021. These included Sikh school principal Supinder Kour, a resident of Alochi Bagh in Srinagar, and Deepak Chand, a resident of Jammu. Kour's husband Ramresh Paul Singh learned of his wife's death through an image forwarded to him on Whatsapp.⁴⁴ Her neighbors erected a banner at her house paying tribute to her act of financially supporting an orphaned Muslim girl in the neighborhood.⁴⁵

On 25 February 2022, Shakeel Ahmad Khan, a civilian, was killed during a gunfight between militant and security forces in Shopian. Officials claimed that the militants had started 'indiscriminate firing', forcing the officers to retaliate. Security forces were able to kill the two militants involved.⁴⁶

On 7 March 2022, militants tossed a grenade at security forces near the busy Amira Kadal bridge in Srinagar and missed the target. The area was witnessing a rush of people visiting the popular local Sunday market. The explosion injured 24 people and killed 19-year-old Rafiya Nazir and 55-year old Muhammad Aslam Makhdoomi. Rafiya was an aspiring

40 Arjun Sharma, *After government change in Pakistan, border villages fear ceasefire violations*, The Tribune, 13 April 2022. Available at: <https://www.tribuneindia.com/news/j-k/after-govt-change-in-pak-border-villages-fear-ceasefire-violations-385879>.

41 Suvojit Bagchi, *How recent civilian killings alter the course of the Kashmir conflict*, TRT World, 17 June 2022. Available at: <https://www.trtworld.com/magazine/how-recent-civilian-killings-alter-the-course-of-the-kashmir-conflict-58072>.

42 M. Saleem Pandit, *Mohammad Shafi Lone was ambushed, killed by associates of militants known to him: Jammu and Kashmir police*, The Times of India, 11 October 2021. Available at: <https://timesofindia.indiatimes.com/india/mohammad-shafi-lone-was-ambushed-killed-by-associates-of-militants-known-to-him-jammu-and-kashmir-police/articleshow/86921874.cms>.

43 Dipak Mishra, *Bihar man lost Kolkata job, sold chaat in Kashmir, killed by terrorists, cremated without family*, The Print, 9 October 2021. Available at: <https://theprint.in/india/bihar-man-lost-kolkata-job-sold-chaat-in-kashmir-killed-by-terrorists-cremated-without-family/748314/>.

44 Safwat Zargar, *Kashmir 2021: How the Valley changed after the killings of religious and ethnic minorities*, Scroll, 30 December 2021. Available at: <https://scroll.in/article/1013919/kashmir-2021-how-the-valley-changed-after-the-killings-of-religious-and-ethnic-minorities>.

45 Rohit Bhan, *Kashmir killings: Slain Sikh principal was a quiet do-gooder*, The Tribune, 14 October 2021. Available at: <https://www.tribuneindia.com/news/j-k/kashmir-killings-slain-sikh-principal-was-a-quiet-do-gooder-324615>.

46 Samaan Lateef, *Civilian, two LeT militants killed in Shopian gunfight*, The Tribune, 25 February 2022. Available at: <https://www.tribuneindia.com/news/j-k/civilian-two-let-militants-killed-in-shopian-gunfight-373023>.

doctor and had gone shopping with her mother a month after securing high marks in her Class 12 Board exams.⁴⁷

Satish Kumar Singh, a driver and father of three girls, was shot dead at his home in Kakran, Kulgam on 13 April 2022. Singh belonged to the Kashmiri Rajput community. His brother Anil claimed that Rajput families in the region had received threats from militants to leave the region but had paid them no heed. Hundreds of the family's Muslim neighbors visited their home and helped in Singh's cremation.⁴⁸

Shoib Ah Ganie, a civilian, was killed in the crossfire between security forces and militants, in Pulwama district on 15 May 2022. The terrorists managed to escape into nearby orchards.⁴⁹

On 17 May 2022, Baramulla wine shop employee Ranjit Singh was killed after a burqa-clad militant tossed a grenade inside the store through a window. Three other employees were injured. Ranjit was a resident of Bakra in the Rajouri district.⁵⁰

On 25 May 2022, 35-year-old Kashmiri TV actress Amreen Bhat was shot dead outside her home in Hushroo, Budgam, as her sister and nephew helplessly watched. State police claimed that the perpetrators belonged to Jaish-e-Mohammed (JeM) and Lashkar-e-Taiba (LeT). Her family remains in the dark as to the possible reasons for the killing as she had never faced any previous threats.⁵¹

Migrant workers targeted

In Kashmir, there is ordinarily an influx of workers during the spring season, and they return home with the onset of winter in November. These are also the periods in which attacks by militants against migrant workers intensify.⁵² Security officials claim that these attacks are 'momentary spikes in violence'.⁵³ However, the fact remains that the targeting of migrants is in danger of becoming a recurring pattern. The Resistance Front, a militant group, perceives migrant workers as part of New Delhi's designs to alter the demography of the region.⁵⁴ Local orchard owners have reported suffering large losses due to unavailability of labourers.⁵⁵

47 Nazir Masoodi, *Hundreds mourn death of 19-year-old killed in Srinagar grenade attack*, NDTV, 7 March 2022. Available at: <https://www.ndtv.com/india-news/hundreds-mourn-death-of-19-year-old-killed-in-srinagar-grenade-attack-2808497>.

48 Muzaffar Raina, *Father of three young girls killed in Kashmir's Kulgam district*, The Telegraph, 15 April 2022. Available at: <https://www.telegraphindia.com/india/father-of-three-young-girls-killed-in-kashmirs-kulgam-district/cid/1860661>.

49 *J&K: Civilian killed in gunfight between security forces and terrorists in Pulwama*, The Quint, 16 May 2022. Available at: <https://www.thequint.com/news/india/jk-civilian-killed-in-gunfight-between-security-forces-terrorists-in-pulwama#read-more>.

50 *Wine shop employee killed, 3 injured in grenade attack in J&K's Baramulla*, Business Standard, 17 May 2022. Available at: https://www.business-standard.com/article/current-affairs/wine-shop-employee-killed-3-injured-in-grenade-attack-by-burqa-clad-terrorist-122051701568_1.html.

51 Shakir Mir, *J&K artist Amreen Bhat killed: Why did a TV actress become militants' target?*, The Quint, 30 May 2022. Available at: <https://www.thequint.com/news/india/jk-artist-amreen-bhat-killed-why-did-a-tv-actress-become-militants-target#read-more>.

52 Tarushi Aswani, *Why do labourers migrate to the Kashmir valley despite the dangers?*, The Wire, 17 July 2022. Available at: <https://thewire.in/labour/kashmir-migrant-workers-dangers>.

53 Safwat Zargar, *Once again, migrant workers are fleeing Kashmir after a spate of attacks*, Scroll, 9 April 2022. Available at: <https://scroll.in/article/1021443/once-again-migrant-workers-are-fleeing-kashmir-after-a-spate-of-attacks>.

54 Rifat Fareed, *Kashmir migrant workers flee amid rise in suspected rebel attacks*, Al Jazeera, 19 October 2021. Available at: <https://www.aljazeera.com/news/2021/10/19/india-kashmir-attacks-non-locals-migrant-workers-exodus-civilians>.

55 Junaid Dar, *New wave of attacks sparks labour shortage concerns in Kashmir*, News 9, 15 April 2022. Available at: <https://www.news9live.com/india/new-wave-of-attacks-on-migrants-spark-labour-shortage-concerns-in-kashmir-164425>.

Militants shot at and injured a carpenter from Uttar Pradesh in Arihal, Pulwama on 19 March 2022. On 3 April, a truck driver and his associate from Punjab's Pathankot were shot at in the Nowpora Litter area of Pulwama as they were sleeping in their vehicle. On 4 April, two labourers from Bihar were shot at and injured by militants in Lajoora, Pulwama as they were transporting stones. On 7 April, a truck driver from Pathankot and shot at and severely injured in Yader village in Pulwama.⁵⁶

On 2 June 2022, terrorists shot dead bank employee Vijay Kumar inside the bank premises in Kulgam. Kumar hailed from Rajasthan and was a manager with the Ellaqui Dehati Bank at the Areh Mohanpura branch.⁵⁷

A 17-year-old migrant labourer was shot dead by militants in Budgam on the following day. Dilkhush Kumar hailed from Bihar and was employed at a brick kiln in Chadoora village. His colleague Rajan, a resident of Punjab, was critically injured.⁵⁸

Issues of law and order

Abuse of powers by security forces

Three civilians were killed in a highly suspect incident on 15 November 2021. As per a police statement issued on the following day, the police had received information regarding the whereabouts of a suspected terrorist inside a building in Hyderpora. Security forces conducted a Cordon and Search Operation (CASO) and called the owner of the building Altaf Ahmad Bhat and a tenant Mudasir Gul to accompany them. However, as they approached the top floor of the building, the hidden terrorists opened fire, killing Bhat and Gul.

It is not known whether Bhat and Gul were given any protective gear. Bhat's family claimed that he was used as a human shield in a staged gunfight.⁵⁹ One Mohamad Ali Magray was also killed in the 'encounter'. Magray's family continues to refute the Jammu & Kashmir Police's claim that he was a militant.⁶⁰ Recently, the Jammu & Kashmir High Court ordered that his body be exhumed, and granted Rs. 5 lakh as compensation to his family for being deprived of their right to give the body a burial as per their religious beliefs.⁶¹

20-year-old shopkeeper Shoaib Ahmad Ganaie was killed in Shopian on 16 May 2022. His family alleged that the death was due to unprovoked firing by security forces as Shoaib

⁵⁶ *Id*

⁵⁷ Aniruddha Dhar, *Vijay Kumar 8th victim of targeted killings in J&K since May 1*, Hindustan Times, 2 June 2022. Available at: <https://www.hindustantimes.com/india-news/vijay-kumar-8th-victim-of-targeted-killings-in-j-k-since-may-1-the-incidents-101654163147212.html>.

⁵⁸ Bobins Abraham, *Brick kiln worker from Bihar becomes latest victim of targeted killings of Hindus in Kashmir*, India Times, 3 June 2022. Available at: <https://www.indiatimes.com/news/india/brick-kiln-worker-bihar-targeted-killings-hindus-in-kashmir-victim-571245.html>.

⁵⁹ Safwat Zargar, *'Terror associates' or 'human shields'? Three men killed in recent Srinagar gunfight*, Scroll, 20 November 2021. Available at: <https://scroll.in/article/1010973/terror-associates-or-human-shields-these-are-the-three-men-killed-in-a-recent-srinagar-gunfight>.

⁶⁰ Press Trust of India, *Hyderpora encounter: Slain Mohammad Amir's father claims his son was not a militant*, India Today, 17 November 2021. Available at: <https://www.indiatoday.in/india/story/hyderpora-encounter-slain-mohammad-amir-father-son-militant-1877527-2021-11-17>.

⁶¹ *Hyderpora gunfight: High Court directs govt to return body of Ramban youth*, The Kashmir Walla, 27 May 2022. Available at: <https://thekashmirwalla.com/hyderpora-gunfight-high-court-directs-govt-to-return-body-of-ramban-youth/>.

was performing Wuzu in the stream. As per a police spokesman however, the casualty occurred during an exchange for fire between militants and a CRPF patrol.⁶²

This incident had parallels with the killing of 19-year-old undergraduate student Shahid Gani Dar on 11 May 2022. Dar's family alleged that he was out to buy bread when he was stopped by security personnel. He was shot as he tried to flee. Shahid's uncle Gulzar Ahmad claimed that Shahid was afraid as there had been recent incidents where the army had roughed up locals in the area. Defence spokespersons however maintained that Shahid was killed in militant fire, as the army was evacuating other civilians from the area.⁶³

Custodial torture and deaths while under detention

Sunil Verma was found dead in mysterious circumstances inside the washroom of the Hiranagar Police Station in Kathua on 6 February 2022. His family claimed that there were third-degree torture marks on his body which indicated that he had been murdered in custody. Hundreds of protestors blocked railway tracks in the Samba district demanding an investigation into the incident.⁶⁴

On 7 April 2022, Abdul Latief hanged himself to death with a blanket in lockup at Police Station Chatroo. He had been arrested in connection with offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 and had been remanded in eight-day judicial custody. The District Magistrate ordered an inquiry into the matter.⁶⁵

23-year-old Muslim Muneer Lone was picked up by the police in Srinagar's Natipora on the morning of 9 July 2022 in connection with his alleged involvement in a theft case. The police returned an unconscious Muslim to his house in the afternoon. His family took him to the hospital after he remained unresponsive until the evening, where he was declared bought dead. The police suspended an official of the Nowgam Police Station in connection with the incident two days later, although they maintain that Muslim had a drug addiction that led to his death.⁶⁶ The City Judge, Srinagar, has since ordered an investigation into the incident.⁶⁷

Arrests and detention under anti-terror and sedition laws

As in the preceding years, the misuse of the Unlawful Activities (Prevention) Act, 1967 (UAPA) and the Jammu and Kashmir Public Safety Act, 1978 (PSA) remains rampant. Over 500 people are in jail under the PSA in J&K, of whom 150 were arrested between

62 Muzaffar Raina, *20-year-old shopkeeper killed in Valley*, The Telegraph, 16 May 2022. Available at: <https://www.telegraphindia.com/india/20-year-old-shopkeeper-killed-in-valley/cid/1865288>.

63 Muzaffar Raina, *Killed in Valley: Youth out to buy bread and ice cream*, The Telegraph, 11 May 2022. Available at: <https://www.telegraphindia.com/india/killed-in-valley-youth-out-to-buy-bread-and-ice-cream/cid/1864481>.

64 *Death in police lockup: protestors block railway tracks in J-K's Samba district*, The Print, 7 February 2022. Available at: <https://theprint.in/india/death-in-police-lockup-protesters-block-railway-track-in-j-ks-samba/824246/>.

65 Sparsh Upadhyay, *JK local court orders judicial probe into death of NDPS accused who allegedly hanged himself in police lockup*, Livelaw, 7 April 2022. Available at: <https://www.livelaw.in/news-updates/jk-local-court-orders-judicial-probe-death-ndps-accused-allegedly-hanged-himself-police-lock-up-196064>.

66 Jehangir Ali, *Kashmir: 21-year-old died because of torture in police custody, alleges family*, The Wire, 10 July 2022. Available at: <https://thewire.in/rights/kashmir-21-year-old-died-because-of-torture-in-police-custody-alleges-family>.

67 Auqib Javeed, *Srinagar 'custodial killing': Court orders FIR against Munshi, others*, Kashmir Observer, 15 July 2022. Available at: <https://kashmirobservers.net/2022/07/15/srinagar-custodial-killing-court-orders-fir-against-munshi-others/>.

March and April this year. The police are unable to execute further new warrants as the Central Jail in Srinagar and the Kot Bhalwal jails in Jammu are full.⁶⁸ The Jammu and Kashmir High Court was constrained to remark that the UAPA had become “what is was never meant to be” while granting bail to PDP leader Waheed Parra on 26 May 2022.⁶⁹

Kashmir-based human rights activist Khurram Parvez was arrested under the UAPA on 22 November 2021 in Srinagar. The National Investigation Agency (NIA) had carried out searches at his residence and at the offices of the Jammu and Kashmir Coalition of Civil Society (JKCCS) a few hours prior to his arrest. Electronics and books belonging to him were seized. Parvez’s two children were asleep in the house as the raids started unannounced. Parvez had previously been subject to similar searches in October 2020 and had undergone detention for 76 days in 2016. He is a recipient of the prestigious Asia Democracy and Human Rights Award for his work on enforced disappearances in Jammu and Kashmir.⁷⁰

On 16 December 2021, Afroza and her young daughter Ayesha were arrested for shouting ‘anti-national’ slogans by the J&K Police. They were purportedly protesting against a shootout in Srinagar on 13 December 2021 where two militants had been killed. Locals were aghast that civilians had been jailed for a mere emotional outburst.⁷¹

Since the start of this year, a worrying pattern has developed where journalists are detained immediately after being granted bail or just before a bail hearing.

16 January 2022 saw the rearrest of trainee reporter Sajad Gul under the PSA. He had been granted bail on the previous day. He was initially arrested on 6 January after he posted a video of family members of Lashkar-e-Taiba commander Salim Parray protesting against his death in a gunfight outside Srinagar.⁷²

Kashmiri journalist Aasif Sultan, who was originally detained under the UAPA in August 2018, was granted bail on 5 April 2022. However, he was immediately rearrested on 10 April 2022 and booked under the PSA. He had originally been arrested for aiding and participating in militant activities, however the NIA Court had granted him bail (albeit four years later) after finding that the prosecution had been unable to provide sufficient evidence to link him to any militant organization.⁷³

68 Ananya Bhardwaj, *Jails full, J&K Police struggle to execute arrest warrants under draconian PSA*, The Print, 28 April 2022. Available at: <https://theprint.in/india/governance/jails-full-jk-police-struggle-to-execute-arrest-warrants-under-draconian-psa/932901/>.

69 *UAPA has become what it was never meant to be: J&K HC*, Times of India, 26 May 2022. Available at: <https://timesofindia.indiatimes.com/city/srinagar/uapa-has-become-what-it-was-never-meant-to-be-jk-hc/articleshow/91799044.cms>.

70 Rifat Fareed, *India arrests prominent Kashmir rights activist under terror law*, Al Jazeera, 23 November 2021. Available at: <https://www.aljazeera.com/news/2021/11/23/india-kashmir-khurram-parvez-arrest-human-rights-uapa-terror-law>.

71 Umer Maqbool, *J&K: Woman, daughter held for ‘anti-national’ slogans, questioning cops’ version of ‘encounter’*, The Wire, 16 December 2021. Available at: <https://thewire.in/rights/jk-woman-daughter-held-for-anti-national-slogans-questioning-cops-version-of-encounter>.

72 *J&K: Journalist Sajad Gul booked under PSA a day after getting bail in criminal conspiracy case*, Scroll, 17 January 2022. Available at: <https://scroll.in/latest/1015207/j-k-journalist-sajad-gul-booked-under-psa-a-day-after-getting-bail-in-criminal-conspiracy-case>.

73 Safwat Zargar, *Kashmiri journalist Aasif Sultan booked under Public Safety Act days after getting bail*, Scroll, 11 April 2022. Available at: <https://scroll.in/latest/1021559/kashmiri-journalist-aasif-sultan-booked-under-public-safety-act-days-after-getting-bail>.

Fahad Shah, editor-in-chief of The Kashmir Walla, was first arrested on 4 February 2022 under the UAPA. On 14 March, after obtaining bail in two of the then three cases against him, and while awaiting his bail hearing for the third case, he was charged under the PSA. His lawyer alleged that new allegations were leveled against him as the authorities were apprehensive that Shah was about to be granted bail by the Special Court. He was booked under the UAPA again on 5 April.⁷⁴

On 28 February 2022, Hurriyat Conference (G) vice-chairman Ghulam Ahmad Dar was booked under the PSA for ‘giving inciting statements and statements adverse to public peace and tranquility’. The FIR claimed that he was motivating Hurriyat workers to continue Hurriyat activities in Srinagar and other parts of the valley, and that he ‘wielded considerable clout in secessionist circles’.⁷⁵

On 17 April 2022, the Jammu & Kashmir Police arrested PhD scholar Abdul Aala Fazli under the UAPA for an article titled “The shackles of slavery will break” published in the Kashmir Wala. This article was published 11 years ago. The State Investigation Agency (SIA) claimed that the article was “highly provocative, seditious, and intended to create unrest in Jammu and Kashmir.” Abdul’s residence was also raided.⁷⁶

Abdul Aala Fazli and Fahad Shah were denied bail by an NIA Court on 15 July 2022.⁷⁷

Ten persons were arrested on 26 May 2022 under the UAPA and PSA for allegedly shouting ‘anti-national’ slogans and hurling stones outside arrested leader Yasin Malik’s home in Srinagar’s Maisuma area. As per onlookers, the arrested persons were protesting Malik’s conviction and that their march was peaceful. The J&K Police meanwhile stated that they were on the lookout for more protestors and other ‘instigators of hooliganism’.⁷⁸

In simultaneous raids across the Union Territory, around twelve people were detained under the UAPA for their alleged contact with ‘terrorist commanders’ in Pakistan in June 2022. The raids were conducted in Srinagar, Baramulla, Anantnag, Kulgam, Jammu, Ramban, Udhampur, and Kathua. The Jammu & Kashmir Police claimed that the arrests were in line with their ‘zero tolerance’ policy against terrorism.⁷⁹

On 12 June 2022, Adil Gafoor, a resident of Bhaderwah, was booked under the PSA for allegedly delivering a hate speech during a protest against former BJP spokesperson Nupur Sharma’s remarks against Prophet Mohammad.⁸⁰

74 Mekhala Saran, *legal experts question new UAPA FIR against Kashmiri journalist Fahad Shah*, The Quint, 25 April 2022. Available at: <https://www.thequint.com/news/law/why-was-kashmiri-journalist-fahad-shah-slapped-with-another-uapa-case>.

75 Naveed Iqbal, *Hurriyat Conference (G) vice-chairman Dar held under PSA*, Indian Express, 4 March 2022. Available at: <https://indianexpress.com/article/cities/srinagar/vice-chairman-hurriyat-conference-g-arrested-7799339/>.

76 *J&K Police arrest PhD student under UAPA for 11-year-old online article*, The Quint, 18 April 2022. Available at: <https://www.thequint.com/news/india/jammu-and-kashmir-police-arrest-phd-student-under-uapa-for-11-year-old-online-article>.

77 *NIA Court denies bail to Abdul Fazili, Fahad Shah*, The Hindu, 16 July 2022. Available at: <https://www.thehindu.com/news/national/other-states/nia-court-denies-bail-to-abdul-fazili-fahad-shah/article65645313.ece>.

78 *J&K: 10 arrested under UAPA for shouting ‘anti-national’ slogans before Yasin Malik’s sentencing*, Scroll, 26 May 2022. Available at: <https://scroll.in/latest/1024823/j-k-10-arrested-under-uapa-for-shouting-anti-national-slogans-before-yasin-maliks-sentencing>.

79 *J&K Police arrests over dozen people in its latest crackdown on terror in UT*, Outlook, 7 June 2022. Available at: <https://www.outlookindia.com/national/j-k-police-arrests-over-dozen-people-in-its-latest-crackdown-on-terror-in-ut-news-200849>.

80 *Jammu and Kashmir man charged for delivering hate speech: Cops*, NDTV, 4 July 2022. Available at: <https://www.ndtv.com/india-news/jammu-and-kashmir-man-charged-under-public-safety-act-for-delivering-hate-speech-cops-3127581>.

2

DELIMITATION

The two orders of the Delimitation Commission – the first dealing with the number of reserved constituencies, and the second with the extent of each constituency, have come into effect from 20 May 2022. This move has unfortunately circumvented several concerns relating to the Commission’s orders.⁸¹ These concerns include peremptory objections to the Commission’s mandate.⁸²

Primarily, there were question marks about the jurisdiction of the Delimitation Commission acting under the Delimitation Act, 2002 and the Jammu and Kashmir Reorganisation Act, 2019, when the latter is pending challenge before the Apex Court. There were also concerns that the Reorganisation Act of 2019 had already usurped and resolved key questions that ought to have been the mandate of the Commission; namely the Census edition that had to be used as the base, and the increase in the number of representatives to the Legislative Assembly (which is now 90 from the previous figure of 83).

There were also concerns about the timing. Inexplicably, Jammu and Kashmir was deemed to be ripe for a delimitation exercise while the process is on hold for the rest of the country until 2026.⁸³ Jammu and Kashmir was initially part of five States that were selected to undergo this exercise immediately. However, the four other States were later dropped.

One can now only analyze the foreseeable political impact of the two orders. The issues here broadly fall under two categories: first, the allocation of Assembly seats between Jammu and Kashmir; and second, concerns of gerrymandering over the demarcation of Assembly seats.

I. Allocation of Assembly Seats

The cardinal principle of allocation of seats, which flows from the principle of equal representation, is that the same has to be done primarily on the criterion of population. This is clearly recognized in Section 62(1)(b) of the Reorganisation Act, which mandates that the Census held in the year 2011 is to be used for the purpose of delimitation of Assembly and Parliamentary Constituencies. In exceptional circumstances, subordinate principles of allocation such as contiguity, convenience, topography etc. may be applied.

81 Radha Kumar, *With delimitation over, a look at the slate for J&K*, The Hindu, 13 May 2022. Available at: <https://www.thehindu.com/opinion/lead/with-delimitation-over-a-look-at-the-slate-for-jk/article65408408.ece>.

82 Haseeb Drabu, *Delimitation: The context*, Greater Kashmir, 2 July 2020 (the first of a four-part series). Available at: <https://www.greaterkashmir.com/todays-paper/delimitation-the-context>.

83 Article 82 of the Constitution of India; The Constitution (Eighty-fourth Amendment) Act, 2001.

The Commission has allocated 47 Assembly seats to Kashmir and 43 to Jammu. This belies the population statistics as per the 2011 Census which gives the population of the Kashmir Division as 68,88,829 and of the Jammu Division as 53,78,519. A split more proportional to these figures would be 51 and 39 to Kashmir and Jammu respectively. Effectively, the Commission has allotted 52.22% of the seats to Kashmir, which has 56.15% of the population, and 47.77% of the seats to Jammu, which has 43.84% of the population.

The BJP has hailed this move as an attempt to equalize the existing power imbalance between Kashmir and Jammu.⁸⁴

In the long-term, there are concerns that the Commission's reallocation will turn Kashmiri Muslims from an actual majority to a political minority. This is best viewed in the backdrop of a slew of Government measures which allow outsiders to purchase land and procure jobs in the region. Observers believe that a major target of the exercise is to disempower Kashmiri Muslims.⁸⁵

A supportive administration in the Union Territory would bring it closer than ever to New Delhi. It would also open numerous new avenues for the Centre to bring its long-term vision for the region to fruition. These moves are part of designs to slowly shift the centre of political power from Kashmir to Jammu, which is seen as more sympathetic to the present dispensation's interests.⁸⁶ All of this was made possible by the abrogation of Article 370, which would prove to be the first and most important move on the chessboard.

II. Fears of Gerrymandering

When we speak of gerrymandering, or the practice of redrawing constituencies with the intent of creating an undue political advantage for the ruling party, the two most common tactics are 'cracking' and 'packing'. Cracking is the practice of dividing and spreading the opposition's support base amongst multiple constituencies. Packing is about agglomerating the opposition party's voters into one constituency, thereby increasing the ruling party's chances of succeeding in the surrounding constituencies.

The Commission's orders are rife with examples of cracking and packing. The village Jakhain for example has a 92.8% Scheduled Tribe population and was part of the Udhampur constituency, where the last time BJP won was in 1996. The Commission has now added Jakhain to the Chenani constituency, where the BJP won in 2014.

In the 2014 Assembly elections, the BJP's candidate in the Rajouri constituency lost by a mere 2.86% of votes. The population of Rajouri tehsil is 70% Muslim and 28% Hindu.

84 For background to the dynamics between the two regions see Ellora Puri, *A dangerous polarization in Jammu*, The Hindu, 26 April 2018. Available at: <https://www.thehindu.com/opinion/op-ed/a-dangerous-polarisation-in-jammu/article23674019.ece>.

85 Muhammad Raafi, *Why proposals for new constituencies in J&K spur fears of Muslim marginalization*, Article 14. Available at: <https://www.article-14.com/post/why-proposals-for-new-constituencies-in-j-k-spur-fears-of-muslim-marginalisation-61d7ace41828b>.

86 Maqsood Hussain, *Looking Behind the Delimitation Exercise in Jammu and Kashmir*, E-International Relations, 31 December 2021. Available at: <https://www.e-ir.info/2021/12/31/opinion-looking-behind-the-delimitation-exercise-in-jammu-and-kashmir/>.

The Commission has rejigged the constituency now to exclude Sohna, which is now part of the Thana Mandi (ST) constituency. Sohna has a 91% Muslim population.

Certain moves have also sharpened the idea of a Muslim Kashmir and a Hindu Jammu. Consider Rajouri and Poonch districts, earlier in the Jammu region. These are Muslim-majority districts that have been included in the Anantnag constituency of Kashmir.⁸⁷

The reorganization has also thrown the region's political leaders into flux. Abdul Rahim Rather, belonging to the Apni Party, was elected from the Kokernag constituency in 2014, a seat that now no longer exists. It has been divided between the Larnoo and Dooru constituencies. Rather claims that he has no political recognition in these constituencies and will now have to reach out to a new voter base from scratch. It is a similar story with Altaf Bukhari, whose erstwhile seat of Amira Kadal has been removed.⁸⁸

Strongholds of parties other than the BJP have been strongly diluted as their favoured constituencies have been removed. Kokernag and Shangus in Jammu, last won by the PDP and Congress, have been removed. They have been replaced by Larnoo, Anantnag East, and Anantnag West. Similarly, Kulgam, Noorabad, and Hom Shali Bugh, preserves of the PDP and NC, have been replaced by DH Pora.⁸⁹

These moves have been recognized by psephologists as possible attempts by the BJP to engineer artificial divisions and enhance their vote bank.⁹⁰ This is a natural inference when salutary principles of allocation, the foremost being the criterion of population, have been disregarded outrightly by the Commission.

87 Anando Bhakto, *Jammu and Kashmir: The hidden agenda behind the delimitation exercise*, Frontline, 8 April 2022. Available at: <https://frontline.thehindu.com/politics/jammu-and-kashmir-the-hidden-agenda-behind-the-delimitation-exercise/article38458966.ece>.

88 Safwat Zargar, *In Kashmir, delimitation plan shrinks space for a new party once seen as close to Delhi*, Scroll, 8 March 2022. Available at: <https://scroll.in/article/1018407/in-kashmir-delimitation-plan-shrinks-space-for-a-new-party-once-seen-as-close-to-delhi>.

89 Shakir Mir, *BJP Govt's J&K delimitation move: An attempt at manipulating voting patterns?*, The Quint, 15 February 2022. Available at: <https://www.thequint.com/news/india/bjp-govts-jk-delimitation-move-an-attempt-at-manipulating-voting-patterns#read-more>.

90 Anuradha Bhasin, *Kashmir's new electoral map boosts Hindu electoral influence and reduces Muslim representation*, Article 14, 18 April 2022. Available at: <https://article-14.com/post/kashmir-s-new-electoral-map-boosts-hindu-electoral-influence-reduces-muslim-representation-625c729a74c8b>.

3

PANCHAYATS

Since the dilution of Article 370, the Central Government has placed significant emphasis on the reintroduction of Panchayati Raj in Jammu and Kashmir. The Jammu and Kashmir Panchayati Raj Act, 1989, prescribes elections at the panchayat level every five years. The Act provides for a three-tier system of grassroots governance which comprises *halqas*,⁹¹ Block Development Councils (BDCs) and District Development Councils (DDCs). BDCs and DDCs are upper tiers. The former body is indirectly elected by members of the *halqas* and the latter is composed of directly-elected representatives, chairpersons of BDCs, and members of the Legislative Assembly from each district. Panchayati Raj had long been dormant in Jammu & Kashmir with elections held only intermittently due to a combination of militancy and apathy of the State Government. Before 2018, elections were last held in 2011, although they were only for the *halqa* panchayats.⁹²

The 2018 Panchayat elections saw what was claimed to be a high turnout of 70%, which was, however, lower than the 80% turnout in the 2011 Panchayat elections. By contrast, Municipal elections held around the time in the valley had yielded an average turnout of 4.27%. Closer scrutiny of the figures revealed that the Jammu division recorded a turnout of 83.5%, whereas the Kashmir division saw a mere 41.3%. Within the valley itself, polling was held in only 30% of the total *halqa* panchayats. There was no candidate in 708 out of 2,135 *halqas*, and another 699 *halqas* had candidates who were elected unopposed.⁹³ One of the reasons was that the *halqa* elections took place under the shadow of violence. The case of Ghulam Nabi Bedaar, sarpanch of Hygam, loomed large in public memory. Bedaar had been abducted from his house in 2014 and shot. The Hizbul Mujahideen had also publicly announced that those filing nomination forms would be attacked with acid.⁹⁴

91 The area comprising a village or a contiguous number of villages as determined by the Government.

92 Dr. Raja Muzaffar Bhat, *Inside Kashmir's Panchayati Raj*, Kashmir Observer, 23 April 2022. Available at: <https://kashmirobsvr.net/2022/04/23/inside-kashmirs-panchayati-raj/>.

93 Safwat Zargar, J&K panchayat elections saw 74% voter turnout – but that figure hides the full story, Scroll, 16 December 2018. Available at: <https://scroll.in/article/905364/a-closer-look-voter-turnout-numbers-do-not-tell-the-whole-story-of-kashmirs-panchayat-elections>; Kashmir's high voter turnout is no indicator that democracy is healthy there, The Telegraph, 21 November 2018. Available at: <https://www.telegraphindia.com/opinion/high-voter-turnout-in-kashmir-panchayat-elections-does-not-indicate-normalcy-or-healthy-democracy/cid/1675971>.

94 Zubair Lone, *Why the panchayat elections in Kashmir hold little meaning*, The Caravan, 21 October 2018. Available at: <https://caravanmagazine.in/politics/kashmir-panchayat-elections-hold-little-meaning>.

Jammu and Kashmir witnessed their first ever BDC elections on 24 October 2019.⁹⁵ This period was closely examined in this Forum's first report: the state by then made a Union Territory was under a complete lockdown; political leaders had been detained, curfew was enforced, public assembly was prohibited.⁹⁶ The election was purportedly held 'on party lines' even as mainstream political parties found themselves muzzled and jailed.⁹⁷

In October 2020, the Central Government notified elections in Jammu and Kashmir for all the three tiers under the Act. Then Union Minister Prakash Javadekar claimed that this was made possible by the whittling down of Article 370. Javadekar further stated that operationalizing all three tiers would lead to decentralization of political power and would hand power back to the people. They would be able to conduct district and block-level planning and implement welfare schemes.⁹⁸

The Minister's remarks proved way off the mark in reality, and as such may be deemed propagandistic. If Panchayati Raj is to be the elected third-tier of governance in any meaningful sense, it follows that the tier above it- that of an elected state assembly which yields an elected government- must be in place as a requisite. In its absence, there can be no devolution of power. This is a requirement by definition. What we saw in Jammu & Kashmir instead was introduction of Central rule by New Delhi by bifurcating the erstwhile state of Jammu & Kashmir and converting Jammu & Kashmir into a Union Territory, with Ladakh being the other Union Territory. The elected state Assembly had been jettisoned and all political power lay in the hands of the Governor acting in the name of the Centre.

Since the ostensible effort at decentralization of power was not grounded in favourable political circumstances, it may be speculated that after the highly controversial reading down of Article 370, the move was expressly intended to offer an appearance of political stability for a troubled border area with a complex history. By creating a simulacrum of normality, the Centre perhaps also looked to promote external investment in Jammu and Kashmir.

Publicised statements of senior leaders of the government in New Delhi and those of the governing party also pointed to an altogether new and disturbing dimension. This was the idea of building up those taking part in the Panchayati Raj elections after August 2019 when Article 370, which guaranteed the former Jammu & Kashmir's political autonomy, was rendered toothless, as the new leaders on the horizon of Kashmir. It hardly seemed to matter that in large measure these individuals were rank newcomers to the public arena.

95 Adil Akhzer, *Explained: What makes today's J&K block elections unique, who are in the fray*, The Indian Express, 28 October 2019. Available at: <https://indianexpress.com/article/explained/explained-what-makes-todays-jammu-kashmir-block-elections-unique-who-are-in-the-fray-6084696/>.

96 Available at: <https://indianculturalforum.in/2020/07/23/jammu-and-kashmir-the-impact-of-lockdowns-on-human-rights/>.

97 A fact that was bought to the notice of the Chief Electoral Officer (CEO): see Ashiq Hussain, *Block Development Council elections in J&K to be held on October 24*, Hindustan Times, 30 September 2019. Available at: <https://www.hindustantimes.com/india-news/block-development-council-elections-in-j-k-on-to-be-held-on-oct-24/story-xD5UoS9mjqMDa01DETn6L.html>.

98 *Cabinet approves adoption of Jammu and Kashmir Panchayati Raj Act*, The Wire, 22 October 2020. Available at: <https://thewire.in/government/cabinet-jammu-and-kashmir-panchayati-raj-act>.

Nevertheless, the publicized idea was that they would supplant the stalwarts of the long-established political parties, who were sought to be systematically vilified.

It thus becomes necessary to scrutinize the impact of the exercise and the extent to which it fulfills the Centre's claims of decentralization. This report examines this in two major ways: first, their functioning in the backdrop of recent violence against Panchayat members; and second, the actual extent of autonomy provided to them in implementing welfare schemes. The Forum received responses from Panchayat members, journalists, local political leaders, and citizens for this purpose.

I. Governance in the shadow of militancy

Since their election, Panchayat representatives have become regular targets of militants and violence against them has intensified over time. In March 2021, BDC member Reyaz Ahmed and his personal security officer were shot dead outside the municipality office in Sopore.⁹⁹ Municipal councilor Rakesh Pandita was shot by militants in Tral in June 2021 while he was visiting his friend.¹⁰⁰ Three elected representatives were shot dead in a span of ten days across March 2022: Panchayat member Mohammad Yaqub Dar was killed on 2 March; Sarpanch Sameer Ahmad Bhat on 9 March; and Sarpanch Shabir Ahmad Mir on 11 March.¹⁰¹ Thereafter, Sarpanch Manzoor Ahmad Bangroo was shot dead in Pattan on 15 April 2022.¹⁰²

Panchayat officials state that they have been at the receiving end of militant threats for decades.¹⁰³ They claim to be targeted as they are perceived by militant organizations to be figureheads of political cooperation with New Delhi. Separatists are rankled by the prospect of seeing Jammu & Kashmir grow formally closer to the political structure of the Indian system. Militant groups also compete to bring their own messaging into local political discourse. Panchayat elections tend to take attention away from their ideas and bring other, less favorable issues into closer focus, such as village development. In the larger political question surrounding Kashmir, militants automatically prejudge Panchayat officials to be a part of the 'Indian camp'.

Several Panchayat officials claim to have survived prior attempts on their life. It is their complaint that despite several conversations with the Centre, the security situation has seen very little change. Contestants and elected officials have been dogged by such threats since the Panchayat elections in 2011. The atmosphere of violence has handicapped many Panchayat officials from discharging their duties. They continuously assess and reassess

99 *Municipal councilor, his personal security guard shot dead by militants in J&K's Sopore*, Firstpost, 29 March 2021. Available at: <https://www.firstpost.com/india/municipal-councilor-his-personal-security-guard-shot-dead-by-militants-in-jammu-and-kashmirs-sopore-9476771.html>.

100 Ashraf Wani, *BJP leader Rakesh Pandita shot by terrorists in Pulwama*, India Today, 3 June 2021. Available at: <https://www.indiatoday.in/india/story/bjp-leader-shot-in-tral-belt-of-south-kashmir-s-pulawama-1810156-2021-06-02>.

101 *Sarpanch shot dead, third panchayat member to be killed in 10 days in J&K*, The Quint, 12 March 2022. Available at: <https://www.thequint.com/news/india/sarpanch-shot-dead-kulgam-third-panchayat-member-killed-10-days-jk#read-more>.

102 Zulfikar Majid, *Sarpanch shot dead by militants in Kashmir*, Deccan Herald, 15 April 2022. Available at: <https://www.deccanherald.com/national/sarpanch-shot-dead-by-militants-in-kashmir-1101095.html>.

103 Ishtiyahq Ahmed, *Killings install fresh fear among Panchayat members*, Kashmir Despatch, 17 March 2022. Available at: <https://kashmirdespatch.com/killings-install-fresh-fear-among-panchayat-members/>; Ahmed Ali Fayyaz, *How Panches and Sarpanches become 'sacrificial lambs' in Jammu and Kashmir's political theatre*, The Probe, 22 April 2022. Available at: <https://theprobe.in/how-panches-sarpanches-become-sacrificial-lambs-in-jammu-and-kashmirs-political-theatre/>.

their actions. Carrying out their mandate might mean that they inch ever closer to the top of the militants' hit list.¹⁰⁴

Since the killings ratcheted at the beginning of 2022, several elected officials have been shifted to secure accommodations. A select few have been provided personal security officers, however a large majority of them remain without such security.¹⁰⁵ Some have refused to accept the guard assigned to them. With or without security, however, carrying out their administrative functions has become very difficult.

Those living in secure accommodations complain that they have been caged in their allotted premises for several months. They have received no assurances about their future prospects. Officials also claim that these makeshift accommodations are not ideal. Some Panchayat members have been allocated cramped hotel rooms which they have to share with others. There is no one to maintain the toilets or the furnishings, and there is no available assistance in cases of medical emergency. They also complain about the quality of the food served to them.¹⁰⁶

Other than these material concerns, councilors complain about losing touch with their constituents. They are unable to meet with people to discuss their concerns.¹⁰⁷ Ordinary administrative tasks which require their physical presence - such as putting their signatures on official documents - become impossible.

One DDC member has reported that a nexus between Panchayat secretaries and private contractors has developed in his enforced absence from his constituency. Private contractors are able to take unilateral decisions due to the lack of supervision. If developmental work goes awry due to these reasons, locals can only pin the blame on elected officials.¹⁰⁸ A social worker informed the Forum that the continued disconnect between the representatives and their constituencies has led to a deterioration of quality of public works. He claimed that novice engineers have been getting appointed for important development projects and there has been a general overrun in project costs.

104 Illustratively, see Jehangir Ali, *An outspoken Kashmiri sarpanch was committed to making local lives better – and was killed for it*, The Wire, 12 March 2022. Available at: <https://thewire.in/rights/an-outspoken-kashmiri-sarpanch-was-committed-to-making-local-lives-better-and-was-killed-for-it>.

105 Zulfikar Majid, *Panchayat members sitting ducks for militants in Kashmir*, Deccan Herald, 13 March 2022. Available at: <https://www.deccanherald.com/national/panchayat-members-sitting-ducks-for-militants-in-kashmir-1090859.html>.

106 For an overview of these conditions, see Suhail Bhat, *In Kashmir, grassroots political workers continue to struggle for safety and remuneration*, NewsClick, 26 April 2022. Available at: <https://www.newsclick.in/Kashmir-Grassroots-Political-Workers-Continue-Struggle-Safety-Remuneration>; Ananya Bhardwaj, 'Poor security', 'bad conditions': Why Panchayat members holed up in Srinagar hotels are angry, The Print, 24 April 2022. Available at: <https://theprint.in/india/poor-security-bad-conditions-why-panchayat-members-holed-up-in-srinagar-hotels-are-angry/928317/>; and Safwat Zargar, *Why elected panchayat members in Kashmir are feeling caged*, Scroll, 13 July 2021. Available at: <https://scroll.in/article/1000029/why-elected-panchayat-members-in-kashmir-are-feeling-caged>;

107 Firdous Hassan, *Fear grips panchayat members in south Kashmir after militant attacks*, MoneyControl, 18 March 2022. Available at: <https://www.moneycontrol.com/news/politics/fear-grips-panchayat-members-in-south-kashmir-after-militant-attacks-8247641.html>.

108 Shakir Mir, *J&K Sarpanch killings: How the militant attacks derail grassroots politics*, The Quint, 17 March 2022. Available at: <https://www.thequint.com/news/india/jk-sarpanch-killings-how-the-militant-attacks-derail-grassroots-politics>. See also Mudassir Kuloo, *Elected panchayat officials unable to move out of hotels as Kashmir goes for another round of polling*, National Herald, 17 February 2020. Available at: <https://www.nationalheraldindia.com/india/elected-panchayat-officials-unable-to-move-out-of-hotels-as-kashmir-goes-for-another-round-of-polling>.

Representatives are also worried about the messaging that their absence sends back home. They are perturbed by the thought of being seen as stooges of the Central Government, staying in luxurious surroundings eating mutton and rice. There is also a prevailing feeling of impuissance. The only recourse available to officials from inside their airtight accommodations is to fruitlessly send letters and complaints.

Those who have been allotted private security claim to have been relegated as puppets in the hands of their police overseers. They must obtain permission from senior security officials before traveling. The police often arbitrarily cite 'security reasons' for denying permission to visit their respective constituencies. Representatives are given very short notice before they are moved from one place to another.

Respondents to the Forum's questions believe that the Centre's extant security policy is unsustainable and suffers from a lack of long-term planning and vision. There is uncertainty as to whether the political project of re-energizing Panchayat Raj in the region can ever be isolated from the broader security situation in Kashmir. As of now however, Panchayat representatives feel isolated and encumbered, both in the presence and absence of their security details. They admit that their personal freedoms have been affected, which has directly translated into their inability to effectively address the grievances of their constituents.

II. Power and autonomy

Responses received by the Forum, both from citizens and elected representatives, indicate that the revival of the three-tier mechanism has not gone as per expectations. Respondents agree that these reintroduced institutions require extensive support from the Centre through the grant of greater latitude and strictly adhering to the terms of the Panchayati Raj Act.

The Forum spoke to citizens and social activists in Jammu and Kashmir in an effort to outline their experience with the new Panchayat mechanism. Respondents stated that many of their representatives lacked a functional understanding of the system. They would be unaware of various practicalities such as the method of obtaining necessary approvals for development plans or knowing the channels through which the necessary files had to traverse. This was to be expected as a number of representatives were novices in the political space and did not have knowledge of the extent of their powers and responsibilities. One social activist stated that he wished for the representatives to undergo extensive training in order to more effectively discharge their responsibilities. This was of immediate necessity as Panchayat representatives were direct political actors who were tasked with implementing different projects in Ward Sabhas and Gram Sabhas. They also did not have any advisory staff attached to them.

As outlined above, citizen respondents also believe that a lack of the requisite know-how has led many representatives to make substandard decisions. This has reflected in their

choice of contractors and engineers and has led to an overall poorer quality of public work. A respondent claimed that waterworks and irrigation projects have been built using inferior material and have not proved to be as effective as hoped. Observers also complain that Gram Panchayats remain unaware of the means available to them to generate their own revenues and continue to be extremely dependent on State and Central Government funds.¹⁰⁹

On the other hand, Panchayat representatives express their haplessness over the situation. They claim that the elections have merely served to turn them into designated rubber stamps. The Valley continues to be administered by bureaucrats, just as it was prior to the Panchayat polls.

Representatives are aggrieved by excessive red tape. It is often inordinately difficult and slow to obtain necessary approvals for projects. The requisite documents have to move through various Panches to the Sarpanch, followed by the BDO, who forwards it to the District Planning Officer, who ultimately must present it to the District Development Commissioner for final approval.

They also speak of the difficulties in negotiating with bureaucrats. They claim that permissions are often withheld without assigning adequate reasons. Administrators are sometimes excessively authoritative and do not grant an adequate audience to Panchayat representatives.¹¹⁰ Their decisions continue to be unilateral, with Panches often not even being informed of the programs being held in their respective constituencies.

Respondents also claimed that bureaucrats flout guidelines which require them to consult elected Panchayat members before implementing various schemes pertaining to rural development, water, poverty alleviation, housing etc. Although 27 functions out of 29 contained in the 73rd Constitutional Amendment Act, 1992 have been devolved to Panchayat institutions, bureaucrats have been hesitant to pass on their long-held and entrenched powers to Panchayat representatives. Shafiq Mir, Chairman of the All Jammu and Kashmir Panchayat Conference and of the BDC, Buzilaz District (Poonch) informed the Forum that in many cases, administrators simply refuse to abide by decisions of Panchayats, even when the decisions are in areas where the Panchayats have autonomy. For example, the Government makes unilateral decisions on the allocation of State land, even though land issues fall within the powers of the Panchayats under the Panchayati Raj Act, 1989.

Panchayat representatives also claim that the mandate of Rule 49 of the Jammu and Kashmir Panchayati Raj Rules, 1996 is not being followed. The said rule mandates that all

109 Haris Rashid, *Potential of PRIs in J&K*, Kashmir Observer, 23 March 2022. Available at: <https://kashmiobserver.net/2022/03/23/potential-of-pris-in-jk/>. Section 14 of the Panchayati Raj Act, 1989 empowers Halqa Panchayats to levy property and house tax whereas Section 15 empowers them to levy a fee on various items.

110 *Bureaucracy has always attempted to uproot democratic edifice in J&K: Altaf Bukhari*, Greater Kashmir, 10 March 2021. Available at: <https://www.greaterkashmir.com/kashmir/bureaucracy-has-always-attempted-to-uproot-democratic-edifice-in-jk-altaf-bukhari>.

works may be executed by the Halqa Panchayat itself employing daily labourer. However, no contractor is to be employed except for work of highly technical nature or involving financial investment of more than Rs. 3 lakhs. Representatives claim that government officials put all proposed development works through a tender process and engage professional contractors, thereby eroding the autonomy of Panchayats.

Panchayat representatives have been public with such grievances. BDC members reported that they were unable to spend their allocated budget and that Government administrators rarely if ever visited the constituencies.¹¹¹ They informed the Lieutenant Governor of their inability to act due to the overlapping of their responsibilities with bureaucrats. They claim that there continues to be a lack of clarity in their mandate and protocol. It is a situation in which Panchayat representatives feel subordinated.¹¹² These problems led 38 Panchayat representatives to resign *en masse* in Banihal district. Their resignation letter claimed that they were not allowed to meet the Union Minister of State, Rural Development and Consumer Affairs and Public Distribution (CAPD), who was on a visit to the district.¹¹³

Representatives also claim that Panchayati Ghars lack basic facilities such as availability of electricity and broadband. There has also been no provision of support personnel such as secretaries, accountants, and local workers. When such employees are available, they lack proper training.¹¹⁴

With respect to the allocation of funds, the Forum received mixed responses from Panchayat members. A few respondents agreed that the allotted funds were being received on time. However, they commonly express dissatisfaction with the fact that they could only propose a plan for utilization of the funds at the beginning of the year, instead of being able to flexibly allocate and utilize funds as needed through the year.

Panchayat officials are also aggrieved by the inadequate honorarium they receive, especially when contrasted with the dangers of their work. Presently, Panches receive 1,000 rupees per month whereas Sarpanches are entitled to 3,000 rupees per month. Many claim that the payment of their honorariums has been pending for over five months.¹¹⁵ With

111 Asif Iqbal Naik, *BDC chairpersons of Chenab Valley blames bureaucracy as hurdles for strengthening of PRIs at grass root level in J&K*, Early Times, 8 December 2021. Available at: <http://www.earlytimes.in/mobile/newsdet.aspx?q=280086>. For an account by a DDC member, see Abass Rather, *J&K: An inert administration continues to obstruct the democratic process in the UT*, NewsClick, 21 October 2021. Available at: <https://www.newsclick.in/jammu-kashmir-inert-administration-continues-obstruct-democratic-process-UT>.

112 *DDC Chairpersons sore about "bureaucratic apathy"*, Daily Excelsior, 20 July 2021. Available at: <https://www.dailyexcelsior.com/ddc-chairpersons-sore-about-bureaucratic-apaty/>; Anando Bhakto, *DDC administration in J&K is a sham, say members, who even three months after winning have no clarity on their role*, Frontline, 9 April 2021. Available at: <https://frontline.thehindu.com/the-nation/ddc-administration-in-j-k-are-a-sham-say-members-who-even-three-months-after-winning-have-no-clarity-on-their-role/article34125184.ece>.

113 Pirzada Shakir, *Fed up by bureaucratic hurdles, 38 sarpanches, panches resign in Ramsoo*, The Kashmir Walla, 9 October 2021. Available at: <https://thekashmirwalla.com/fed-up-by-bureaucratic-hurdles-38-sarpanches-panches-resign-in-ramsoo/>.

114 *More need to be done for empowering PRIs*, The Northlines, 24 April 2022. Available at: <https://www.thenorthlines.com/more-need-to-be-done-for-empowering-pris/>.

115 *Honorarium of Panches, Sarpanches pending for months*, Daily Excelsior, 18 March 2022. Available at: <https://www.dailyexcelsior.com/honorarium-of-panches-sarpanches-pending-for-months/>.

rising inflation, this has had a deleterious impact on their families. Children of officials have had to drop out of school and work as farmhands, and some officials have been constrained to take up second jobs.

4

KASHMIRI PANDITS

The Kashmiri Pandits who reside in the Valley comprise approximately 4,000 people who never migrated and stay at a hundred-odd locations across Kashmir (without security); about 4,500 individuals employed under the Prime Minister's Relief scheme for the community, of whom about 15-20 percent are accommodated in seven gated and secure transit colonies throughout the Valley; and a few hundred other migrant-returnees who are employed in several districts in government departments and the private sector. Like the majority community, these Pandits live with uncertainty and fear predominant in a conflict zone. But this situation was shattered with the October 2021 shocking militant-killing of Pandit Makhan Lal Bindroo, a prominent and popular medical shop owner in Srinagar.

The community, encouragingly, took the Bindroo killing on its chin because it was for the first time in 18 years, since the Nadimarg massacre of 2003, that a Pandit had been specifically targeted—the June 2020 killing of Ajay Bharti in Anantnag was said to be more the killing of a *sarpanch* than a Pandit. Moreover, the majority community throughout the Valley strongly condemned the act of terror and wholeheartedly sympathized with the Pandits. But it was the May 12, 2022 gunning-down by a militant of Rahul Bhat, a Pandit, at his desk at the Chadoora tehsil office that generated a massive wave of unrest and enormous insecurity amongst the community. This was the final straw for a microscopic minority already struggling to find its feet in the valley since the exodus of nearly the entire 3,00,000-member community in 1990.

Since the recent incidents of minority killings, Kashmiri Pandits who migrated back to the valley have been threatening to return *en masse*. They have raised blockades and held public demonstrations.¹¹⁶ These events have brought into light their overwhelming precariousness: their drawn-out efforts to reconnect with other religious communities in the valley, the inadequacy of State policies aimed at their rehabilitation, the economic challenges continued to be faced by them, and an unnerving sense of fear and vulnerability.

1. Impact of *The Kashmir Files*

The Kashmir Files is based on the stories and testimonials of Kashmiri Pandits who, fearing grave insecurity and volatility due to the sudden onset of militancy in the Valley in early 1990s, felt compelled to migrate out of the Valley to Jammu, the National Capital Region and other places in the rest of India. The film tells a story that needed to be told: of human anguish, heartache of memories, and the gnawing pain of how a proud and erudite

¹¹⁶ Hari Kumar and Mujib Mashal, *As Targeted Killings Spike, Hindus are Desperate to Flee Kashmir*, The New York Times, 3 June 2022. Available at: <https://www.nytimes.com/2022/06/03/world/asia/india-kashmir-hindu-pandits-attacks.html>.

community got clawed from their millennia-long geo-cultural moorings into uncertain and widespread social and climatological geographies. On the flip side, the film seeks to slander, vilify, and delegitimize the Valley's majority community's own pain and suffering of three decades during which tens of thousands of its youth were killed. *The Kashmir Files*, in a brutal and dehumanizing manner, describes every Kashmiri Muslim as barbaric, devious, and jihadi to boot.

Since the militancy of 1990, the exile of Kashmiri Pandits and the historical developments leading to the event have lived many narrative afterlives. These facts are tortuous and continue to be deprived of the attention they deserve in the public consciousness. Yet, in a tragic irony, the victimhood of Kashmiri Pandits has been appropriated as a crude political and ideological tool to be wielded for the cause of majoritarianism.

The cinematic merits of the film and its adherence to established facts aside – about which there are significant concerns – its impact upon the lives of Kashmiri Pandits living in the Valley merits closer scrutiny.¹¹⁷ Kashmiri Pandits who live in the valley have repeatedly voiced their concerns, to journalists and civil society such as the Concerned Citizens' Group, that the film and the government sponsorship it has received from BJP-ruled states across India, makes them even more vulnerable to attacks by militant groups.¹¹⁸ Recent killings of Kashmiri Pandits, including the killing of Makhan Lal Bindroo (the Pandit medical store owner referred to above), have revived memories of the targeted killings of Kashmiri Pandits in the valley from 1989 onwards. According to the Kashmiri Pandit Sangharsh Samiti, which has been collecting data on such killings, over 700 Kashmiri Pandits were killed between 1989 and 2010.¹¹⁹ The KPSS figures include those that were killed by militants groups as well as those that died in militant-security forces' crossfire.

Indeed, Pandit fears have reached such a height that those who returned under the PM's package for Pandit returns and rehabilitation have demanded that their jobs be shifted to more secure locations, a point that is further discussed below.

a) Otherisation, emasculation, and fear-mongering

The film projects blame for the events of 1990 and their aftermath upon three groups to varying degrees: Kashmiri Muslims, journalists, and members of the shadowy 'left'. Through a liberal use of stereotyping and caricature, every portrayal of these groups is purpose-built to demonise. The film's outlook towards religion and its adherents is highly exclusivist in character. Kohl-eyed Muslims, long a trope in Hindi films, are adopted wholesale. But the film goes further to underscore religious differences especially when it relates to the actions of the protagonists and the terrorists.

117 For critical commentary on the film see Sanjay Kak, *The dangerous 'truth' of The Kashmir Files*, Al Jazeera, 13 April 2022. Available at: <https://www.aljazeera.com/opinions/2022/4/13/the-dangerous-truth-of-the-kashmiri-files>; Ipsita Chakravarty, *Here are five things 'The Kashmir Files' gets wrong about Kashmir*, Scroll, 19 March 2022. Available at <https://scroll.in/article/1019863/here-are-five-things-the-kashmir-files-gets-wrong-about-kashmir>; and Saadhya Mohan (supra).

118 Tenth Report of the Concerned Citizens Group (CCG) comprising Yashwant Sinha, Wajahat Habibullah, Air Vice Marshal (retd) Kapil Kak, Sushobha Barve and Bharat Bhushan, 15 April 2022.

119 Interview with the Kashmiri Pandit Sangharsh Samiti president Sanjay Tickoo, 4 August 2022

Surely the truth is more artful. Independent Kashmiri Pandit researchers point out that the bulk of Pandit killings did not follow the usual pattern of ethnic conflict in which neighbours were actively involved in pogroms against the minority; they were carried out by Pakistan-backed militant groups. Targeted attacks were further fuelled by the maelstrom of movements and massacres that followed from the quondam Princely State of Jammu and Kashmir and its change in status after 1947.¹²⁰

Dog-whistling is also done for 'leftists' and journalists, ostensibly for not automatically subscribing to a communalised version of the events of 1990. An academic's character in the film is an object of derision. She is shown to be a member of the 'Tukde Tukde gang' (*Squad of demolitionists*), goading her students to disregard the suffering of Kashmiri Pandits. As per the film, journalists also had a significant hand to play in suppressing the tragedy. One protagonist proclaims that when Indians become wise, they will drag journalists to the streets and thrash them. Just as these groups are vilified, the film attempts to play upon the insecurities of Hindus. A lingering scene shows a burning portrait of Lord Shiva. Hindu women are repeatedly shown as targets of Muslim men and as subjects of their lechery and violence. The intention and effect is not subtle enough to even be termed insidious. This is its method of marking itself within the larger Hindutva political project.

b) Growing communalisation and distrust

If *The Kashmir Files* is meant to be a call to arms for Hindutva legions across the country, it succeeds. There have been various reports of audiences across the country being whipped into a frenzy after viewing the film. Social media is rife with videos of Hindu men shouting anti-Muslim slogans in theatres.¹²¹ Hindutva-associated groups and individuals have been prompt in calling for boycott of Muslim businesses and even violence against them.¹²²

The film was directly associated with the violence in Madhya Pradesh's Khargone. One of the film's scenes shows a Hindu woman being stripped and sawed alive by militants in the presence of the woman's Muslim neighbors. This led Raju Sharma, district president of the Shiv Sena, to sponsor a tableau recreating the scene with a pile of wooden logs and a bicycle wheel standing in for the electric saw. This tableau was included in the Ram Navami processions in the town. It was accompanied by soundtracks of 'Jai Shree Ram' and 'Har Har Mahadev'. The tableau was on the way to a mosque and was encountered by Muslims walking towards their evening prayers. They were met by scores of saffron flags amongst the Ram Navami processions. In the matter of a few moments stones were being hurled, and a few hours later, communal riots engulfed the town. Several houses

belonging to Muslims and Dalits were burnt, and many were attacked and killed with swords and other weapons.¹²³

120 Sanjay Kak (supra). See also Nitasha Kaul, *Kashmir is not a file: Propaganda and politics in India*, The News Minute, 24 March 2022. Available at: <https://www.thenewsminute.com/article/kashmir-not-file-propaganda-and-politics-india-162236>.

121 Amongst numerous such instances, see the following tweets by Mohammed Zubair: https://twitter.com/zoo_bear/status/1503346472737116160; https://twitter.com/zoo_bear/status/1504095981545041926; https://twitter.com/zoo_bear/status/1504550855856451584.

122 For an in-depth examination of these groups, see Alishan Jafri & Kaushik Raj, *We ID'd Anti-Muslim Sloganeers at 'The Kashmir Files' Screening and What we found wont surprise you*, The Wire, 22 March 2022. Available at: <https://thewire.in/communalism/kashmir-files-hindutva-anti-muslim-hate>.

123 Supriya Sharma, *How 'Kashmir Files' added to communal fires in Khargone that ended with bulldozer injustice*, Scroll, 29

In Roorkee's Bhagwanpur region, perpetrators of communal violence unabashedly claimed to have been inspired by their viewing of *The Kashmir Files*.¹²⁴ The fear of other similar outbreaks of rioting also prompted the Delhi Police to review their extant security arrangements in 'mixed population' areas of the city.¹²⁵ The provocative nature of the film was recognized by the Government of Singapore which banned its release.¹²⁶ Within the Muslim population of the country, the film has prompted a sense of despair and growing insecurity.¹²⁷

Not unexpectedly, the impact on the Muslim community of Jammu and Kashmir, the only Muslim-majority State (presently a Union Territory), that has been facing a conflict situation for over three decades, is said to have been far deeper. The exultation and celebration of the film by Kashmiri Pandits in the rest of India sullied the mood of the Valley's majority community. It would have been hard to miss the Prime Minister's statement of March 15, 2022 when he said that instead of reviewing the film on the basis of facts and its art form, attempts were being made to discredit it by those afraid of the truth coming out in the open. The Prime Minister also told party lawmakers to watch it.¹²⁸

In light of these factors, the palpable discomfort of Kashmiri Pandits is understandable for Kashmir is not isolated from events in the rest of the country. Growing communalisation in other states feeds into the pre-existing volatility in Kashmir. KPSS President Sanjay Tickoo was constrained to remark that "*The wrong portrayal in The Kashmir Files of all Muslims in Kashmir as 'jihadi' and militants was the last nail in the coffin for Pandits*".¹²⁹

The fallout, if any, will be felt by Kashmiri Pandits who have stayed on in the valley.

The film's narrative feeds into mutual distrust and apathy amongst Kashmiri Pandits and Muslims. The sense of coexistence, which was perhaps on its way back, is bound to be disturbed yet again. The Pandit pain and suffering has been appropriated and weaponised against the Valley's majority community, and their attempts to set the record for themselves have been hijacked by profiteers. They have been rendered victims of double jeopardy – at once the source of political mileage and sitting ducks at the mercy of militants.

April 2022. Available at: <https://scroll.in/article/1022860/how-kashmir-files-added-to-communal-fires-in-khargone-that-ended-with-bulldozer-injustice>.

124 Sumedha Pal, *Influenced by 'Kashmir Files', Hindutva Workers Threaten to Remove Muslims from Roorkee Village*, The Wire, 19 April 2022. Available at: <https://thewire.in/communalism/roorkee-ground-report-kashmir-files-communal-hindutva>.

125 *'The Kashmir Files': Delhi Police to step up security at mixed population areas amid political slugfest over Vivek Agnihotri film*, The New Indian Express, 17 March 2022. Available at: <https://www.newindianexpress.com/cities/delhi/2022/mar/17/the-kashmir-files-delhi-police-to-step-up-security-at-mixed-population-areas-amid-political-slugf-2431131.html>.

126 Haraprasad Das, *'The Kashmir Files' Banned in Singapore: 'One-Sided Portrayal of Muslims'*, Pragativadi, 11 May 2022. Available at: <https://pragativadi.com/the-kashmir-files-banned-in-singapore-one-sided-portrayal-of-muslims/>.

127 *Kashmir Files, hailed by Modi, triggers anti-Muslim hate speech*, Al Jazeera, 17 March 2022. Available at: <https://www.aljazeera.com/news/2022/3/17/kashmir-files-film-modi-anti-muslim-hate-speech>.

128 Vibha Sharma, *Campaign being run to discredit Kashmir Files, says PM Modi*, The Tribune, 16 March 2022. Available at: <https://www.tribuneindia.com/news/j-k/campaign-being-run-to-discredit-kashmir-files-says-pm-modi-378105>. The film also received tax exemptions in a number of BJP-administered States. See *Row between Cong, BJP over 'The Kashmir Files', many States make film tax free*, The Quint, 14 March 2022. Available at: <https://www.thequint.com/news/india/the-kashmir-files-row-congress-bjp-states-make-film-tax-free-kerala-maharashtra#read-more#read-more>.

129 Peerzada Ashiq, *Kashmiri Pandits living on the edge*, The Hindu, 11 June 2022. Available at: <https://www.thehindu.com/news/national/kashmiri-pandits-living-on-the-edge/article65514628.ece>.

2. Targeted Killings

The Forum spoke to Kashmiri Pandits housed in transit camps across Jammu and Kashmir in the third week of June, 2022 to ascertain their conditions following the wave of targeted killings. A few common themes that emerged are as follows:

a. Personal liberty

Most respondents stated that they had been confined within their transit camps for over a month and were living in fear-induced psychosis. They had received a number of threatening pamphlets from militants which were shared with the Forum. These pamphlets contained explicit warnings asking Kashmiri Pandits to leave Kashmir or be killed and were signed by groups such as Lashkar-e-Islam, The Resistance Front, Jammu and Kashmir Freedom Fighters, and Kashmir Fight. The sense of terror was such that Susheel Bhan, resident of the Nuthusia migrant colony in Kupwara district, is said to have passed away due to high blood pressure. He had reportedly been suffering from depression since the killing of Rahul Bhat.¹³⁰

The predicament of Kashmiri Pandits is clear: they have been trying to protest and convey the danger of their situation.¹³¹ However, on the other hand, this prevailing terror coupled with heavy security presence has inhibited their ability to leave their homes. Security personnel posted at the colonies do not allow the inhabitants to leave or outsiders to visit. Essentials can only be delivered and migrant colonies are under a strict lockdown for the majority of the day. Those amongst the inhabitants who were able to do so have fled the valley. These were inhabitants who left just as the targeted killings began or were able to prove to security personnel that they had extended family elsewhere. A respondent from the Vessu camp in Kulgam district claimed that 60% of the inhabitants in his camp had left for Jammu and other places. The only ones remaining were those who had no resources to relocate.

Respondents claimed that the situation harkened back to the events of 1990. This time however, the sense of paranoia had also intensified due to the mass dissemination of information (and misinformation) through social media. Several respondents stated they have been in touch with their Kashmiri Muslim friends, colleagues, and neighbours, who at times had discouraged them from returning to their workplaces. Typically flocked by Kashmiri Pandit devotees, the annual festival of Jyestha Ashtami or Mela Kheer Bhawani also witnessed a subdued turnout this year.¹³² The Pandit transit quarters are located within the premises of the famed temple. Respondents remarked that nobody had been able to vouch for their safety. This was hardly surprising considering that even the Lieutenant-Governor is said to have been only able to proffer half-hearted assurances.

¹³⁰ Information shared with the Forum by respondents.

¹³¹ Ayesha Jain and Anthony Rozario, 'Situation crawling back to '90's': Fear grips Kashmiri Hindus over killing spree, The Quint, 3 June 2022. Available at: <https://www.thequint.com/news/india/fear-grips-the-valley-as-kashmiri-pandits-protest-for-safety-relocation#read-more>.

¹³² Samaan Lateef, *Kashmiri Pandit devotees give a miss to Kheer Bhawani mela*, The Tribune, 8 June 2022. Available at: <https://www.tribuneindia.com/news/j-k/kashmiri-pandit-devotees-give-a-miss-to-kheer-bhawani-mela-402096>.

Most of the respondents were despondent and believed that they were condemned to a life in limbo. They look in envy towards tourists who are safe from militants unlike those who call the valley their home. Nobody knew when or if ever the killing spree would cool down and whether they would be able to resume their lives.

b. Education and livelihood

Kashmiri pandits have been unable to return to work since the killings began. Respondents working at private enterprises expressed their uncertainty about receiving their salary. A few respondents who were working as teachers expressed their worry about their students. Residents who owned farmland elsewhere in the region reported their inability to supervise the harvest. In any case, respondents claimed that there was a paucity of farmhands: migrant workers from other States who usually did the job had stayed away this time due to another set of killings amongst them; and local workers were apprehensive of being associated with Pandits at such a sensitive time.

Parents have been unable to conscientiously send their children to school. Since there is no government directive yet, some schools have been cooperating by providing online classes whereas others are not. Students have now missed classes for over a month. This has come at a critical time when most students have their examinations, and the fate of their careers hangs in the balance.

3. Threat of Exodus by PM Package Employees

Prime Minister Manmohan Singh's employment package of 2010 was promulgated with the objective to provide Government jobs to 6,000 Kashmiri Pandits and to house them in temporary colonies in Kashmir. Migrant families were also offered financial assistance. The appointment was conditional on the ground that the employees would only reside and serve in Kashmir. At the time, the effort was hailed as a radical and farsighted policy aimed at repairing some of the damage of 1990. Since then, however, the policy has not undergone any major update.¹³³ Even the 2015 announcement on construction of 6,000 transit accommodation units for the PM package employees was a repetition of P Manmohan Singh's plan with little progress on the ground. According to Ministry of Home Affairs data, construction of only 1,025 units had been partially or fully completed till February, 2022.¹³⁴ This construction project needs to be completed on the highest priority. Moreover, it is apparent that there is an urgent need to build an additional few thousand accommodation units as a means to enhance 'habitat security' of Pandit employees.

Kashmiri Pandit employees view their demands for redeployment at safer places and enhancement of their security following the targeted killings of their community members as temporary and in the interest of their immediate safety. So far the Lieutenant-Governor

¹³³ In 2021, the Minister of State for Home Affairs had informed the Parliament that the Government had prepared a 'comprehensive policy' to increase and improve the habitation available to returning Kashmiri Pandit migrants. See Riyaz Wani, *Is a fresh exodus in the works?*, Tehelka, 16 June 2022. Available at: <http://tehelka.com/is-a-fresh-exodus-in-the-works/>.

¹³⁴ Vijaita Singh, *Only 17% houses for Kashmiri Pandits complete: Centre*, The Hindu, . Available at: <https://www.thehindu.com/news/national/only-17-of-proposed-accommodation-for-kashmiri-migrants-built-so-far-show-home-ministry-data/article65241269.ece>.

has been adamant in rejecting them.¹³⁵ However, the public nature of the demand has thrown the Central Government into a conundrum. Over 350 PM package employees have already resigned in support of their petition.¹³⁶ From the Government's perspective, acceding to such demands, however, would undo the long-term project of rehabilitating Kashmiri Pandits in their homeland. Moreover, it would bring back the failures of 1990 into the public eye.

The present Government maintains that it has successfully eradicated militancy in the region through a slew of measures, not least through its abrogation of Article 370 of the Constitution. These tall claims, however, do not match the situation on the ground because acknowledging Kashmiri Pandit claims would dilute the impact of the ruling dispensation's political messaging. As a token measure, the Government has offered to transfer Pandit employees under the PM's package to other places within the Kashmir division.¹³⁷

The killings also dilute the Government's other claims. The Government has been making an effort to attract investors from elsewhere in the country to Kashmir. The State Government, collaborating with the Centre, also held the first Real Estate Summit, showcasing its intent to throw open investments in real estate for buyers outside the region.¹³⁸ Any cleavages in the fabric of peace and tranquillity would naturally throw a spanner in the works.

Pandits are also aggrieved by the overall implementation of the PM's employment package. As stated earlier, while around 5,900 of the allocated 6,000 posts have been filled; by the Home Ministry's own admission, only 17% of the employees have been allotted government accommodation.¹³⁹ The remaining resort to rented housing. This has the effect of arbitrarily dividing families and communities and further impinges their ability to ameliorate their situation.

Residents also claim that the allotted government housing suffers from poor construction as it was only meant for use over 8 years, and now is in need of constant repair. The capacity of the housing provided is also not uniform across camps. Flats in Sheikhpora and Vessu have two bedrooms, whereas certain other places such as Tullamulla (Kheer Bhawani) provide for only one. Unemployed residents of Jammu camps have also demanded an increase in financial relief from Rs. 13,000 to Rs. 35,000 per month for each

135 Arun Sharma, *Less than one-fifth of Pandits under PM job package live in secure areas*, The Indian Express, 17 May 2022. Available at: <https://indianexpress.com/article/political-pulse/kashmiri-pandits-pm-modi-job-package-secure-areas-7920765/>.

136 *J&K: Over 350 Kashmiri Pandit PM package employees resign after Rahul Bhat gunned down in office*, Firstpost, 13 May 2022. Available at: <https://www.firstpost.com/india/jk-over-350-kashmiri-pandit-pm-package-employees-resign-after-rahul-bhat-gunned-down-in-office-10669631.html>.

137 Fayaz Wani, *Jammu and Kashmir: Pandit staffers recruited under the PM's job package can choose posting*, New Indian Express, 20 June 2022. Available at: <https://www.newindianexpress.com/nation/2022/jun/20/jammu-and-kashmir-pandit-staffers-recruited-under-the-pms-job-package-can-choose-posting-2467581.html>.

138 Tariq Bhat, *Kashmiri Pandits are fleeing the valley once again*, The Week, 19 June 2022. Available at: <https://www.theweek.in/the-week/current/2022/06/10/kashmiri-pandits-are-fleeing-the-valley-once-again.html>.

139 Supra

family.¹⁴⁰ The amount has not undergone any revision for a while, and residents claim that it is insufficient in light of rising inflation.

The recent spate of targeted killings and reported exodus (temporary, as it appears) of nearly forty percent of Pandit employees under the PM's package scheme shows that militancy in the valley has yet to be eradicated. By virtue of their vulnerability and proximity, Pandits are the favored targets once again. Security experts have labeled the perpetrators of violence as 'hybrid terrorists', i.e. disillusioned and radicalized youth who do not have a criminal record and may not go in for a second operation.¹⁴¹ This is a worrying development indicative of the despair, sense of hopelessness, and disempowerment of the Valley's youth. There is unambiguous conviction among wide cross sections of society that the solution to the present problem does not lie in tightening the security apparatus and giving the armed forces more teeth.

The situation, which confronts the Pandits as well, again highlights the need for more nuanced and sensitive policymaking; perhaps one that begins with the recognition that stringent policymaking by itself is not enough. Italian philosopher Antonio Gramsci's observations are relevant: all political action is driven by the twin engines of coercion and hegemony. While the former includes legal and policy measures of the State, the latter comprises intellectual, moral, and cultural direction given by civil society. Analysts recognise that the harm that has befallen Kashmiri Pandits today is a misbegotten aftereffect of the systematic wrecking of civil society in the region.¹⁴² Whether directly – by putting activists and social workers behind bars, or indirectly by coercing them to keep their mouths shut with the specter of anti-sedition laws – the present administration has destroyed a critical buffer between militants and ordinary people. Those who used to act as mediators and speak out for the masses now find themselves unable to do so.

An unbiased media, NGOs, political activists, religious leaders, and politicians voicing dissenting views, are all equal stakeholders in democratic progression. Any process that leads to their marginalisation impinges on society's ability to correct itself. It is significant that Pandits, those who returned to the valley and those who never migrated, were able to rebuild their lives with the help of civil society leaders of both the majority and minority community, who helped insulate Pandits successfully, as no harm befell them from 2003 to 2021. This begs the question whether Kashmiri Pandits became collateral damage for the Constitutional changes on Jammu & Kashmir initiated by the Centre on August 5, 2019 followed by other measures. There are no easy answers.

140 30,000 Kashmiri Pandits applied for over 2,000 posts under PM package, *Officials*, The Economic Times, 30 January 2021. Available at: <https://economictimes.indiatimes.com/news/politics-and-nation/30000-kashmiri-pandits-applied-for-over-2000-posts-under-pm-package-officials/articleshow/80601382.cms?from=mdr>.

141 Lt. Gen (Retd.) Satish Dua, *J&K Killings: Why Terrorism cant be erased without civil society's help*, The Quint, 7 June 2022. Available at: <https://www.thequint.com/voices/opinion/jammu-kashmir-jk-civilian-killings-terrorism-kashmiri-pandits#read-more>.

142 Bharat Bhushan, *Flight of Kashmiri Pandits: The aftershock of destroying civil society*, Business Standard, 6 June 2022. Available at: https://www.business-standard.com/article/opinion/flight-of-kashmiri-pandits-the-aftershock-of-destroying-civil-society-122060600103_1.html.

Leaders of the majority community have been at the forefront of efforts to reassure Pandits and to request them to stay back. It is clear then that the process of repair must begin with re-energizing civil society stakeholders that have fallen by the wayside in recent years.

Civil society leadership alone can help restore the historic and famed Kashmiri ethos of mutual caring and accommodation. Inter-community dialogue within the Valley as also in Jammu that involves religious and spiritual leaders, businesspersons, and professionals up to the village/*mohalla* level would help rebuild mutual trust and faith in each other and guard against attempts to disturb peace.

Interaction by Kashmir's civil society with students at the high school, college and university level within the Valley as also in the rest of India would help bridge perceptual gaps in understanding each other. Initiation of such processes would also defeat the virulent narratives unleashed by majoritarian-oriented political forces and related national TV channels in the country which have an impact on the lives of all Kashmiris, including Pandits. At the same time it would be foolhardy to pretend that there is no political question in Kashmir to be debated or resolved. For without a bold, meaningful, and sincere political outreach by the Centre to the political leadership in the Valley and establishment of a mechanism for dialogue with the people to resolve the Kashmir issue politically, including talks with Pakistan, the challenges faced by the majority community as also the Kashmiri Pandits in the Valley are bound to linger.

APPENDIX

Short Bios of members of The Forum for Human Rights in alphabetical order:

Enakshi Ganguly is a human rights activist, writer and researcher. Beginning her career at the Indian Social Institute in 1985, she was Deputy Director of the Multiple Action Research Group (MARG), worked with Mobile Creches and the Population Council and co-founded the HAQ Centre for Child Rights in 1998. She is currently advisor to HAQ and a freelance consultant. She is the President of the Society for Rural, Urban Tribal Initiatives (SRUTI) and on the boards of the Gender Centre of the Lal Bahadur Shastri Academy for Administration (LBSNAA) and National Centre for Advocacy Studies (NCAS). Ms. Ganguly was a member of the Steering Committee of the Planning Commission for the Eleventh and Twelfth Five Year Plans and a technical expert for several UN agencies. In 2003, she was awarded the Ashoka Fellowship and has been profiled in a book entitled *WOMANKIND: Faces of Change Around the World* by Donna Nebenzahl and Nance Ackerman (Raincoast Books: 2003). In 2019, she was awarded the REX Karmaveer Chakra award instituted by iCONGO in Partnership with the United Nations.

Ramachandra Guha is a historian and biographer based in Bengaluru. He has taught at the universities of Yale and Stanford, held the Arné Naess Chair at the University of Oslo, and served as the Philippe Roman Professor of History and International Affairs at the London School of Economics. In 2019-20 he held the Satish Dhawan Chair in the humanities at the Indian Institute of Science. Guha's books include a pioneering environmental history, *The Unquiet Woods* (University of California Press, 1989), an awardwinning social history of cricket, *A Corner of a Foreign Field* (Picador, 2002), and a best-selling history of independent India, *India after Gandhi* (Macmillan/Ecco Press, 2007). His most recent work is a two-volume biography of Mahatma Gandhi: *Gandhi Before India* (2013), and *Gandhi: The Years that Changed the World* (2018).

Col. Yoginder Kandhari was born and brought up in Kashmir and remains intensely connected to the region. He regularly contributes articles on it and other strategic and security issues in newspapers and magazines. He served a tenure in Kashmir during the peak of militancy from 1983 to 1987. Presently, he is involved in the preparatory work of a book titled *Revisiting Kashmir – 1989-90: Deconstructing the State Response*.

Air Vice Marshal (retd) Kapil Kak served in the Indian Air Force in the flying branch for over three decades and undertook combat missions in the India-Pakistan War of 1971. For distinguished service of exceptional order', the President of India awarded him the Ati

Vishist Seva Medal, as well as the Vishist Seva Medal. A former Deputy Director at the Institute for Defence Studies and Analyses in New Delhi, and Advisor (Strategic Studies) at the University of Jammu, Air Marshal Kapil Kak is the Founding Additional Director of the Centre for Air Power Studies, New Delhi, and is closely associated with the Track II initiatives of multiple public policy think tanks on the India-Pakistan peace process, and conflict resolution and peace building in Jammu and Kashmir. He is a member of the University Council of Cluster University, Jammu; Board of National Security Studies, Central University, Jammu, and on the Board of Directors of the New Delhi-based Healing Minds Foundation.

Radha Kumar is former Director General of the Delhi Policy Group (2010-2015) and a specialist on peace and security. Earlier Director of the Mandela Centre for Peace at Jamia Millia Islamia University, Dr. Kumar was also Senior Fellow at the Council on Foreign Relations in New York, Warren Weaver Fellow at the Rockefeller Foundation, Associate Fellow at the Institute for War and Peace Studies at Columbia University and Executive Director of the Helsinki Citizen's Assembly in Prague. She has served on the boards of the UN Institute for Training and Research (UNITAR), the Foundation for Communal Harmony, the United Nations University Council (which she chaired from 2016-19), and is currently a Board member of the Stockholm International Peace Research Institute (SIPRI). She was a member of the three-person Group of Interlocutors for Jammu and Kashmir appointed by the Government of India (2010-11), who prepared the report titled *A New Compact for Jammu and Kashmir*. Dr. Kumar's latest books are *A Gender Atlas of India* (Sage: 2018) and *Paradise at War: A Political History of Kashmir* (Aleph: 2018).

Justice Madan Lokur graduated in law from Delhi University in 1977 and joined the Bar immediately thereafter. He was appointed Additional Solicitor General of Delhi in 1998 and judge of the Delhi High Court in 1999, and as Chief Justice of the Gauhati High Court in 2009 and of the Andhra Pradesh High Court in 2011. In June 2012, he was appointed judge of the Supreme Court. After his retirement in December 2018, he was appointed judge of the Supreme Court of Fiji in January 2019 and took the oath of office in August. Justice Lokur's expertise includes alternative dispute resolution mechanisms (such as arbitration and mediation), legal aid, judicial education, child rights and human rights.

Justice Hasnain Masoodi is a former judge of the High Court of Jammu and Kashmir and a Member of Parliament (Lok Sabha, the lower house of the Indian parliament), from the Anantnag constituency of Jammu and Kashmir.

Major General (Retd.) Ashok Kumar Mehta retired from the Indian army in 1991. He served in Uri, south of the Pir Panjal in Rajouri, and in the Kargil and Ladakh sectors. He fought in the 1965 and 1971 India-Pakistan wars, both in the eastern and western

theatres of the conflict. He also commanded the Indian Peace-Keeping Force in Sri Lanka, fought counter-insurgency operations in Nagaland, and engaged in UN Peacekeeping Operations in 1962-63. He returned to Jammu & Kashmir in 1988 as a member of the Defence Planning Staff, Ministry of Defence. He has subsequently visited Jammu and Kashmir after retirement in 1993 and in mid-2000 as part of Track II assignments. In 2003, he became the convenor of an annual India Pakistan conference which continued almost uninterrupted till 2018.

Justice Bilal Nazki is a former Chief Justice of the High Court of Orissa and has served as judge in the high courts of Jammu and Kashmir, Andhra Pradesh and Bombay, and as Advocate General of Jammu and Kashmir. He was Chairman of the Jammu and Kashmir State Human Rights Commission and the Human Rights Commission of Bihar and headed the committee set up by the Government of India to review the functioning of the Haj Committee of India and its state units. He has been President of the Andhra Pradesh State Judicial Academy, Chancellor of National Academy of Legal Studies & Research University (NALSAR), Hyderabad, and Executive Chairman of the Andhra Pradesh State Legal Services Authority.

Justice Ruma Pal is a former judge of the Supreme Court of India (2000-2006) as well as of the Calcutta High Court. She has served as Chancellor of Sikkim University, Executive Council member of the International Academy of Law, Executive Chairperson of the National Services Authority, Chairperson of the Academic Council of the Indian Law Institute, Executive Council member of the National Judicial Academy and the WB National University of Juridical Sciences. She is a member of the International Association of Women Judges and advisor to the Asia Pacific Forum on Equality Issues, as well as member of the Committee of experts on the Application of Conventions and Recommendations, International Labour Organization.

Lieutenant General (retd.) H S Panag is former GOC-in-C of the army's Northern Command, Udhampur, and Central Command, Lucknow. He is experienced in both counter-insurgency and high-altitude operations, and has served as an Instructor in the Indian Military Officers' Training Academy, commanded an Infantry brigade, the 31 Armoured Division and the XXI Corps, the strike formation of the Southern Command. Post-retirement he was appointed an Administrative Member of the Armed Forces Tribunal, Chandigarh Bench. His awards include the Param Vishisht Seva Medal and the Ati Vishisht Seva Medal. He is a frequent contributor to the media on strategic and military affairs and an expert on Chinese strategic planning.

Amitabha Pande is a former member of the Punjab Cadre of the Indian Administrative Service who retired in 2008 as the Secretary of the Inter State Council of the Government of India, a constitutional machinery for federal policy coordination, diversity management and consensus building between the Union of India and the states, and among the states.

The Council represents India in the Forum of Federations – an international organisation for the promotion of federalism with headquarters in Ottawa, Canada. He has written several articles on the subject of intergovernmental relations in India, with a focus on the dynamics of the interplay between democracy, diversity, identity and the idea of a monolithic ‘nation state’. He also had a long stint in the Ministry of Defence involving close interaction with the armed forces. That and his experience in Punjab during its most troubled period has given him insights into security related issues which have a bearing on the current situation in Jammu and Kashmir.

Gopal Pillai (co-chair) is a former member of the Kerala Cadre of the Indian Administrative Service, who retired as Union Home Secretary in June 2011. He has served as Under Secretary/Deputy Secretary in the Defence Ministry, Deputy Secretary Labour, Kerala Special Secretary for Industries, Secretary Health and Family Welfare, Principal Secretary to the Chief Minister of Kerala, Joint Secretary (North East) in the Home Ministry, Additional Secretary in the Department of Commerce, Special Secretary in Commerce, and Secretary in the Department of Commerce, before becoming Union Home Secretary (2009-11). As Union Home Secretary, he dealt closely with security, political, legal and humanitarian issues relating to Jammu and Kashmir. Along with the then Home Minister, he instituted the Multi-Agency Centre for security and intelligence coordination between the Centre and States (MAC), and floated the National Counter-Terrorism Centre (NCTC) and the Crime and Criminal Tracking Network System (CCTNS).

Justice Anjana Prakash is a former judge of the Patna High Court (2009-2016). She has practiced law since 1982 and is currently a senior advocate based out of Delhi. She is also a frequent contributor of opinion pieces on constitutional issues in journals, such as Live Law, and newspapers, including The Wire. In early 2020 she served as amicus curiae to the Supreme Court on the death penalty for the Nirbhaya rape-murder convicts.

Nirupama Rao was Foreign Secretary in the Government of India (2009-2011) and earlier served as Spokesperson of the Ministry of External Affairs; she was High Commissioner of India in Sri Lanka and Ambassador to the People’s Republic of China. She was Ambassador of India to the United States from 2011 to 2013. On retirement, Rao was a Fellow at Brown University and also taught there from 2015-16. She was George Ball Adjunct Professor at Columbia University in Fall 2018. In 2019, she was a Pacific Leadership Fellow at UC San Diego. She is a Global Fellow of The Woodrow Wilson Center, Washington DC and Councillor of the World Refugee Council. She is a frequent contributor of opinion pieces on foreign policy and global affairs to a number of Indian media outlets.

Moosa Raza is a polyglot and a respected scholar of Islam who has been Principal Secretary to the Chief Minister of Gujarat, Chief Secretary in Jammu and Kashmir, Adviser to the Governor of Uttar Pradesh, and Secretary to the Government of India in the Cabinet Secretariat and in the Ministry of Steel. Currently, he is the chairman of the

South Indian Educational Trust (SIET), which runs six educational institutions, and of the Executive Committee of Coastal Energen Pvt. Ltd. In 2010, he was honoured with the Padma Bhushan. His latest book is *Kashmir: Land of Regrets* (Context:2019).

Anand K. Sahay is a columnist who has held senior positions at the Patriot, Times of India, The Hindu, BITV, Hindustan Times and Asian Age and written for the Indian Express, Times of India, Economic Times, The Wire and the Citizen. He reported and commented for the BBC in New Delhi and London and was a Kabul-based advisor to the Afghanistan Times. He reported the fall of Gorbachev and end of communism out of Moscow, the dismantling of apartheid and the first all-race election in South Africa and the transfer of Hong Kong to China, as well as insurgency and militant politics in Kashmir, Punjab and Assam. He has been visiting professor at the Nehru Centre, Jamia Millia Islamia University and guest lecturer at the National Defence College. He has also been president of the Press Club of India.

Shivani Sanghavi is a lawyer, activist and consultant on matters concerning civilian security in armed conflict, international humanitarian law, and access to justice.

Probir Sen joined the Indian Administrative Service after graduating from Cambridge, and retired as Secretary to the Government of India and Secretary General of the National Human Rights Commission. During the course of his career he headed a large number of organizations, including Indian Airlines and Air India. After retirement he was appointed Director, India International Centre and subsequently served on the Boards of a number of corporations, companies, trusts and NGOs. He possesses wide exposure to issues relating to management, organizational development and leadership.

Justice Ajit Prakash Shah (co-chair) served as a judge of the Bombay High Court and later as Chief Justice of Madras and Delhi High Courts. After retirement, he headed the Twentieth Law Commission of India (2013-2015), which submitted 19 reports, including on the Arbitration and Conciliation Act, commercial courts, electoral reforms and the death penalty. He has been Chairperson of the Broadcasting Content Complaints Council (BCCC), a self regulatory body appointed by the Indian Broadcasting Foundation, and member of the Governing Council appointed by the Ministry of Law and Justice for judicial reforms. He also served as member of the Expert Committee of the International Labour Organization for implementation of ILO Conventions by member countries and headed a Committee appointed by the Planning Commission for drafting the Privacy and Data Protection Laws. He is nominated as the Commissioner in the International Commission of Jurists (ICJ). He has also acted as ombudsman for sports bodies such as the Board for Cricket Control in India.

Hindal Haidar Tyabji joined the J&K cadre of the IAS in 1965. He has served in the State Govt. as well as the Central Govt. in a variety of positions. He was Chief Secretary Jammu and Kashmir during the Governor's Rule of General Krishna Rao in 1994. In 1995, he

moved to the Ministry of Home Affairs (Department of Justice) as Additional Secretary. He returned to the state in October 1996 when an elected government was sworn in and headed the state's Agriculture and Rural Development departments. He took premature retirement in 1998 to take up a 5-year assignment as the Chairman of the Jammu and Kashmir Public Service Commission. In August 2008, he returned to Jammu and Kashmir to serve as an Adviser to the then Governor Shri NN Vohra. After the period of Governor's Rule ended and the newly elected government was sworn in he returned to Delhi where he and his wife reside.

