

JAMMU AND KASHMIR:
THE IMPACT OF LOCKDOWNS
ON HUMAN RIGHTS

AUGUST 2019-JULY 2020

REPORT



THE FORUM FOR HUMAN RIGHTS
IN JAMMU AND KASHMIR

JAMMU AND KASHMIR:
THE IMPACT OF LOCKDOWNS
ON HUMAN RIGHTS

AUGUST 2019-JULY 2020
REPORT

THE FORUM FOR HUMAN RIGHTS
IN JAMMU AND KASHMIR

TABLE OF CONTENTS

| | |
|--|----|
| 1. Acknowledgements | 5 |
| 2. Report and Methodology | 6 |
| 3. Executive Summary | 8 |
| 4. Overview and Human Rights Issues | 12 |
| 5. Impact on Civilian Security | 23 |
| 6. Impact on Children and Youth | 32 |
| 7. Impact on Health | 38 |
| 8. Impact on Industry and Employment | 44 |
| 9. Impact on Media | 52 |
| 10. Conclusion and Recommendations | 58 |
| | |
| List of abbreviations | 61 |
| | |
| Appendix A: About the Forum | 62 |
| Appendix B: Estimates of Losses to Industry by Kashmir Chamber of Commerce and Industry | 69 |
| Appendix C: Sample Forum Questionnaire | 70 |

ACKNOWLEDGEMENTS

The Forum for Human Rights in Jammu and Kashmir would like to express deep gratitude to all those residents of Jammu and Kashmir who responded to the Forum's questionnaires and, in particular, to Abhilasha Ramakrishnan and Anjana Ramanathan for their critically important legal research, and to Narjees Faisal Qadri, Gulzar Bhat, Adil Khan and Soaib Qureshi, who provided valuable inputs to our work, as well as to research interns Anum Wani and Sushila Sahay, who collected facts and figures and worked on the final production of the report. Finally, many thanks to Jayashree Kumar for proof-reading the report in record time.

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, an independent initiative is required so that continuing human rights violations do not go unnoticed.

This is the first report issued by the Forum. It has largely been compiled from questionnaires sent by the Forum (sample questionnaire in Appendix C); government sources, media accounts (carried in well-established and reputed newspapers or television); NGO fact-finding reports and information garnered through public interest writ petitions; as well as information received from industry bodies such as the Kashmir Chamber of Commerce and Industry. Though in situ verification has not been possible during the Covid-19 lockdown, 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. Where there is any doubt regarding a piece of information, queries have been footnoted.

hforumjk@gmail.com

Members of the Forum

Co-Chairs:

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

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

Members:

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

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

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

Gopal Pillai, former Home Secretary, Government of India

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

Lieutenant-General H S Panag (retd)

Major-General Ashok Mehta (retd)

Air Vice-Marshal Kapil Kak (retd)

RD Sharma, former Vice Chancellor of Jammu University

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

Ramachandra Guha, writer and historian

Anand Sahay, columnist

EXECUTIVE SUMMARY

On August 4, 2019, a day before the President of India voided all clauses of Article 370 of the Indian constitution and suspended the Jammu and Kashmir constitution, the state was put under a total lockdown. Around 38,000 additional troops were flown in to enforce the lockdown, which closed markets, educational institutions and all public spaces for several weeks. Internet and telephone services were snapped, curfew was declared, public assembly was prohibited under Section 144 of the Code of Criminal Procedure, 1973 (CrPC),¹ and thousands, including minors and almost all the elected legislators of Jammu and Kashmir (excluding those belonging to the BJP), were put under preventive detention. Five days later, the Parliament of India passed the Jammu and Kashmir Reorganization Act, dividing the state into two Union Territories, of Jammu and Kashmir, and Ladakh. In the months that followed, national political figures were denied permission to enter the former state and were turned back from Srinagar airport.

The economic, social and political impact of these actions, and their long duration – eleven months thus far – have been disastrous. All the former state's industries suffered severe blows, pushing the majority into loan defaults or even closure; hundreds of thousands lost their jobs or underwent salary deferment or cuts; closures of schools and universities gravely impaired education and added to the trauma of children and parents; healthcare was severely restricted by curfew and roadblocks; the local and regional media lost what little independence they had.

Worst of all, there was no elected representative to advocate the interests of the people of Jammu and Kashmir, since the majority of political leaders were put in preventive detention. Moreover, many of those that were released, gradually over the past eleven months, had to pledge that they would not criticize government actions. Statutory bodies to which citizens could go to seek redress virtually ceased to exist, since all the state commissions

¹ The Code of Criminal Procedure, 1973 (CrPC) was extended to Jammu and Kashmir on August 9, 2019, through the Jammu and Kashmir Reorganisation Act, 2019, Fifth Schedule Item 9. Before that the Code of Criminal Procedure, Samvat 1989 was applicable. Both the Presidential Orders of August 5 and 6, and the Reorganization Act have been challenged in the Supreme Court of India. Hearings are still to conclude

– for human rights, women and child rights, anti-corruption and the right to information – were closed when the state was divided into Union Territories, and the Union Government decided not to reinstate them, even though Union Territories too are entitled to independent statutory bodies for oversight.

As a result, there has been a near-total alienation of the people of the Kashmir valley from the Indian state and people. While alienation of the people of Jammu is not as severe, their concerns over economic and educational losses as well as policies such as the new domicile rules, are as substantial.

It is in this context that the Human Rights Forum for Jammu and Kashmir was formed. This Report seeks to document the numerous human rights violations in the former state over the past eleven and a half months (August 4, 2019 to July 19, 2020) under five broad heads: civilian security, health, children and youth, industry and media. Its findings are as follows:

- Counter-insurgency concerns have been given absolute priority over public, civilian and human security, leading to an across-the-board violation of human rights, including the vitiation of protections such as habeas corpus, prevention of illegal detention and strict restrictions on arrest and detention of children. There has been denial of the right to bail and fair and speedy trial, coupled with misuse of draconian legislation, such as the Public Safety Act (PSA) and the Unlawful Activities Prevention Act (UAPA), to stifle dissent.
- In the same manner, the eleven months of lockdown, which saw frequent closures, harassment at barricades and checkpoints, and restrictions on mobile telephony and internet connectivity, have enormously impacted public health, and caused trauma and stress amongst the people of Jammu and Kashmir, violating the rights to health and medical care under the Indian, and Jammu and Kashmir, constitutions. The rights of children to a trauma-free environment have been arbitrarily ignored.
- The impact on education has been particularly severe. Schools and colleges functioned for barely 100 days between 2019 and 2020 (the bulk of which were pre-August 2019). After the COVID-19 pandemic lockdown, the limiting of networks to 2G has made it impossible for online classes to function adequately. Graduate students and teachers have been unable to participate in conferences or have their papers published, causing wilful harm to their careers and violating the rights to education under the Indian, and Jammu and Kashmir, constitutions.
- Local and regional industries have suffered large losses in every sector. Many companies that are heavily or solely reliant on 4G networks that are available in the rest of the country, such as tourism and cottage industries, have been forced out of business. The new domicile rules introduced by the Ministry of Home Affairs and the Jammu and Kashmir administration, moreover, erode prior employment protections for permanent residents of the former state.

- The local media has been one of the worst sufferers. Journalists have been harassed and even had draconian charges slapped on them, for example under the UAPA. Their content, readership and revenues have suffered such a sharp decline that dozens of journalists have lost their jobs. The new media policy, which introduces censorship by the Directorate of Information and Public Relations (DIPR) in coordination with security agencies, is a death blow to the freedom of the press and the freedom of expression.
- Moreover, the Jammu and Kashmir administration's decision to notify areas of the former state as 'strategic areas' for development by the army suggests further expansion of the military presence in hinterland and border areas.

Recommendations

1. Release all remaining political detainees who were taken into preventive detention on or after August 4, 2019. Strictly follow jurisprudence on the rights to bail and speedy trial. Repeal the PSA and any other preventive detention legislation, so that they cannot be misused against political opposition, or amend them to bring them in line with our constitutional ethos. Remove all restrictions on freedom of representation and expression. Strictly implement juvenile protection legislation in letter and in spirit. Release all detained juveniles and withdraw charges against them. Initiate enquiries followed by criminal and civil actions against personnel of police, armed forces and paramilitary forces found guilty of violation of child rights. Withdraw charges under the UAPA against journalists and activists.
2. Balance security considerations with public interest, giving utmost consideration to humanitarian concerns involving the population and eliminating hindrances to the welfare and well-being of the people. Curb the application of Section 144 to only those instances in which there is clear and present danger. Ensure that District Magistrates strictly follow judicial guidelines restricting the use of Section 144. Restore in practice the humanitarian guidelines to be followed when conducting Cordon and Search Operations (CASO), to prevent civilian deaths, injuries or any other damage or loss, and adequately compensate innocent citizens whose houses have been destroyed in Cordon and Search Operations.
3. Ensure that police and paramilitary forces at checkpoints allow smooth passage for medical personnel and patients. Where patients lack transport to hospital, provide aid by making vehicles available. Hold police and paramilitary personnel who harass civilians at checkpoints accountable and initiate appropriate disciplinary action.
4. Restore 4G internet and mobile services *in toto*. Noting that Jammu and Kashmir has below average access of children to online facilities (see section on children and youth, make additional efforts to provide access for such children.
5. Reinstate all the former state's statutory oversight bodies, especially those monitoring human rights, such as the Jammu and Kashmir Human Rights Commission and the Jammu and Kashmir Women and Child Rights Commission.

6. Compensate local businesses that were forced to shut down due to the government lockdown between August 2019 and March 2020 and ensure that they are given the government aid they require to the fullest extent possible.
7. Rollback the new media policy and encourage all shades of opinion to be freely and peacefully expressed, as the laws apply in every part of the Indian Union.

OVERVIEW AND HUMAN RIGHTS ISSUES

“A few days before New Delhi’s radical move of August 5, 2019, there was a heightened sense of uncertainty in Kashmir.

A flurry of Government orders asking different government departments to stockpile rations had unleashed bedlam. The moving of legions of additional forces to the valley only amplified anxiety and fear among the people.

Srinagar’s nerve-centre, Lal Chowk, became a maelstrom of crowds, auto-rickshaws and buses, with people resorting to panic buying of essentials. Petrol stations witnessed long queues of vehicles with people scrambling to fill up their tanks. The principal hospitals in Srinagar shut their elective theatres. People took to social media to post goodbye messages for their friends and relatives.

At around quarter to midnight on August 4, the phones suddenly stopped ringing in the valley and the internet vanished. The next day the balloon went up when Home Minister Amit Shah informed parliament that the government was revoking the special status of Jammu and Kashmir and reorganizing the state.

As the worst fears of people with regard to the abrogation of article 370 came true, people did not understand how to react.”²

* * *

The constitutional changes of August 5-6, 2019, bewildered Kashmiris and left them stunned and dumbfounded. The valley has historically viewed its special status, founded on its unique, syncretic, socio-cultural and political ethos, as a marker of its distinct identity. The people, especially the youth, are gravely disturbed at this loss of special status. Apparently apprehensive of an imminent retaliation by the population, the Union Government enforced a total lockdown a day prior to the Presidential Order of August 5, bringing the entire state to a standstill. An estimated 8.8 million mobile telephones were blocked in the Kashmir valley alone.³ The arrest of over 6,600 people, inclusive of the apex leadership of mainstream and separatist parties, created a complete political vacuum and placed the state’s electoral democracy in indefinite suspension. Not surprisingly, the footprint of security forces had to be substantially enlarged for them to enforce the strict lockdown, arrest and detain people and prevent protests. Though data is not readily available on the number of days Jammu and Kashmir was put under curfew, indications are that a ban on public gatherings remained in force from August 4, 2019 till March 24, 2020, when a national

² Senior journalist Gulzar Bhat, note to the Forum.

³ Azaan Javaid, ‘J&K has 2 sets of cell-phone numbers — those on ‘white list’ work, ones on ‘black list’ don’t’, The Print, September 26, 2019.

lockdown was declared due to the COVID-19 pandemic. In the absence of civilian oversight, these measures further sharpened the mistrust between the people and the government.

INTERNET CLOSURES AND BAN ON 4G NETWORKS

Table 1: Internet closures/restrictions 2019-2020

2019

| | |
|--------------|--|
| July 5: | Suspended in Shopian (counter-insurgency gunfight) |
| July 10: | Suspended in Anantnag, Pulwama, Kulgam and Shopian (Burhan Wani death anniversary) |
| July 27: | Shopian (CASO) |
| August 4: | Mobile, landline and internet suspended across state |
| September 9: | Some landlines restored |

2020

| | |
|--------------|---|
| January 15: | Broadband and mobile services restored for 1 week |
| January 25: | PS GOJK order that mobile and internet services be restricted to 2G and only white-listed social media sites allowed Same day internet snapped |
| January 27: | Internet restored |
| January 31: | PS GOJK order of 25th January extended for 1 week |
| February 7: | Extended again for 1 week |
| February 12: | Mobile, internet services suspended |
| February 15: | PS GOJK order of 25th January extended for 10 days (February 24) |
| February 24: | Extended again till March 4 |
| March 4: | Extended again till March 26 |
| March 24: | COVID lockdown. 2G restrictions continued. |
| March 26: | PS GOJK order of 25th January extended again, till April 3 |
| April 3: | Extended again till April 15 |
| April 15: | Extended till April 28 |
| April 28: | Extended till May 11 |
| May 11: | Continued till May 27 |
| May 27: | Continued till June 17 |
| June 17: | Continued to July 17 |
| July 8: | Continued to July 29 |

Mobile+ /internet shutdowns in previous 5 years

| | |
|----------|--------------|
| 2014-15: | 5 shutdowns |
| 2015-16: | 5 shutdowns |
| 2016-17: | 10 shutdowns |
| 2017-18: | 32 shutdowns |
| 2018-19: | 65 shutdowns |

Source: Compiled from Correspondent, 'Internet Services Suspended in Kashmir: A Brief History of Data Shutdowns in The State', News 18, August 7, 2019, <https://www.news18.com/news/tech/internet-services-suspended-in-kashmir-a-brief-history-of-data-shutdowns-in-the-state-2258401.html>, *Voices from Kashmir: Narratives that lost connection* (initiative by internetshutdowns.in), 27 January, 2020, <https://sflc.in/using-2g-fight-pandemic-digital-world>, Government of Jammu and Kashmir, Department of Disaster Management, Relief, Rehabilitation and Reconstruction, Order No.66-JK (DMRRR) of 2020, <https://jkgad.nic.in/commonshowOrder.aspx?actCode=O35860>.

Landlines began to be restored in late 2019 and mobile telephony was restored in January 2020, following the Supreme Court's order in *Anuradha Bhasin v Union of India*,⁴ However, internet access was limited to 2G services and only 'white-listed' social media sites were allowed. In May 2020, the Supreme Court ordered that the Government of Jammu and Kashmir (GOJK) set up a special committee to review and determine restoration of 4G services, but the committee was to be composed only of GOJK members, which defeated the overall purpose of examining the question in an unbiased way, and was criticized as "outsourcing justice".⁵ Whether the committee was set up at all is unclear, but the GOJK has continued to order restrictions to 2G till date. In the latest GOJK order dated July 8, 2020, extending the 2G restriction to July 29, 2020, there was no mention of a review by a special committee.⁶

While the provision of 2G services has at least enabled families to contact each other, the restrictions on the Internet have caused widespread damage to education, health and industry. This is the longest internet shutdown ever imposed in a democracy, according to Access Now, an international advocacy group that tracks internet suspensions. Only authoritarian regimes such as China and Myanmar have cut off the Internet for as long or longer periods.⁷

Overall security situation

The Union and Jammu and Kashmir administrations argue that the overall lockdown and internet shutdowns are necessitated by the security situation in Jammu and Kashmir. But an overall review of security conditions indicates otherwise.

A two-decade rewind brings forth that from 2002, the security situation – despite spikes in violence in 2008 (the Amarnath land row), 2010 (the Army's Machhil fake encounter, resulting in the court martial of five personnel), and 2016 (Burhan Wani's killing) – was not allowed to get out of hand. The terror threat witnessed its sharpest decline during the years of the New Delhi-Srinagar and New Delhi-Islamabad peace and dialogue process (2003-2007) and this sustained downward trend continued until 2014.

The Government's own data, provided in a counter-affidavit to the writ petition *Mohammad Akbar Lone and ANR*, confirms that incidents of terrorist violence reduced drastically from a peak of 4,522 in 2001 to 170 in 2013. The reduction in fatalities (civilians, security forces and militants) from 3552 (2001) to 135 (2013) was equally dramatic.⁸ Perhaps duly

4 AIR 2020 SC 1308. In this case, the Court, while protecting the freedom of speech and expression and the freedom to practice any profession over the internet, held that restriction upon such rights would need to be in accordance with Articles 19(2) and (6) of the Constitution as well as the test of proportionality.

5 Arvind Datar, 'The Dangers of Outsourcing Justice', Bar and Bench, June 7, 2020, <https://www.barandbench.com/columns/the-dangers-of-outsourcing-justice>.

6 Government of Jammu and Kashmir, Department of Disaster Management, Relief, Rehabilitation and Reconstruction, Order No.66-JK (DMRRR) of 2020, dated July 3, 2020, <https://jkgad.nic.in/common/showOrder.aspx?actCode=O35860>

7 Correspondent, 'Internet Services Suspended in Kashmir: A Brief History of Data Shutdowns in The State', News 18, August 7, 2019, <https://www.news18.com/news/tech/internet-services-suspended-in-kashmir-a-brief-history-of-data-shutdowns-in-the-state-2258401.html>

8 Counter Affidavit on behalf of the Union of India in Mohd. Akbar Lone & Anr. v Union of India & Ors., WP(C) No.1037/2019 before the Supreme Court of India, pp.21-22.

elected governments in Jammu and Kashmir, hopes generated by initiation of a political dialogue for resolution of the Kashmir issue, and more people-sensitive security force operations contributed to this encouraging development.

But, over the years, the absence of a multi-dimensional dialogue for settling the Kashmir issue between the Centre and Kashmiri leaders, and India and Pakistan, has given rise to anger, despondency and despair among people. This is particularly so for youth, who spearhead militancy. Moreover, the adoption of 'hard and muscular' counter-insurgency measures by security forces post-2017 served to further brutalise society, tear asunder kinship patterns and provide societal sanction for violence. These cautionary points were repeatedly brought to government notice by policy analysts and civil society groups, such as the Concerned Citizens' Group led by former Union Finance and External Affairs Minister Yashwant Sinha, but garnered no response, nor were any actions initiated.

The consequential adverse impact on security was, therefore, only to be expected. A near continuous decline in terror fatalities that had bottomed out in 2013 swung upwards in most metrics. According to the South Asia Terrorism Portal (SATP), incidents of terrorist violence rose from 84 incidents in 2013 to 205 in 2018, 135 in 2019 and 80 in the first six-and-a-half months of 2020.⁹ The proportion of locals in militancy and fatalities also began to rise. According to another SATP report, out of 257 militant fatalities in 2018, at least 142 were local.¹⁰ Likewise, of the 152 militants killed in 2019, locals numbered 120.¹¹ Expectedly, in a mirror-image response to national impulses, radicalization also witnessed an upswing. Deeply conservative religious-cultural entities have also ramped up their influence in varied geographies.

Pakistan's seven-decades-long efforts to fish in the troubled waters of Kashmir continue unabated. But after the August 2019 political changes in Jammu and Kashmir, it has gone into overdrive, infiltrating terrorists, ramping up cross-LoC firing, inciting and radicalizing Kashmiris through virulent social media campaigns, and establishing Kashmir Cells in its missions abroad as part of Kashmir-specific anti-India information war strategy. China's attempts to mobilize the UN Security Council against the August changes, and its own army's May 2020 intrusions in Eastern Ladakh have added further diplomatic and security concerns for the Indian Government. They have also highlighted a trilateralization of the dispute over Kashmir between India, Pakistan and China, lending a new edge to the strategic China-Pakistan nexus against India, specifically in Jammu and Kashmir.

9 SATP, 'Datasheet - Jammu & Kashmir: Yearly Fatalities 2000-2020',

<https://www.satp.org/datasheet-terrorist-attack/fatalities/india-jammukashmir>, resulting in the deaths of 86 civilians in 2018, 42 in 2019 and 17 in 2020 (January-July 15). Comparable figures for security forces killed from 2018 to July 15, 2020 are 95, 78 and 33, and for militants killed 271, 163 and 145.

10 SATP, 'Jammu & Kashmir: Assessment - 2020', <https://www.satp.org/terrorism-assessment/india-jammukashmir#:~:text=According%20to%20a%20March%202014,in%20Kashmir%2C%2021%20were%20locals>.

11 The SATP datasheet gives higher figures (see fn. 7). These 2019 figures are based on the Forum's cross-check with security sources.

Security operations and people

The comprehensive clampdown of August 2019 did impel visible decline in terrorist related incidents, overall fatalities and employment of improvised explosive devices (IEDs). During January-June, 2020, uniformed forces were able to eliminate roughly 130 terrorists and their top commanders, book and arrest around 250 'over-ground workers' who constitute their logistics lifeline, and neutralise the incipient threat of global terrorist formations. On the flipside, instances of attempted and estimated net infiltration have both seen a substantial rise. Cease-fire violations escalated sharply from 449 in 2016 to 3,168 in 2019.¹² Prolonged lockdowns, arrests and detentions, and restrictions on media and 4G mobile internet services, appear to have caused worrisome disquiet and seething youth anger.

It is evident that a mix of security consolidation in certain metrics and setbacks in others has been accompanied by an overwhelming curtailment of freedoms and political rights in Jammu and Kashmir. The ban on 4G networks is a case in point. While the ban undoubtedly limits the recruitment, mobilization and planning of militant groups, it has caused immense harm to people's lives, industry, health, education and the media. It has also limited the scope of intelligence agencies to gather early warnings from listening-in.

Moreover, the establishment of a pattern of politics that sees uniformed forces as the vanguard for force-use rather than for sharply targeted counter-insurgency operations against known and clearly identified terrorists is problematic. Post August 2019, the intensification of security force operations and rising number of cordon and search operations – conducted every single day from the beginning of June 2020 to around mid-July – have exacerbated the pain and suffering that the people of Kashmir have endured over three long decades.

Furthermore, the Jammu and Kashmir administration's new media policy (see section on the media), and amendments to the Control of Building Operations Act, 1988, and the Jammu and Kashmir Development Act, 1970, again prioritize counter-insurgency concerns over public and human concerns. The decision to notify areas of the former state as 'strategic areas' to be developed by the army, suggests that the army will have an expanded and long-term military presence in hinterland as well as border areas, beyond the already existing cantonments.¹³ Such an expanded and long-term presence is something the army has previously sought to limit, even at the height of the insurgency in the 1990s; indeed, as conflict figures declined, the MHA and the Jammu and Kashmir administration, together with the security forces, had begun to remove security structures from crowded city areas. That essentially peace-building policy has been ended.

Human rights issues

In the view of this Forum, there have been systematic violations of human rights in Jammu and Kashmir from August 4, 2019 to date. This conclusion is arrived at by looking

¹² SATP, 'Jammu & Kashmir: Assessment - 2020', op cit.

¹³ Azaan Javaid, 'J&K govt changes laws to aid construction of armed forces facilities outside cantonments,' The Print, 17 July, 2020

at the human rights provisions of the Indian, and Jammu and Kashmir, constitutions and subsequent jurisprudence, as well as selected international agreements to which India is a party. The rights violated vary from those conferred under the right to life jurisprudence to the rights to health, education, work, freedom of expression and privacy. For example:

1-8 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, rights of pregnant women prisoners.

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*,¹⁴ *Sunil Batra v Delhi Administration*,¹⁵ *Francis Coralie Mullin v Administrator, Union Territory of Delhi and Others*¹⁶);

Protection from injury (*Kharak Singh v State of Uttar Pradesh*¹⁷);

Right against illegal detention (*Joginder Kumar v State of Uttar Pradesh*,¹⁸ *D.K. Basu v State of West Bengal*¹⁹);

Right to bail (*Babu Singh v State of Uttar Pradesh*²⁰);

Right to speedy trial (*Hussainara Khatoon v Home Secretary, State of Bihar*,²¹ *A.R. Antulay v R.S. Nayak*,²² *Anil Rai v State of Bihar*,²³ *Zahira Habibullah Sheikh v State of Gujarat*²⁴).

The Constitution of India, Article 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.

14 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.

15 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.

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

17 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.

18 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.

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

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

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

22 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.

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

24 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”²⁵.

The UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, adopted by the UN General Assembly in 2010, specifies that non-custodial means should be preferred for pregnant women during the pre-trial phase wherever that is possible or appropriate.²⁶

9-17 Protection of children, principle of natural justice and the principle of a fresh start, arrest only by a special juvenile police unit, detention only in homes for juveniles, presumption of innocence, non-waiver of rights, right to bail, right to privacy and confidentiality, aftercare and rehabilitation.

The Juvenile Justice (Care and Protection) of Children Act 2015, (i), (ix), (xi), (xv), (xvi), Article 3(b), which are based on the UN Convention on the Rights of the Child, 1992 (to which India is a party), Articles 38, 39, 40 (1, 2, 3): Principle of natural justice, presumption of innocence, non-waiver of rights, right to privacy and confidentiality, the Juvenile Justice Board responsible for ensuring aftercare and rehabilitation;

The Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013, Article 11(1), The Juvenile Justice (Care and Protection) of Children Act 2015, Chapter IV, Articles 10(1) and 12(1): Arrest (in heinous offences) only by a special juvenile police unit, production before the Juvenile Justice Board within 24 hours, detention only in homes for juveniles, right to bail.

Jurisprudence: *Sheela Barse v Union of India*,²⁷ *Munna v State of U.P.*,²⁸ *Rajeev Kumar v State of*

25 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

26 Resolution 2010/16, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), <https://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf>

27 AIR 1989 SC 1278. In this case, the Court held that children should not be made to stay in Observation Homes for too long and as long as they were there, they should be kept occupied.

28 AIR 1982 SC 806. In this case, the Court held that even if the youths were found guilty, they should not be maltreated. It also noted that they do not shed their fundamental rights when they enter jail.

U.P. & Ors.,²⁹ *Vinod Solanki v Union of India*,³⁰ *Vikram Deo Singh Tomar vs. State of Bihar*,³¹ *Salil Bali v Union of India*,³² *Tanvi Ahuja v State of J&K and others*.³³

18-22 Right to free education for ages 6-14, right to free education up to university level, protection against mental harassment, making the child free of fear, trauma and anxiety and helping the child to express views freely, protection of the rights of the child by the National Commission for Protection of Child Rights.

The Right of Children to Free and Compulsory Education Act 2009: the right to free education for ages 6-14: (*Mohini Jain v State of Karnataka*,³⁴ *Unni Krishnan J.P. v State of Andhra Pradesh*,³⁵ *Avinash Mehrotra v Union of India*,³⁶ *Bachpan Bachao Andolan v Union of India*³⁷);

The Constitution of Jammu and Kashmir, Part IV: Directive Principles of State Policy, Articles 20(a-c), 21(b) and 23: the right to free education up to university level with equal opportunity.

The Constitution of India, Articles 21A and 45, and the Right of Children to Free and Compulsory Education Act 2009, Sections 3(1), 17(1): making the child free of fear, trauma and anxiety and helping the child to express views freely, protection of the rights of the child by the National Commission for Protection of Child Rights;

Disciplinary action against contraveners of the Right of Children to Free and Compulsory Education Act 2009, Sections 17(1), 17(2)), 29(g), 31 (1,2,3).

29 2019 (2) SCT 697(Allahabad). In this case, the Court held that the right to privacy and confidentiality of a juvenile is required to be protected by all means and through all the stages of the proceedings, and this is one of the reasons why the identity of a juvenile in conflict with law is not disclosed.

30 (2008) 16 SCC 537. In this case, the Court reiterated the well-settled principle that presumption of innocence as contained in Article 14(2) of the International Covenant on Civil and Political Rights is a human right.

31 1988 AIR 1782. In this case, the Court held that it is incumbent upon the State when assigning women and children to these establishments, euphemistically described as 'Care Homes', to provide at least the minimum conditions ensuring human dignity.

32 AIR 2013 SC 3743. In this case, the Court held that the essence of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the 2007 Rules is restorative and not retributive, and is aimed at providing for the rehabilitation and reintegration of children in conflict with law into mainstream society.

33 W/PIL no.9/2015. In this case, the Jammu and Kashmir High Court held that the J&K JJ Act 2013 and Rules 2014 had not been implemented on the ground, and ordered that the Juvenile Justice Board, which had not been constituted in the two years since the enactment of the legislation, be established. However, it was only in 2018 that the State established Juvenile Justice Boards, Child Welfare Committees, Juvenile Police Units, and District Child Protection Units.

34 AIR 1992 SC 1858. In this case, the Court held that the "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional-mandate to provide educational institutions at all levels for the benefit of the citizens.

35 AIR 1993 SC 2178. In this case, the Court ruled that Article 45 in Part IV has to be read in 'harmonious construction' with Article 21 in Part III of the Constitution, as Right to Life loses its significance without education.

36 (2009)6 SC C398. In this case, the Court held that the Constitution directs both burdens to achieve one end: the compulsory education of children, free from the fetters of cost, parental obstruction, or State inaction.

37 AIR 2011 SC 3361. In this case, the Court mentioned that the right of children to free and compulsory education had been made a fundamental right under Article 21A of the Constitution and that now, every child between the ages of 6 to 14 years has right to have free education in the neighbourhood school till elementary education.

23-25 Right to health and medical care, right of children to a happy childhood with adequate medical care and attention, protection of the health and strength of workers.

The Constitution of India, Article 21: Right to life includes right to health and right to medical care: *Kharak Singh v State of Uttar Pradesh*,³⁸ *Sunil Batra v Delhi Administration*,³⁹ *State of Punjab v M.S. Chawla*,⁴⁰ *Vincent v Union of India*,⁴¹ *Consumer Education and Research Centre v Union of India*,⁴² *Paschim Banga Khet Mazdoor Samity v State of West Bengal*,⁴³ *Pravat Kumar Mukherjee v Ruby General Hospital & Others*.⁴⁴

The Constitution of India, Article 47: Directive Principle of State Policy on the improvement of public health as one of the primary duties of the state;

Articles 39(e) and (f), 41, 42: Protection of the health and strength of workers

The Constitution of Jammu and Kashmir, Article 21(a): The State shall strive to secure to all children the right to happy childhood with adequate medical care and attention; Article 24: Duty of the State to improve public health.

26-27 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*,⁴⁵ *Sakal Papers (P) Ltd., and Others v Union of India*,⁴⁶ *Shreya Singhal v Union of India*,⁴⁷ *Subramanian Swamy v Union of India*.⁴⁸

38 See fn 9.

39 See fn 7.

40 AIR 1997 SC 1225. In this case, the Court in holding that the Government was required to reimburse the Government employee for the medical treatment availed by him, observed that the right to health is integral to the right to life.

41 AIR 1987 SC 990. In this case, the situation was regarding a petition to ban the import, manufacture, sale and distribution of certain drugs. The Court held that the State under Article 47 had an obligation to enforce the production of qualitative drugs at reasonable price and also the elimination of harmful drugs.

42 AIR 1995 SC 922. In this case, the Court observed that the right to health and medical care of a worker is an integral facet of the meaningful right to life under Article 21.

43 AIR 1996 SC 2426. The Court held that the State's failure to provide timely medical treatment to persons in need would amount to a violation of Article 21.

44 2005(2) C.P.C.1. In the case, the Court noted that established principles of medical jurisprudence require providing treatment until "the last breath," and sometimes even beyond with resuscitation. The Court excerpted The Code of Medical Ethics, which crystallized the duty of doctors, including practicing with skill and not withdrawing treatment from a patient without proper notice to the patient and his family.

45 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

46 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.

47 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.

48 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.

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;

Article 20(1): right to freedom of peaceful assembly and association.

28-29 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;

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 Maharashtra v Shobha Vitthal Kolte and Ors*,⁴⁹ *Air India Statutory Corporation v United Labour Union & Ors*,⁵⁰ *M/S Zee Telefilms Ltd. & Anr v Union of India & Ors*,⁵¹ *Samir Bhattacharya And Ors. v The State of West Bengal And Ors*,⁵² *Rishi Kumar v State Of U.P. And Ors*⁵³;

Article 21: the right to life includes the right to livelihood. *Delhi Development Horticulture Employees' Union v Delhi Administration, Delhi and Ors*⁵⁴;

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*.⁵⁵

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.

49 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.

50 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.

51 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.

52 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.

53 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.

54 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.

55 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.

30-33 Freedom of the press, right to know, right to publish, freedom of circulation

The Constitution of India, Article 21: the freedom of expression includes the freedom of the press: *Romesh Thapar v State of Madras*,⁵⁶ *Indian Express Newspapers v Union of India*,⁵⁷ *Sakal Papers v Union of India*⁵⁸;

The right to know: *Reliance Petrochemicals. Ltd. v Proprietors Indian Express Newspapers*,⁵⁹ *Bombay Pvt. Ltd, Essar Oil Ltd. V Halar Utkarsh Samit*.⁶⁰

To our great sorrow, the dozens of public interest petitions challenging these human rights violations and denials have not received the prompt judicial attention or judicial remedies that they should have. As a resident of Kashmir commented, “the silence of the judiciary on this issue has seriously created a huge void of trust in Jammu and Kashmir” (response to the Forum’s questionnaire). The failure of the judiciary to address these human rights issues have left an indelible and distressing mark in India.

⁵⁶ AIR 1950 SC 124. In this case, the Court observed that ‘where a law purports to authorise the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as if may be applied within the constitutional limits, as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void. In other words, clause (2) of article 19 having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to the State is involved, an enactment, which is capable of being applied to cases where no such danger could arise, cannot be held to be constitutional and valid to any extent.’

⁵⁷ AIR 1986 SC 515. In this case, the Court observed that in today’s free world, freedom of press is the heart of social and political intercourse.

⁵⁸ AIR 1962 SC 305. The Court has reiterated that the Indian Constitution does not expressly provide for the freedom of press but it has been held by this Court that this freedom is included in “freedom of speech and expression” guaranteed by clause (1) (a) of Article 19. The same was also observed in *Brij Bhushan v The State of Delhi*, AIR 1950 SC 129.

⁵⁹ AIR 1989 SC 190. In this case, the Court observed that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. The Right to Know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution.

⁶⁰ AIR 2004 SC 1834. In this case, the Court observed that the citizens who have been made responsible to protect the environment have a right to know and that there is a strong link between Article 21 and the right to know particularly where “secret Government decisions may affect health, life and livelihood”. It further observed that the role of voluntary organisations as protective watch-dogs to see that there is no unrestrained and unregulated development cannot be over-emphasized.

IMPACT ON CIVILIAN SECURITY

Since August 4, 2019, the security lockdown in Jammu and Kashmir has been accompanied by widespread violation of the security of persons, property and dissent, including lax observance of SOPs and protocols designed to protect human rights, while pursuing counter-insurgency. The period between August 2019 and July 2020 was marked by mass detention of politicians, activists and children, imposition of Section 144 and ban on all gatherings for civilian deaths, including of children, destruction of schools and houses during insurgency/counter-insurgency measures, and use of draconian laws against media and/or activists.

1 Mass detention of politicians and activists

According to the Ministry of Home Affairs (MHA), 6,605 people, including “miscreants, stone-pelters, over ground workers (OGWs), separatists”, were taken into preventive custody after August 4, 2019, 444 of them under Jammu and Kashmir’s Public Safety Act (PSA) of 1978. All the state’s leading political representatives, including three former Chief Ministers – Farooq Abdullah, Omar Abdullah and Mehbooba Mufti – were amongst those detained, as were at least 144 minors. A majority of detainees were released, one by one, over the next six months, but over 400 people still remain in preventive custody. In March 2020, 437 people continued to be detained, 389 of them under the PSA.⁶¹ As these figures show, less than a quarter of those detained under the PSA between August 2019 and March 2020 were released. Moreover, political detainees were not allowed visits by their families and/or colleagues for several months.

The justifications provided for political detentions were flimsy in the extreme. For example, the dossier against Ali Mohammad Sagar, General Secretary of the National Conference and four times MLA from Khanyar in Srinagar, stated: “You are a known political figure in Srinagar and enjoy popularity... Your capacity can be gauged from this fact that you were able to convince your electorates to come out and vote in huge numbers even during the peak of the militancy and poll boycotts... You reportedly impressed upon your party workers... that (the) youth of Khanyar constituency be informed to be ready for mass agitation in case Article 370 was revoked.”⁶² Despite these clearly unjustifiable reasons, the detention of Mr. Sagar was quashed only in June 2020 by the Jammu and Kashmir

61 Ananya Bhardwaj, ‘389 People Detained In J&K Under Public Safety Act Since Article 370 Was Scrapped’, *The Print*, 5 February, 2020, <https://theprint.in/India/389-People-Detained-In-Jk-Under-Public-Safety-Act-Since-Article-370-Was-Scrapped-Govt/360243/>.

62 Mudasir Ahmed, ‘J&K Leader’s Ability to Convince People to Vote During Boycotts Cited as Reason for PSA Charge’, *The Wire*, February 8, 2020, <https://thewire.in/rights/ali-mohammed-sagar-jk-psa-2>.

High Court.⁶³ Congress leader and former Union Cabinet Minister Saifuddin Soz continues to remain in detention; the Supreme Court has deferred hearing of his petition until July 2020.

The PSA, which allows for detention without trial for up to 2 years, has been widely criticized by human rights activists for decades. In 2006, the Prime Minister's working group on human rights in Jammu and Kashmir, led by Hamid Ansari (later Vice-President of India), recommended review of the PSA. In October 2011, the Group of Interlocutors for Jammu and Kashmir recommended either revoking the PSA altogether or amending it to allow for no more than three months' detention.⁶⁴ The recommendation was not acted upon.

In May 2020, a division bench of the Jammu and Kashmir High Court rejected the bail plea of Mian Abdul Qayoom, President of the Jammu and Kashmir Bar Association, citing confidential reports submitted by the Jammu and Kashmir Advocate-General under Section 13(2) of the PSA, which allows the authority to withhold facts considered to be against the public interest. The court said the reports showed that Qayoom had not given up his 'secessionist ideology' and recommended, bizarrely, that he write to the Union Home Ministry to do so.⁶⁵ His petition is currently being heard by the Supreme Court.

On June 9, 2020, the Jammu and Kashmir police filed an 'open FIR' against social media critics of the May High Court judgement rejecting Qayoom's bail plea.⁶⁶

2 Illegal detention of children

Despite initial denials of the detention of children, the Union and Jammu and Kashmir administrations finally admitted in the Supreme Court that 144 children had been detained in August-September 2019.⁶⁷ The youngest was 9 years old. According to a report prepared by the Additional Director General of Police, Srinagar, submitted to the Juvenile Justice Committee which comprised four judges of the Jammu and Kashmir High Court, 75 of the 144 children were arrested under the PSA.⁶⁸ Nine others were arrested under Section 107, Chapter VIII of the CrPC and some of them were kept in observation homes. Both

63 'J&K HC quashes PSA detention of NC leader Sagar', *Hindustan Times*, June 16, 2020.

64 Group of Interlocutors for Jammu and Kashmir, 'Final Report: A New Compact with the People of Jammu and Kashmir', October 2011, <https://www.mha.gov.in/sites/default/files/J%26K-InterlocutorsRpt-0512.pdf>

65 Apoorva Mandhani, 'J&K HC rejects plea of Kashmir bar chief's release, asks him to shun 'secessionist' ideology', *The Print*, May 28, 2020, <https://theprint.in/judiciary/jk-hc-rejects-plea-of-kashmir-bar-chiefs-release-asks-him-to-shun-secessionist-ideology/431415/>.

66 Naseer Ganai, 'J-K Police Start Summoning People After Open FIR Against Criticising High Court Judgment', *Outlook magazine*, June 9, 2020, <https://www.outlookindia.com/website/story/india-news-j-k-police-starts-summoning-people-after-open-fir-against-criticising-high-court-judgment/354434#:~:text=Jammu%20and%20Kashmir%20Police%20have,Mian%20Qayoom%20on%20ideological%20grounds.>

67 Livelaw News Network14, 'Illegal Detention Of Children In Kashmir: Two Child Right Experts Move SC, Seek Urgent Intervention Of Court' [Read Petition] <https://www.livelaw.in/top-stories/illegal-detention-of-children-kashmir--148066?infinitescroll=1>, <https://www.livelaw.in/top-stories/illegal-detention-of-children-kashmir--148066?infinitescroll=1>, <https://www.indiatoday.in/india/story/children-among-minors-detained-kashmir-article-370-abrogation-reports-1605322-2019-10-01>. Also see Supreme Court of India, Writ Petition (C) No.1166/2019, <https://indiankanoon.org/doc/193384604/>, <https://www.livelaw.in/top-stories/kashmir-sc-to-consider-plea-against-alleged-illegal-detention-of-juveniles-on-december-13-150617?infinitescroll=1>.

68 Anjana Prakash, 'Jammu and Kashmir Police Has Violated the JJ Act in Detaining Children', *The Wire*, <https://thewire.in/rights/jammu-and-kashmir-police-has-violated-the-jj-act-in-detaining-children>.

actions were in violation of the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013 and the Juvenile Justice (Care and Protection) of Children Act 2015.

Sadly, the Supreme Court in its oral remarks on December 9, 2019, while hearing a petition relating to the alleged illegal detention of children in Kashmir, said that petitioners should not be overly alarmed if children are detained for a few hours or for just a day, because in certain situations it is for their own good.⁶⁹ However, in law, illegal detentions still remain illegal, whatever the quantum of time.

In its final order of December 13, 2019, the Supreme Court directed that children who had been detained should be provided with mental health support.⁷⁰ It is unclear whether this order has been acted upon.

According to the UN Secretary General's June 2020 report on children in armed conflict, 68 children between the ages of 9 and 17 were detained in Jammu and Kashmir on national security-related charges, including one for actual or alleged association with armed groups.⁷¹ Again, it is unclear whether this is the number of children remaining in detention in June 2020.

3 Indiscriminate imposition of Section 144

On August 4, 2019, the state of Jammu and Kashmir was put under lockdown and Section 144 was imposed. The imposition was challenged by a group of petitions in the Supreme Court, clubbed together as *Anuradha Bhasin and Others*. The Court delivered its judgement on January 10, 2020, saying that indiscriminate imposition of Section 144 was unacceptable and the Jammu and Kashmir government should publish all Section 144 orders.⁷² Following the judgement, the Chief Secretary of Jammu and Kashmir issued an order that all impositions of Section 144 should be published.

What publication means is doubtful. We have been able to access only a handful of orders imposing Section 144, mostly those following the COVID-19 lockdown. Prior orders for Section 144, i.e. from August 2019 to end March 2020, are not readily available.

However, an examination of the situation prevailing in the state before August 2019 indicates that most of the Supreme Court's guidelines as set out in the January judgement were not followed. For example, according to the court, Section 144 is a preventive mechanism that enables the state to maintain public peace and it can be invoked in urgent cases of perceived danger, subject to restrictions. Section 144 cannot be imposed merely because of likelihood of danger, but only to immediately prevent specific acts that may lead to danger. Indefinite restrictions under Section 144 are unconstitutional. Orders passed under Section 144 are executive orders subject to judicial review under Article 226 of the Constitution. The Court

69 *Anuradha Bhasin v Union of India*, AIR 2020 SC 1308.

70 *Enakshi Ganguly v Union of India*, Writ Petition (civil) no.1166 of 2019, available at: <https://indiankanoon.org/doc/10618046/>.

71 United Nations, 'Report of the Secretary-General, Children and armed conflict', June 2020, UN A/74/845-S/2020/525, https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/15-June-2020_Secretary-General_Report_on_CAAC_Eng.pdf.

72 *Anuradha Bhasin v Union of India*, op cit.

noted that “orders passed under Section 144 of the Criminal Procedure Code have direct consequences upon the fundamental rights of the public in general. Such a power, if used in a casual and cavalier manner, would result in severe illegality.” [para. 129]

Magistrates must balance the right and restriction against the right and duty, and any restrictions must be proportionate, i.e. “never allowed to be excessive either in nature or in time.”[para. 39]

Further, “[o]rders passed mechanically or in a cryptic manner cannot be said to be orders passed in accordance with law.”[para. 134]

The Court concluded that the power under Section 144 cannot be used to suppress legitimate expression and should be used only in the presence of material facts justifying its application.⁷³

In contrast, Section 144 orders were imposed across the then state prior to any legitimate expression of dissent. As late as October 15, 2019 – two months after the removal of Jammu and Kashmir’s special status and division and demotion of the state – thirteen women were arrested for staging a peaceful protest against the August decisions. The arrests were under Section 107 of the CrPC, for breaching the peace. According to the police, they had violated Section 144, still in force.⁷⁴ They were released only 30 hours later, after furnishing a personal bond of Rs. 10,000 and surety of Rs. 40,000 each, as well as giving an assurance that they would maintain peace.⁷⁵

Moreover, after his release from preventive detention on June 23, 2020, People’s Democratic Party (PDP) leader Naeem Akhtar, told the press that the Jammu and Kashmir administration had offered him release in August itself, on condition that he signed a similar bond and refrained from criticising government decisions. A day after he was released, he was asked to vacate his government accommodation within 5-6 hours.⁷⁶

4 Civilian deaths and injuries

According to the South Asia Terrorism Portal, there have been 37 terrorism-related civilian deaths in Jammu and Kashmir from August 2019 to July 16, 2020.⁷⁷ These are provisional figures based on newspaper reports and may be slightly understated. Government figures for terrorism-related civilian deaths between August 2019 and April 2020 are 30, and the Forum’s survey of newspaper reports for May and June found at least nine reported civilian deaths, including that of a child.⁷⁸

73 Summarized in Global Freedom of Expression (Columbia University), ‘Anuradha Bhasin v Union of India’, <https://globalfreedomofexpression.columbia.edu/cases/bhasin-v-union-of-india/>.

74 Peerzada Ashiq, ‘Farooq’s sister, daughter jailed’ *The Hindu*, October 15, 2019, <https://www.thehindu.com/news/national/13-women-activists-including-sister-and-daughter-of-farooq-abdullah-detained-during-protest/article29689414.ece>.

75 Correspondent, ‘Sister, daughter of Farooq Abdullah released after spending 30 hours in prison’, *Live Mint*, October 17, 2019, <https://www.livemint.com/news/india/sister-daughter-of-farooq-abdullah-released-after-spending-30-hours-in-prison-11571251772999.html>.

76 Kashmir Observer Web Desk, ‘Was Asked to Quit Politics for Freedom: Nayeem Akhtar’, *Kashmir Observer*, June 27, 2020, <https://kashmirobsrver.net/2020/06/27/asked-to-sign-horribly-worded-bond-ex-minister-spills-detention-beans/>.

77 <https://www.satp.org/datasheet-terrorist-attack/fatalities/india-jammukashmir>.

78 According to the Jammu and Kashmir government affidavit to the 4G petitions in the Supreme Court, 30 civilians died in armed encounters between August 5, 2019 and April 4, 2020. Reply on Behalf of Respondent No. 1 (Union Territory of Jammu And Kashmir) In the Matter Of: Foundation for Media Professionals ... Petitioner(S) Versus Union Territory Of Jammu And Kashmir And Anr. Respondents, A Civil/Crl/Appellate/Original Jurisdiction Special Leave Petition (Civil/Crl.) No. Of 2020 Civil/Criminal/

The causes of attack range from alleged ethnic/religious hatred to militant attacks to cross-border shelling to being caught in army-militant crossfire to disproportionate violence by policemen at check posts. To take a few recent examples:

On July 9, 2020, the BJP's district president for Bandipora, Waseem Bari, his father and brother, were shot by motorcycle borne gunmen. On June 8, 2020, Sarpanch Ajay Pandita of the Indian National Congress party was assassinated in his orchard in Anantnag. According to Director-General of the Jammu and Kashmir Police Dilbag Singh, the Hizbul Mujahideen were involved in the killing. Congress Provincial President, GA Mir, alleged that Pandita was targeted because he was a member of the Kashmiri Pandit (Hindu) community; the administration's failure to provide him security despite repeated requests left him vulnerable to attack.⁷⁹ Prior to that, in November 2019, Sarpanch Syed Rafiq Ahmed and Assistant Agricultural Officer Sheikh Zahoor were wounded in a grenade attack in Anantnag. Both died in hospital. While Rs.30 lakhs were paid to Zahoor's family and Rs.20 lakhs to Pandita's family, Ahmed's family asserted that they had not received any compensation to date.⁸⁰

On June 14, Pakistan army shelling killed a woman and injured two civilians in Hajipur, Uri,⁸¹ and on June 10, Nayamtullah of Rajdhani village was injured in Pakistani shelling across the border at Rajouri (Poonch).⁸²

On June 6, Ishfaq Ahmad Najar was shot by alleged terrorists at his residence in Baramulla.

On June 4, health worker Imtiyaz Ahmad of Wanmoh was hit by a bullet after militants attacked a police party in Yaripora area of Kulgam district.⁸³

On June 3, four Army personnel, including the commanding officer of the Rashtriya Rifles' 21 Battalion, and a sub-inspector of police, were killed while attempting to rescue civilians held hostage by terrorists in Handwara⁸⁴

On May 19, five civilians were injured when the army blew up a house in which a group of militants had taken shelter, in Nawakadal locality of Srinagar; three of them later succumbed to their injuries.⁸⁵

Appeal/Writ Petition Diary No. 10817 Of 2020 Review Civil/Criminal/Misc. Petition No. Of 2020, para 16, p.11. The Forum's figures also suggest understatement. For example, they give the number of civilian casualties in May 2020 as 1, whereas by our count it is 5. The Jammu and Kashmir Coalition of Civil Society (KCCS) and the Association of Parents of Disappeared Persons (APDP), report 32 civilian deaths for January-June 2020 alone, but their sources are unclear. KCCS and APDP, 'Six Monthly Review of Human

79 HT Correspondent, 'Kashmiri Pandits in Jammu protesting killing of a Kashmiri Sarpanch at Anantnag', *Hindustan Times*, June 9, 2020, <https://www.hindustantimes.com/cities/kashmiri-pandits-take-out-protest-rally-against-killing-of-sarpanch-ajay-pandita/story-5tZlpo5wYCy3JvcSB1k9gI.html>.

80 Kusum Arora and Irfan Lone, 'Despite Persistent Security Threats, J&K Sarpanchs Say Govt Has Little Concern for Their Safety' *The Wire*, June 19, 2020, <https://thewire.in/rights/jk-valley-sarpanch-killed-kashmiri-pandit-security>.

81 Hakeem Irfan, 'Riyaz Naikoo's encounter, successor and militancy in Kashmir', *The Economic Times*, May 13, 2020, https://economictimes.indiatimes.com/news/defence/riyaz-naikoo-encounter-successor-and-militancy-in-kashmir/articleshow/75715239.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

82 Sparshita Saxena, 'Army jawan killed in Pak shelling in J-K's Rajouri, civilian injured', *Hindustan Times*, June 11, 2020, <https://www.hindustantimes>

83 Correspondent RK, 'Militant Attack Forces in Kulgam, Civilian Injured', *Rising Kashmir*, June 5, 2020, <http://www.risingkashmir.com/news/militants-attack-forces-in-kulgam-civilian-injured-361944.html>.

84 Snehesh Alex Philip, 'Rashtriya Rifles battalion CO among 5 killed in encounter with terrorists in J&K's Handwara', *The Print*, June 4, 2020, <https://theprint.in/defence/rashtriya-rifles-battalion-co-among-5-killed-in-encounter-with-terrorists-in-jks-handwara/413442/>.

85 Naseer Ganai, 'Srinagar Gunfight: Third Civilian Succumbs to Injuries, Two Discharged', *Outlook magazine*, May 24, 2020, <https://www.outlookindia.com/website/story/india-news-srinagar-gunfight-third-civilian-succumbs-to-injuries-two-discharged/353431>.

On May 13, 25-year-old Peer Mehrajuddin was shot dead at a checkpoint near Budgam by troopers of the paramilitary Central Reserve Police Force (CRPF). According to the CRPF, Mehrajuddin “broke a checkpoint of J&K [Jammu and Kashmir] police and sped (sic) and came across another checkpoint of CRPF, and jumped this checkpoint as well”. His uncle, Ghulam Hassan Shah, an assistant sub-inspector with the Jammu and Kashmir police, who was in the car, said that a police constable told him to pull over near the town of Budgam since an army convoy was on its way and the constable let him go after he showed his police identity card, but gestured to a CRPF trooper ahead, who fired at Mehrajuddin.⁸⁶

On May 6, 32-year old civilian Jehangir Yousuf Wani of Pulwama succumbed to bullet injuries following clashes between civilians and armed forces after the killing of Hizbul Mujahadeen commander Riyaz Naikoo. Reportedly, many civilian protesters received pellet injuries.⁸⁷

On June 30, the National Human Rights Commission of India asked the Jammu and Kashmir administration to provide a list of civilian and child deaths in custody or in crossfire within 24 hours of a custodial death and 48 hours of a death due to armed encounters.⁸⁸

4b Child deaths and injuries

On June 21, 2020, a five-year old child was injured in Bijbehara, Anantnag, when militants opened fire on a CRPF road clearing team. One member of the CRPF was also injured. Both succumbed to their injuries in hospital.⁸⁹

He was not the first child to die in the Jammu and Kashmir conflict this year. According to the UN Secretary-General’s report cited above, over the past ten months the UN has verified the killing of 8 children and maiming of 7 others (13 boys, 2 girls), between the ages of 1 and 17, “by or during joint operations of the Central Reserve Police Force, the Indian Army (Rashtriya Rifles) and the Special Operations Group of the Jammu and Kashmir Police (10), Lashkar-e-Tayyiba (1), unidentified armed elements (1), or during shelling across the line of control (3). The casualties that occurred in Jammu and Kashmir were mainly caused by torture in detention, shootings, including from pellet guns, and cross-border shelling.”⁹⁰ The Indian and Kashmiri media have substantiated similar allegations. For example, *The Print* documented five cases of minors including a 14-year-old child who suffered from serious pellet injuries at one of the protests in Srinagar in August 2019.⁹¹

86 Shafaq Shah, ‘Kashmir’s Growing List of Forgotten Inquiries’, article 14, June 3, 2020, <https://www.article-14.com/post/kashmir-s-growing-list-of-forgotten-inquiries>.

87 Kashmir News Trust, ‘Civilian killed in clashes yesterday laid to rest in Pulwama’, May 7, 2020, <https://kashmirpulse.com/jk/kashmir/civilian-killed-in-clashes-yesterday-laid-to-rest-in-pulwama/41879.html>

88 National Human Rights Commission, ‘NHRC to UTs of J&K and Ladakh: Send intimation of custodial and encounter deaths in 24 hours and 48 hours respectively as per its guidelines to all States and UTs’, <https://nhrc.nic.in/media/press-release/nhrc-uts-jk-and-ladakh-send-intimation-custodial-and-encounter-deaths-24-hours>

89 HT Correspondent, ‘CRPF trooper, 5-year-old killed in terrorist attack in J-K’s Bijbehara’, *The Hindustan Times*, June 26, 2020, <https://www.hindustantimes.com/india-news/crpf-personnel-child-killed-in-terrorist-attack-in-jammu-and-kashmir-s-anantnag/story-3OTvxdwGU5DmXr1dvkeiWN.html>

90 United Nations, Report of the Secretary-General Children and armed conflict, June 2020, op cit.

91 Ananya Bhardwaj, ‘Kashmir authorities say no pellet injuries, but here are 5 victims’, *The Print*, August 13, 2019, <https://theprint.in/india/kashmir-authorities-say-no-pellet-injuries-but-here-are-5-victims/276023/>

According to the Forum's analysis of news reports, the bulk of child and civilian casualties in 2020 were caused by crossfire between militants and security forces, both in armed group attacks on security forces and in Cordon and Search Operations (CASO), followed by militant assassinations and cross-border shelling from Pakistan.⁹²

Apart from physical trauma, children caught in crossfire have experienced grave mental trauma. Few people can forget the recent image of a three-year-old child trying to revive his dead grandfather, shot in crossfire during a militant attack on a CRPF patrol in Sopore on July 1, 2020. While the CRPF did well to rescue the boy and speedily restore him to his family, the fact that they tweeted pictures of their rescue invaded the child's privacy and led to a propaganda war in which the child has become a victim.⁹³

Attacks on schools have added to children's trauma. According to the UN Report of the Secretary-General on children and armed conflict cited above (see footnote 13), the UN has verified attacks on nine schools in Jammu and Kashmir by 'unidentified elements' since August 2019.

5 Destruction of houses in counter-insurgency

Cordon and Search Operations (CASO), which the army had progressively limited after 2001, have increased since 2018 when, reportedly, the army decided to broaden their use⁹⁴ and include the use of explosives to destroy houses where militants shelter. Standard Operating Procedures (SOPs) for counter-insurgency operations, which had also been tightened following the continuing decline in violence up to 2013, seem also to have been relaxed to permit, for example, the alleged deployment of civilians as human shields in Awantipura (see para 3 below), as happened in 2017.⁹⁵ Rare as such incidents are, the allegations are extremely grave and should be investigated.

On May 19, 2020, during a cordon and search operation in Nawakadal Srinagar, over a dozen houses were severely damaged in the ensuing gunfight between Hizbul Mujahedeen militants and the army. While the District Commissioner stated that compensation would be given after assessment, the amounts have not been announced yet. In the interim, the local mosque put up a relief collection.⁹⁶

Between May 4 and 6, in a 42-hour gun battle in Awantipura, during which Hizbul Mujahedeen commander Riyaz Naikoo was killed, eighteen houses were damaged

92 The KCCS-APDP report cited above suggests the same: see the tables of casualties (pp.6-10).

93 Anuradha Bhasin, 'What Images Tell and What They Don't', *The Moving Finger Writes*, 2 July, 2020, <http://themovingfingerin.wordpress.com/2020/07/02/what-images-tell-and-what-they-dont/>

94 PTI, 'Army brings back CASO as part of counter-terror operations in Kashmir', *India Today*, May 11, 2017, https://economictimes.indiatimes.com/news/defence/army-brings-back-caso-as-part-of-counter-terror-operations-in-kashmir/articleshow/58632117.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst. The Wire Staff, 'Indian Army Accused of Using Civilian as Human Shield in Kashmir Patrol'

95 The Wire Staff, 'Indian Army Accused of Using Civilian as Human Shield in Kashmir Patrol', *The Wire*, April 14, 2017, <https://thewire.in/rights/allegation-army-using-human-shields-kashmir-patrol>.

96 Ashiq Hussain, 'Srinagar gunfight: As 21 families go homeless, Kashmiris call for donations to rebuild their houses', *The Hindustan Times*, May 21, 2020, <https://www.hindustantimes.com/chandigarh/srinagar-gunfight-as-21-families-go-homeless-kashmiris-call-for-donations-to-rebuild-their-houses/story-SB6xOqQx1SFjYGWYyF2xPI.html>.

by explosives used by the army, three of them razed to the ground. It was alleged that security forces used local youth to set the explosives and to lead the way into houses where militants were suspected to be hiding.⁹⁷

6 Use of draconian laws against media and/or activists

On June 29, 2020, Kashmiri NRI businessman Mubeen Shah was charged with sedition because he had called for a boycott of non-Kashmiris seeking to acquire land with the new domicile certificates issued by the government.⁹⁸ Shah had been put under preventive detention on August 7, 2019 and 'temporarily released' for three months on December 7, under section 20(2) of the PSA, which allows the government to release a person at any time for any specified period either without conditions or upon such conditions as that person accepts and may at any time cancel his release. On December 9, the PSA against him was 'permanently revoked'. Chauvinist as his post was, it hardly qualified as sedition.

On April 21, the same cyber police cell booked journalist and writer Gowher Geelani under Section 13 of the UAPA and Section 505 of the Indian Penal Code, with similar charges of 'indulging in unlawful activities through social media posts'.⁹⁹

On April 18, the Jammu and Kashmir cyber police booked Kashmiri photojournalist Masrat Zahra under Section 13 of the stringent Unlawful Activities (Prevention) Act (UAPA) and Section 505 of the Indian Penal Code for posting "anti-national" content on social media. The alleged content that she posted were photographs she had taken for a story back in December 2019. In it, she talks about Arifa Jan, whose husband was allegedly killed by the Indian Army in 2000. "Arifa Jan suffers frequent panic attacks nearly 2 decades after her husband was gunned down by Indian army in 2000, she can still hear the gunshots and sees her husband's blood-soaked body when she thinks of him,"¹⁰⁰ Telling such a story through photographs has not been classified as an unlawful activity and any attempt to do so would clearly violate the freedom of the media.

Originally intended to target organizations supportive of terrorist activities, the 1967 UAPA was amended in August 2019 – around the same time as Kashmir's special status was abolished and the Jammu and Kashmir Reorganization Act was passed – to include prosecution of individuals.¹⁰¹ The amendment was challenged in the Supreme Court, but the hearings are yet to conclude. In the meantime, a large number of students and human rights activists have been charged under it, including pregnant Kashmiri student Safoora Zargar, who was active in student protests against the Citizenship Amendment Act (also

97 Hakeem Irfan, 'Riyaz Naikoo Encounter Success and Militancy in Kashmir', *The Economic Times*, May 13, 2020, https://economictimes.indiatimes.com/news/defence/riyaz-naikoos-encounter-successor-and-militancy-in-kashmir/articleshow/75715239.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

98 Observer News Service, 'Businessman Mubeen Shah Booked for Sedition', *Kashmir Observer*, June 29, 2020, <https://kashmirobsrver.net/2020/06/29/businessman-mubeen-shah-booked-for-sedition/>.

99 Naseer Ganai, 'Kashmiri Author and Journalist Gowhar Geelani, Booked Under UAPA, Moves HC', *Outlook magazine*, April 24, 2020, <https://www.outlookindia.com/website/story/india-news-kashmiri-author-and-journalist-gowhar-geelani-booked-under-uapa-moves-hc/351368>.

100 Mudasar Ahmed, 'Kashmiri Photojournalist Charged Under UAPA for Unspecified Social Media Posts', *The Wire*, April 20, 2020, <https://thewire.in/media/kashmiri-photojournalist-charged-under-uapa-for-unspecified-social-media-posts>.

101 The Unlawful Activities (Prevention) Amendment Act, 2019, No. 28 Of 2019, <http://egazette.nic.in/WriteReadData/2019/210355.pdf>.

under challenge in the Supreme Court) at the Jamia Millia Islamia University and was arrested and charged under the amended UAPA on April 10, 2020.

The Editors' Guild, Network of Women in Media in India, and Press Club of India, and of Kashmir all asked that the charges against Zahra and Geelani be dropped. Zargar's bail plea was rejected by the lower court on June 5, 2020.¹⁰² On June 19, 2020, she was granted bail on humanitarian grounds by the Delhi High Court.¹⁰³

While no charges were lodged against him, journalist Ashiq Peerzada of *The Hindu* was subjected to 12 hours of questioning by the Jammu and Kashmir police over filing what they claimed was 'fake news'. The article in question quoted a family member of a dead militant who had been buried by security forces, saying they had been given permission to exhume their relative's body. The district administration did not respond to Peerzada's fact-checking query, which too was mentioned in the article.¹⁰⁴

102 Seemi Pasha, 'Safoora Zargar Denied Bail as Judge Finds Prima Facie Evidence of 'Conspiracy'', *The Wire*, June 5, 2020, <https://thewire.in/law/safoora-zargar-denied-bail>.

103 Arvind Gunasekar and Saurabh Shukla, 'Pregnant Jamia Student Safoora Zargar Gets Bail in Delhi Riots Case', NDTV, June 23, 2020. <https://www.ndtv.com/india-news/safoora-zargar-pregnant-jamia-millia-islamia-student-arrested-in-april-in-delhi-riots-case-granted-bail-by-high-court-2250814#:~:text=New%20Delhi%3A,objection%20on%20%22humanitarian%20grounds%22>.

104 Special Correspondent, 'J&K police file FIR on *The Hindu* report', *The Hindu*, April 20, 2020 <https://www.thehindu.com/news/national/jk-police-file-fir-on-the-hindu-report/article31391183.ece>.

IMPACT ON CHILDREN AND YOUTH

Responses to the Forum’s questionnaires show that the lockdowns from August 2019, lack of connectivity, presence of police and armed forces, all combined have impacted adversely on children of all age groups in many ways. Between August 2019 and March 2020, the number of days that schools which were open came to a mere two weeks. Even when the Jammu and Kashmir administration allowed schools to reopen, two months after the August lockdown, many parents were not willing to send their children to school as they felt it was unsafe, and with the closure of mobile telephony they would not be able to contact them if needed.

After the COVID-related lockdown (March 24, 2020 till date), when schools and universities moved to online classes, the 2G facility made the classes a charade, since online group sessions require 4G and even downloading assignments or papers is extremely difficult without 4G. In an online survey by Child Relief and You, the findings revealed that school-going children could access online classes on a regular basis in only 27.62 percent of households in Jammu and Kashmir, as against the national average of 41 percent.¹⁰⁵

A teacher commented, “As a consequence of the abrogation of Article 370, Kashmiri students had to remain away from school for a period of 8 whole months. Now, as these students were ready to go back to school and resume education, the (COVID) outbreak pushed them inside their homes once again, that too with just 2G internet. To battle this prolonged shut-down, while the teacher’s community, along the lines of the world, is trying to conduct classes online... It is a major task’.¹⁰⁶

1 Lack of connectivity – impact on children’s behaviour

According to one parent, children felt “mentally drained” and 12- to 15-year-olds, especially, have become “less tolerant and aggressive” (mother, Srinagar). A legal and development practitioner added that children as young as 10 years old had started to ask questions “beyond their age after August 2019”, and that too “in a challenging tone”. The questions, he said, were about issues connected to lockdowns, curfews, troops’ deployment and the religion of armed forces. Children also became aggressive due to “desperation at not being able to access the internet”; denying them access, he concluded, was tantamount to “denying them the right to life in the present digital world”. (Questionnaire response).

105 Child Relief and You (CRY), *Rapid Online Perception Study About the Effects Of Covid-19 On Children* (May 2020), p.15, https://www.cry.org/wp-content/uploads/2020/05/Report-CRY_COVID-19-Study.pdf

106 Voices from Kashmir: Narratives that lost connection (initiative by internetshutdowns.in), 27 January, 2020, <https://slc.in/using-2g-fight-pandemic-digital-world>

The continuous ten months of lockdowns, said a PhD student, had led children and adolescents to “feel very sad, lonely and isolated because of restrictions and continuous hearing of sad stories. The parental control has also increased over children. The frequent restrictions and lockdowns have been one of the main reasons for children experiencing psycho-social issues to overcome, both in terms of hampered access to health services and getting exposed to recurrent traumatic situations (even just hearing about adverse events constitutes trauma and may affect children adversely)”. (Questionnaire response, Kulgam)

2 Parental anxiety

Parental anxiety is an added burden: “There is a tremendous pressure on children, especially adolescents, to not go out. I am aware of a few cases where young people were picked up in 2016 suddenly while they were walking on the national highway passing through our village. Such situations create a sense of fear among parents, resulting in pressures on children to stay inside... Even the adults are not feeling safe to take walks.” (Questionnaire response). “Obviously”, stated another respondent, “children and particularly youth were made to stay at home as police and army were apprehending and detaining them. Then many of them particularly their parents were made to pay hefty amounts for their release, if that was not possible then they were booked under different acts.” (Questionnaire response writer/activist/researcher Srinagar).

According to parents and educationists, no parent feels secure about her children, whatever the age group. “Parents will not send their wards to school because of communication issues, the atmosphere prevalent (and the) lack of civic facilities that can make children easy victims of Covid 19.” (Questionnaire response, group of 7 parents and educationists). An assistant professor added, “Parental anxiety would affect children because children will always look up to their parents and largely display similar kinds of behavioural patterns.” (Questionnaire response, Jammu).

Given the situation, concluded a respondent, “even if the situation improves and the lockdown is relaxed, unless communication is not restored fully, no parent will be willing to send kids to school.” (Questionnaire response, Srinagar).

Many parents were stressed that they could not contact their children studying outside Kashmir due to lack of internet and mobile telephony.

3 Connectivity in the context of armed encounters

Shutdowns during armed encounters, which are frequent in the valley, add to child and parental trauma and further disrupt education. “Every time an encounter takes place, the internet is shut down for 2 to 3 days in that particular district and also the district where the dead militants hail from. So, the shutdowns depend on the frequency of encounters... But the more dreadful thing is during certain encounters in which high profile militants are killed or civilians get killed, the whole mobile communication is blocked in the valley as happened during Naikoo and Sehrai’s encounter in May for several days.” (Questionnaire response, lecturer, Kulgam).

According to a PhD student, the “intermittent complete shutdown of internet services has created unpredictability whether we will have internet services in the next hour or day or week is uncertain here. The internet is shut down in a district or two during an encounter and this happens a couple of times in a month. For instance, the government-imposed communication blockade on 6th May 2020 after an encounter took place in Pulwama district, suspending both voice calling and internet services from 6th to 9th May in Kulgam district. In Pulwama, the suspension of internet services and voice calling continued for a day or two more. Again, government suspended internet services on 30th May in Kulgam district.” (Questionnaire response). Srinagar was similarly shut down for 5 consecutive days in May, when a counter-insurgency operation was launched in the Nawa Kadal area of the old city. Given that there were daily CASOs during the month of June, most of them concentrated in south Kashmir, there were clearly very few online classes in the districts of Pulwama, Shopian and Anantnag.

4 Children’s education

Even high-end private schools like the DPS Athwajan have struggled with online classes, according to a student who attends the online classes regularly, although “they have to be cancelled every now and then because of internet snaps. It gets disrupted all of a sudden and never gets reconnected.” (Questionnaire response, Srinagar)

A majority of children are, moreover, dependent on their parents’ mobile phones for online classes. Parents with children in different classes found it difficult to spare their mobiles to each of them and were under pressure because the family needed more than one high end phone. They also had to buy data and attend to their own calls, which became unaffordable. Tutorials have also become difficult for parents to handle or explain presentations to kids. Even children over 6 years of age often hesitate to ask their parents for their phones once they come back from work.

There have been attempts at live classes, tutorials and assignments. But the low speed acts as a spoiler for all the effort both in government schools and private schools (indeed, on July 15, 2020, the Jammu and Kashmir High Court voiced frustration at the impossibility of conducting even the “*bare semblance of a hearing*” on account of poor internet connectivity issues.¹⁰⁷ Schools and teachers have had to struggle to find usable applications through which to run online classes. ZOOM, for example, which is being used all over the country for online classes, could not be run on 2G. Sameena, a Class 9 student, from Srinagar’s Nowgam, said, “The grainy video, the frequent drop calls, the background noises, the poor sound quality, and the unreadable words on the board get on your nerves, and make the entire learning process a pestering experience.” Bitterness runs deep for many. As a class 12 student, Sadaf Mirza, commented, “... the current regime wants Kashmiris to beg for

¹⁰⁷ Meera Emmanuel, ‘Impossible to have “even a bare semblance of a hearing”, Jammu & Kashmir HC summons Home Secy over poor Internet, e-connectivity of courts’, Bar and Bench, <https://www.barandbench.com/news/litigation/jk-hc-summons-home-secretary-over-poor-internet-e-connectivity-of-courts>.

everything... It's clear that they want to send out a message that *beggars can't be choosers*."¹⁰⁸

5 Awareness of COVID lockdown and closure of schools

Most respondents stated that they were aware of the lockdown and closure of schools. They were aware that the government uploaded directions on safety during lockdown but these instructions were not publicised enough. Information was by word of mouth from child to child who went to nearby government schools. Some heard about classes on the DD Channel, and also online classes run by the government.

According to the local government in Srinagar, they set up centres with internet access to help students seeking to register for exams and 100,000 students used them. But media reports suggested that for most Kashmiris, the nearest place for broadband internet was the town of Banihal in Jammu province bordering the valley, which became accessible only in November 2019 when train services resumed. "It was Yakoob's second trip in as many days. The day before, the Internet wasn't working even in Banihal. She had attempted to access the Internet at the district headquarters near her home – where four computers are available for a population of 1 million people – but the lines were too long. Yaqoob and her mother waited for three hours outside an Internet cafe before their turn came. The teenager was submitting a form for a competitive exam for which she had been studying for two years, and the deadline was fast approaching. When she finally submitted the form, she burst into tears of relief."¹⁰⁹

6 Impact on teachers

Every teacher who responded to the Forum's questionnaires repeatedly complained that their lack of access to 4G networks forced them to work against the odds to deliver online teaching. The slowness of the internet and consequent deprivation of not being able to see their students was frustrating. One teacher stated, "I am a teacher by profession so the internet is the only option left for us to impart some education to our students...Uploading/downloading video and audio lessons/assignments is taking much time under this speed. Live video streaming becomes impossible. 4G Internet would make a considerable difference and make one to one interaction possible." (Questionnaire response). Moreover, the lack of high-speed internet prevented them getting access to relevant material for teaching. "I am not able to provide online classes convincingly to my students due to the lack of speed." (Questionnaire response, lecturer, Kulgam). According to Shakeel Shuja, a Srinagar-based teacher who gives three online lectures from his home daily, "the entire process driven by the slow-internet merely makes us teachers as some talking heads. We can't even read the proper facial expressions and body language of our students on mobile screens... We are

108 Sajad Bhat, Jyotsna Bharti, 'Poor and Pestered: 2G-Online Classes 'Killing Curiosity' in Kashmir', *Kashmir Observer*, June 4, 2020, <https://m.kashmirobservers.net/2020/06/04/poor-and-pestering-2g-online-classes-killing-curiosity-in-kashmir/>.

109 Niha Masih, Shams Irfan and Joanna Slater, 'India's Internet shutdown in Kashmir is the longest ever in a democracy', *Washington Post*, December 16, 2019, https://www.washingtonpost.com/world/asia_pacific/indias-internet-shutdown-in-kashmir-is-now-the-longest-ever-in-a-democracy/2019/12/15/bb0693ea-1dfc-11ea-977a-15a6710ed6da_story.html.

running these online classes for the heck of it, as 2G internet defeats the very purpose of the learning process”¹¹⁰

7 Higher education

There are nine state universities and two central universities in Jammu and Kashmir, in addition to a campus of the National Sanskrit Sansthan (deemed university). Two of the state universities – the University of Kashmir and the University of Jammu – have more than 150 government and about 80 private affiliated colleges, the administrative control of which rests with the Government. There are about three lakh students pursuing undergraduate and postgraduate courses, including M. Phil. and Ph. D. programmes, in these universities and colleges. In March 2020, they shifted from campus learning to online learning due to the COVID-19 pandemic, but the poor internet connectivity of the 2G service was not compatible with the strength and uninterrupted connectivity required for longer duration online sessions every day. Online examinations that some of the educational institutions decided to conduct remained another cause of tension to students. Though other sectors, such as banking, insurance and retail, also suffered on account of poor internet connectivity, the loss to both school and higher education students is manifold and cannot be easily recouped. Moreover, classes carried online through platforms such as WhatsApp, Zoom and Google Classroom remained confined to major towns, thus depriving students of rural and hill terrains due to limited facilities.

The School and Higher Education Department’s live classes through government-owned TV channels and local Cable TV network channels, too, are often not available. University teachers complain of the ways in which lack of 4G connection has frustrated them as teachers. “There are frequent disruptions in the internet which makes me unable to maintain a seamless connectivity with my students. I am not able to upload PPT files and therefore have to convert them into PDF files first. I am not able to upload any audio or video files over my Google Classroom set up for online education. Less than 50 percent of my students are able to attend my online classes and even they are facing a lot of difficulties downloading PDF files and attending lectures without any disruptions. Overall, it has been a very discouraging and unpleasant experience.” (Questionnaire response).

Students face immense problems, too. According to student-activist Sayed Suri, he has not attended a single class from March 23, 2020, because he was not able to access his university’s module page. “Sometimes if it may open, it takes 2-3 hours. Otherwise, mostly it says, ‘out of time’ and goes back.”¹¹¹ Another student, who is preparing for the civil services examination, said, “due to the slow internet speed, at times I am not able to connect to my class or find it difficult to come online. I also am not able to connect to other online resources, which can

110 Sajad Bhat, Jyotsna Bharti, ‘Poor and Pestered: 2G-Online Classes ‘Killing Curiosity’ in Kashmir’, *Kashmir Observer*, June 4, 2020, <https://m.kashmirobservers.net/2020/06/04/poor-and-pestering-2g-online-classes-killing-curiosity-in-kashmir/>.

111 *Voices from Kashmir: Narratives that lost connection* (initiative by internetshutdowns.in), 27 January, 2020, <https://sflc.in/using-2g-fight-pandemic-digital-world>.

be helpful.” He sometimes had to wait for 2 to 3 hours to download an assignment sent by his teachers. (Questionnaire response) A third commented that she had to connect to classes via audio rather than video since the 2G network could not accommodate the video load.¹¹²

Nor could students apply readily for courses offered by the universities at state and national levels. “The internet outage has forced many people to move out of the valley at very dear costs. The students are suffering from mental, physical and emotional unease because of this. The internet is a means through which students can explore career opportunities but the internet ban in Kashmir has put a permanent lockdown on the career avenues of students.

I myself suffered a huge loss with reference to PhD research work”. (Questionnaire response, Assistant Professor, Anantnag).

Post-graduate students, researchers and university fellows faced additional obstacles to professional activities. Apart from being severely hampered in their research, they could not attend conferences, or send papers for publication. Moreover, universities in Kashmir have not been able to conduct semester exams because of the post August situation and are now proposing that they will conduct both the 1st and 2nd semester exams together, adding to the workload of both students and teachers.

The University Grants Commission has issued new guidelines that include promotion on the basis of internal examination and external examination only in the final semester. But the situation is still not fully clear to the faculty and students as to how to implement these guidelines in Jammu and Kashmir due to non-availability of basic infrastructure to meet online learning requirements.

112 Ibid.

IMPACT ON HEALTH

The impact of the lockdowns on health shows a clear distinction between the political and security lockdown of August 2019 and the COVID-19 lockdown of March 2020. Based chiefly on 70 responses to a questionnaire circulated by the Forum on Human Rights, with respondents that included doctors, medical personnel, patients and relatives, the August-October 2019 lockdown appears to have had a far more severe impact on health and healthcare than the COVID-19 pandemic and related lockdown.

1 August-October 2019 lockdown compared to March-June 2020 lockdown

On August 4, 2019, all communications, including landlines, mobile telephony and the internet were snapped and a state-wide Section 144 was imposed on Jammu and Kashmir. Patients found it extremely difficult to travel to the hospitals and private clinics or to speak to their doctors, and doctors were unable to communicate with specialists for consultations on grave cases. According to the Kashmir Fact-Finding Report, conducted by a group of lawyers, human rights activists and a psychiatrist, and published in October 2019, roadblocks were set up at every lane, doubling the time that it took patients who could walk to get to the hospital and back.¹¹³ According to one of our respondents, the snapping of all telephones also included emergency numbers of ambulances and fire brigades. Moreover, the valley faced shortages of medicines and delays in their delivery to hospitals and clinics. Home delivery was not allowed either. Several patients are believed to have died as a result of the complete lockdown.¹¹⁴

As a biotech researcher based in Srinagar put it: “The impact has been fatal for many, to say the least. Quick, easy access to healthcare is an absolute, basic human need. Curfews restricting movement coupled with snapping of cellular and internet networks, complete blockade of movement and communication, following abrogation of 370, weighed heavily on every Kashmiri mind and quickly became the worst nightmare for those in need of healthcare especially with medical emergencies. With no access to medical personnel through phones and internet and no access to ambulances and public transport, the only alternative was to take aim in the dark, head for the nearest hospitals, clinics, which for many were very long distances, carrying the ailing on foot, stretchers, private transport

113 People’s Union for Civil Liberties (PUCL) report, *Imprisoned Resistance: 5th August and its aftermath*, October 2019, <http://www.pucl.org/reports/imprisoned-resistance-5th-august-and-its-aftermath>.

114 Sameer Yasir and Jeffrey Gettleman, ‘In Kashmir, a Race Against Death, With No Way to Call a Doctor’, *The New York Times*, October 7, 2019 <https://www.nytimes.com/2019/10/07/world/asia/kashmir-doctors-phone.html>.

if available, be stopped and questioned at every check-post, and if you're still breathing by the time you reach the destination, keep your fingers crossed for help being available. The heartache is hard to imagine.

“The Covid situation, although a tough one as well, does not seem as bad. Though movement is restricted, it's not entirely curbed. Hospitals are running and medical staff is in place. Cellular network and 2g internet services are a breather making access to medical personnel and ambulances easier, unlike post August 2019. But communication gets snapped every now and then and we can feel the same helplessness in such times.”

On the other hand, as another respondent pointed out, in the COVID-19 conditions it is virtually impossible for residents of containment zones to go to the hospital. Moreover, in most districts, “due to the shortage of staff, infrastructure and funding, the health system with its total attention to Covid-19 is unable to cope with the crisis and the rising number of cases. Most of the Corona-positive patients have been quarantined in non-medical facilities with poor facilities. Due to the shortage of doctors and paramedical staff, most of these patients are being taken care of by teachers and other government employees. There are also examples where there has been laxity in testing.” (Questionnaire response, teacher, Kulgam).

2 Harassment/delays of doctors and medical personnel at check-posts

Though traffic curbs may have eased during the COVID-19 lockdown, several doctors have been held up and even beaten at check-posts, which continue to be in place. For example, on June 3, 2020, Dr Muzaffar Jan, a prominent epidemiologist, was allegedly beaten by CRPF troops in Budgam district. On May 26, the Chief Medical Officer of Bandipora district was not allowed to cross a check-post while on his way to inspect a quarantine and sample collection centre. On May 23, Dr Syed Maqbool, a senior cardiologist, was detained and allegedly beaten by the police in Srinagar while on his way to the hospital. In two of the cases, the doctors were traveling in official government vehicles.¹¹⁵ Following protests by the Doctors Association of Kashmir, Inspector-General of Police Vijay Kumar issued instructions that medical personnel were to be given passage at check-posts.

According to one doctor, a woman, “healthcare workers were attacked... ambulance drivers and paramedics particularly”, but by whom was not specified. “The stress among the healthcare workers is more than the general population,” she added, “and lack of empathy shown towards them is adding to their plight.” (Questionnaire response). The trauma of not being able to care for patients in need, she and other doctors underlined, had caused widespread depression amongst medical personnel.

3 Ban on 4G networks and restriction to 2G

Across Jammu and Kashmir, the restriction of mobile telephony and internet to 2G has

115 Observer News Service, ‘Senior Kashmir Epidemiologist Thrashed by CRPF in Budgam’, *Kashmir Observer*, June 3, 2020, <https://m.kashmirobsv.net/2020/06/03/senior-kashmir-epidemiologist-thrashed-by-crpf-in-budgam/amp/>, Adil Akhzer, ‘You are harassing doctors’: Bandipora CMO tells J&K Police in viral video’, *Indian Express*, May 26, 2020 <https://indianexpress.com/article/india/kashmir-coronavirus-jk-police-cardiologist-bandipora-cmo-viral-video-6427983/>.

caused a host of problems, from curtailed abilities to keep up with medical research, in particular the latest information on dealing with COVID-19, to difficulty in advising patients on the phone given the slowness of 2G networks and the unavailability of key Apps on them. Video-conferencing for medical consultations has become impossible, with grave consequences for patients suffering from complex medical problems. Healthcare workers complained that they were unable to participate in an online meeting organized by the Ministry of Health and Family Welfare to provide guidance on how to operate ventilators for critical patients affected by the COVID-19 virus.¹¹⁶

Selected quotations from a range of medical specialists below:

“Omar Salim, a leading urologist in Srinagar, said his abiding regret is not being able to consult with colleagues on a particularly difficult case. In July, Salim saw a patient who had advanced-stage pancreatic cancer. He contacted fellow specialists in Mumbai to consult on possible treatments. Then communication snapped in August. The patient died in November.”¹¹⁷

In her Writ Petition No. 10817 of 2020 for restoration of 4G service, Revati Laul, Director of the Foundation for Media Responsibility, quoted the following medical experts (names blanked by her):

According to the President of the Doctors Association of Kashmir, 4G internet is absolutely imperative “to reduce the pressure on hospitals and minimize the risk of hospitals turning into COVID 19 hotspots... doctors in America had their patients calling them and they were interacting with their family physicians video-graphically.” (Affidavit, para 3).

The spokesperson for the Doctors Association of Kashmir raised another crucial point – disseminating safety precautions and awareness to the people of the Union Territory, especially those living in far-flung areas and who do not read or write, has become very difficult with the mobile speed restrictions. “Video is the easiest and most crucial ally in fighting a pandemic. Until we can make the common person educated and aware about this disease, she cannot fully protect herself from it. But it’s impossible to upload videos at the moment.” (Affidavit, para 6).

A doctor at Srinagar’s Government Medical College, added, “This is so frustrating. Trying to download the guidelines for intensive care management as proposed by doctors in England. It is as many as 24 MBs. It has been one hour... still not able to do so... I have so many patients who are just able to call me this time. I can’t understand what they are trying to tell me exactly... One said, ‘I have pain in the tummy.’ The tummy is big. It has around 20 organs inside. So then I ask – is it the upper part of the tummy, is it the right side, is it lower?... It’s not possible to accurately pin-point what they’re saying.” (Affidavit, para 4).

116 ‘Voices from Kashmir: Narratives that lost connection’, (initiative of internetshutdowns.in), January 27, 2020, <https://sflc.in/using-2g-fight-pandemic-digital-world>.

117 Ibid.

An eye surgeon said, “I am an ophthalmologist and we have to see patients very far away. With video conferencing, it makes it much easier to tackle issues of the eyes. It gives us 90% of the diagnosis. In this scenario, we are suffering a lot.” (Affidavit, para 5)¹¹⁸.

4. Impact on non-COVID healthcare facilities

Doctors and patients alike complained that the stressed state of healthcare in Jammu and Kashmir is such that, in order to cope with the pandemic, other services such as Out-Patient Departments, surgeries and wards for patients suffering from non-COVID ailments, have been closed. According to an online survey conducted by Child Relief and You, 77 percent of respondents from Jammu and Kashmir said they had not been able to access immunization services for children aged 1-5, as compared to 63 percent for the rest of North India.¹¹⁹ According to one of the respondents to the Forum’s survey, “most of the dental clinics are closed, the patients have to face a lot (of problems)”.

As a lawyer from Kupwara district reported: “in Kupwara district people were forced to walk 30 to 40 kms by foot to buy life-saving drugs... mostly the sufferers are pregnant women and children as there is no separate maternity or pediatric hospital functioning in the district and pregnant women and children were mostly being shifted to the SDH Kupwara from all the concerned primary health centers and in other critical matters to the Srinagar Lal Ded Hospital or children’s hospital Sonawar, However due to the shutdown of sub district hospital Kupwara by the Chief Medical Officer Kupwara vide office order No: CMOK/2020/21-23, dated 06.04.2020, that designated the Sub-district hospital Kupwara as an isolation hospital for COVID-19 patients and consequent thereof shut down all the sections/units functioning in the SDH including casualty, routine OPD/IPD/gynae/dialysis and all other services, it turned hard to move the pregnancy cases to a distance which is 22 kms away from the town as the people belonging to areas of Lolab, Kalaroos, Machil, Kralpora, Trehgam, Chowkibal, Bednumbal, Manigah or other areas were to cross 50-60 kms to reach the district hospital Handwara or have to cross 90-130 kms to reach hospitals at Srinagar.”

5 Impact on patients

The impact on patients ranged from (a), the enormous difficulty of accessing medical care in the immediate months after the August lockdown, when Section 144 was imposed on the state, referred to above, (b), similar difficulties in accessing non-COVID related medical care when the pandemic hit, (c), an exponential rise in mental health problems, and (d), financial stress and inability to pay for medical care given closures and loss of jobs and wages since August 2019.

6 Mental health

Undoubtedly the most widespread and long-lasting impact of the lockdown since August

118 Revati Laul, Director of Foundation for Media Professionals, in Writ Petition No. 10817 of 2020, *Foundation of Media Professionals v UT of Jammu and Kashmir*, carried on Livelaw, https://www.livelaw.in/pdf_upload/pdf_upload-373172.pdf

119 Child Relief and You (CRY), *Rapid Online Perception Study About the Effects of Covid-19 On Children* (May 2020), p.15, https://www.cry.org/wp-content/uploads/2020/05/Report-CRY_COVID-19-Study.pdf

2019, which was accompanied by rising conflict, has been on mental health. According to mental health expert Justine Hardy, who has worked in Jammu and Kashmir since the 1990s with Kashmir Lifeline, an organization overseen by the Healing Minds Foundation:

“When societies are living through crises there are both similarities and differences between the challenges caused by a ‘known threat’ (the lockdown and increased security after Abrogation) and an ‘invisible threat’ (Covid-19). Both situations increase the pressure on all public services, and this pressure is very marked in the field of healthcare. Seen from a distance it is clear that the strain on the healthcare infrastructure and delivery systems has been extreme in both lockdown cases. One of the main aspects of this is what is called ‘the drag effect’. If people cannot get to hospitals and doctors for extended periods it means that the healthcare system then has to deal with more advanced symptoms and late diagnosis of major illnesses, once the public can get to clinics and hospitals again. Healthcare costs increase both for the providers and for the patients. This can also affect the quality of care due to increased over-crowding and pressure on key aspects such as surgical theatre times and the availability of life-saving courses of treatment such as chemotherapy and radiotherapy for cancer patients. When this is applied to mental health care, the later diagnosis of patients with severe anxiety or depression is equally as high risk as that of late diagnosis as outlined above. This is where ‘an invisible threat’ creates another kind of pressure due to often rapidly increasing levels of anxiety. Those with pre-existing mental health issues can deteriorate to dangerous levels in a short period of time as the general understanding of managing mental health risks in the region remains low.” (Questionnaire response)

A valley-based psychiatrist added: “the post-abrogation lockdown has shown a sudden rise in anxiety, depression, and suicidal tendency cases. I received one case a month back, the man lived alone at home, he would go to meet his relatives every weekend. Alone due to lockdown and communication clampdown, he started getting panic attacks and developed suicidal thoughts, he is now a patient of acute depression and suffers from tremors, suicidal tendencies, and frequent panic attacks.” Drug abuse, he says, has become very common. “Substances are easily available and the youth are being engulfed in this deadly cycle. Youngsters have become addicts and to satisfy their cravings resort to stealing money from their families.” (Questionnaire response).

These opinions are substantiated by all the other responses to our questionnaire, whether from Jammu or the valley. Every single person stressed depression and anxiety as a result of the continuing lockdown from August 2019, which was only marginally alleviated by the provision of 2G telephony and internet. A few extracts below:

“Since the abrogation of article 370 things have changed in terms of health, education, socializing... no one is secure regarding the future of their kids, work, life. A lot of cases of domestic violence have been reported since the last couple of months, the reason

being frustration in terms of loss in business, work, having nothing to do, continuous lockdowns, communication blockades, curfews etc.” (Questionnaire response, housewife, Srinagar).

“Due to the lockdown imposed on August 5th, I was not able to speak to dad for a month, nor did I know about his situation as he lives on life saving drugs. I was frustrated and so mentally disturbed that I could not concentrate on anything else.” (Questionnaire response, NRI, US).

“This time during the covid-19 lockdown getting to a doctor was a challenge. Most of the private practice was stopped. The patients and doctors seemed a threat to each other. One of my cousins who had some complications with her pregnancy was refused treatment at a reputed private hospital during the initial lock down. Beyond doubt, our mental health suffers the most... My mother suffers from anxiety and depression since long. It began in the 1990s turmoil. It only worsens during the Internet blockades. One of my friend’s daughters is outside the country for education. Her daughter got anxiety attacks during the blockade.” (Questionnaire response, teacher)

“Children and adolescents in general feel very sad, lonely and isolated because of restrictions and continuous hearing of sad stories. The parental control has also increased over children. The frequent restrictions and lockdowns has been one of the main reasons for children experiencing any psychosocial issue to overcome such issues both in terms of hampered access to health services and getting exposed to recurrent traumatic situations (even just hearing about adverse events constitutes trauma and may affect children adversely). Young adolescents have an aggressive tendency and desperation for not being able to access the internet. It naturally develops an angry behaviour... Behaviour changes and fatigue can be seen as an outcome of long lockdown.” (Questionnaire response, development professional, Kulgam).

“These shutdowns also led people into a spiral of emotional instability. As a result of this loss in the rational thinking process of the youth, many youngsters are prone to exploitation by violent elements under the pretext of Kashmir issue and also Kashmiri youth have continuously been exploited by various forces for political interests too.” (Questionnaire response, Government employee, Kupwara).

“Children under 5 years old show reactions like unusual crying, hunger or no hunger. Children between 6 and 12 show a lot of panic and hustle bustle. Children aged 12 and above are overall in a depressed state.” (Questionnaire response, teacher, Jammu).

Two of the doctors who responded to the Forum’s questionnaire also pointed out that there was “no online facility as far as mental health was concerned.” (Questionnaire responses).

7 Financial stress

Several respondents pointed out that ten months of joblessness due to the lockdown from August 2019 till today caused their own healthcare constraints. The long lockdown, said

a healthcare researcher, impacted “access to health services in both direct and indirect ways through impeding access to transport, hampering mobility and impacting incomes (people who depend on daily wages don’t find avenues to earn). The impact on livelihoods affects the affordability of people to access health services. To note, outpatient health care is expensive in J&K as compared to all-India. For instance, the NSSO report 507 revealed that the average expenditure (medical and other related expenditure but excluding loss of household income/wages) for non-hospitalised treatment per ailing person was Rs.394 and Rs.478 for rural and urban J&K, while it was only Rs.285 and Rs.326 in rural and urban India (NSSO, 2006).”

“COVID has created a worse situation. Along with restriction, it has also brought fear of contracting the disease from anyone. Anyone in the neighbourhood or among relatives is seen as a potential carrier of COVID-19. As a result, people even in rural areas are also scared and fearful to carry any construction related work impacting local livelihoods.”

“Further, because of COVID people tend to avoid visiting health facilities. The stories in the media about medical staff getting infected have changed people’s perception about safety at health facilities and thereby impacting access to health services. People don’t see it safe to visit health facilities. In general, any illness other than COVID has taken a back seat and its implications are to be seen. The OPD records clearly show a steep decline in the number of people accessing health care.” (Questionnaire response).

A development professional added: “One of the observations I gathered from interacting with people associated with local charity work, an increase in numbers for asking financial help to access healthcare and meet routine daily medicinal needs. Similarly, during interactions with people associated with pharmacy business and retail medical shops, many people stop taking routine life-saving drugs due to financial conditions. It is generally elderly population who are dependent on their children for such support. The connection is obviously linked to loss of daily income.” (Questionnaire response).

IMPACT ON INDUSTRY AND EMPLOYMENT

Before the lockdown of August 2019, Jammu and Kashmir was one of the better-performing states of India, economically as well as on human development indices. The state ranked third highest on its tax revenue, in comparison to other states, and second highest on non-tax revenue.¹²⁰ It was among the top three special category states for low fiscal deficit,¹²¹ and among the top ten for its low poverty rate.¹²² Its net state domestic product had risen from over Rs. 53,000 crores in 2011-12 to over Rs. 78,000 crores in 2016-17, and its per capita gross state domestic product had risen from around Rs. 60,000 to Rs. 100,000.¹²³

The August 2019 lockdown plunged the state into a sharp downward spiral. By end December 2019, the economy of the valley was in dire straits. In four months of the lockdown, the Kashmir Chamber of Commerce and Industry (KCCI) said, Kashmir's industries suffered a loss of Rs.17,878.18 crores (roughly USD 2.4 billion), while job losses in the valley were just under half a million (497,000).¹²⁴ Estimated industry losses during the period January-July 2020 amount to another Rs.22,000 crores (roughly USD 2.9 billion), bringing the total losses for the period August 2019-June 2020, as estimated by the KCCI, to almost Rs. 40,000 crores (USD 5.3 billion).¹²⁵

Comparable figures are not available for Jammu, but the Jammu Chamber of Commerce and Industry (JCCI) asked the Jammu and Kashmir administration to "constitute a panel to assess the factual huge running losses being faced by the business houses in J&K post August 05, 2019 on account of continuous shutdown, law and order problems and non-availability of internet connectivity" and grant compensation. They also sought special protection for existing industrial units that had been established by the Jammu and Kashmir residents such as "mandatory purchase preference by the government/semi government projects" so that such units "could survive the competition with the big existing and the new industrial units that would be setting up their units in J&K."¹²⁶

120 Reserve Bank of India, *Handbook of Statistics on Indian States*, Tables 134: State-wise Own Tax Revenue, and 135: State-wise Own Non-Tax Revenue, <https://m.rbi.org.in/Scripts/PublicationsView.aspx?id=18930>.

121 Ibid, Table 131: State-Wise Gross Fiscal Deficit.

122 Ibid, Table 14: State-wise Poverty Rate.

123 Ibid, Table 15: Per Capita Net State Domestic Product at Factor Cost.

124 Ministry of Statistics and Implementation, Government of India, GSVA/NSVA by economic activities: Jammu and Kashmir, <http://mospi.nic.in/GSVA-NSVA>.

125 Press Trust of India, 'Kashmir economy suffered loss of Rs. 17,878 cr. in 4 months after Article 370 abrogation', December 17, 2019, <https://indianexpress.com/article/india/kashmir-economy-suffered-loss-four-months-after-article-370-abrogation-jk-6172096/>. For category-wise figures, including job losses, see KCCI computation in the Appendices.

126 Telephone interview with the KCCI secretary, July 7, 2020.

As a professor of commerce from Jammu commented, prolonged lockdowns from August 2019 till date led to low demand, fewer purchases, a reduction in satisfaction, trust and loyalty, which in turn reduced turnover, margins, market share and overall business performance. The lockdowns, he continued, “had an immense density on customers as well as employees. The stress of not working, the job security and regular salaries were grave concerns for employees and impacted industry. For customers, the procurement of goods from the nearest shop was also a big challenge.” (Questionnaire response)

The most affected sectors were agriculture and horticulture, construction, handicrafts, manufacture, real estate, transport, tourism, IT and small businesses, including start-ups, and financial services, the bulk of which have seen a drop of 50 percent in earnings. In November 2019, the Jammu and Kashmir State Level Bankers’ Committee, representing 41 banks operating in the region, approached the Reserve Bank of India for a special loan rehabilitation package and relaxation in capital provisioning for bad loans to save their balance sheets. What they got was debt servicing.¹²⁷

In effect, Kashmiri industry suffered a quadruple whammy: first the August lockdown, then the restriction of internet to 2G, then the COVID-19 lockdown and then the opening of the Jammu and Kashmir economy to companies from other parts of India. For the first time, mining rights were opened to all Indian bidders, and the bulk went to non-Kashmiris.¹²⁸ Though Finance Minister Nirmala Sitharaman announced some relief for industries affected by the COVID-19 lockdown, there was no relief for the preceding eight months of lockdown that the Jammu and Kashmir industries had to face, nor rehabilitative programs for local industries that are forced out by national ones.

Moreover, though phone and internet services were restored, albeit on the slow and limited 2G network, mobile telephony and the internet are snapped every time there is an armed encounter, sometimes for four days at a stretch. From the beginning of June 2020 to the first week of July, there was an armed encounter every day.

Below we describe the economic impact of the lockdowns on selected industries and employment, based both on quantitative and on responses to the Forum’s questionnaires.

1 The fruit industry

The fruit industry, one of the state’s largest producers that supplies apples across India, contributes about 10 percent to Jammu and Kashmir’s economy. It lost around 1.35 lakh metric tons of its crop due to restricted transport facilities. A government announcement that the National Agricultural Cooperative Marketing Federation of India (NAFED) would

127 Ejaz Ayoub, ‘With One Lockdown After Another, J&K’s Economy is Shattered and Shattered’, *The Wire*, May 22, 2020, <https://thewire.in/economy/with-one-lockdown-after-another-jks-economy-is-shattered-and-shattered>

128 Athar Parvaiz, ‘In A First, Outside Companies Earn 100 Percent Mining Rights in Kashmir’, *Kashmir Observer*, February 7, 2020, <https://kashmirobservers.net/2020/02/10/in-a-first-outside-companies-earn-100-percent-mining-rights-in-kashmir/#:~:text=In%20A%20First%2C%20Outside%20Companies%20Earn%20100%20Percent%20Mining%20Rights%20In%20Kashmir,-Join%20%40KashmirObserverOnline&text=For%20example%20in%20Srinagar%20district,bidding%20amount%20of%201800%2C000..>

buy the crop came to little, since NAFED faced the same transport obstacles, along with limited funds. According to the MHA, by January 2020, NAFED had only purchased Rs.70.45 crores worth of apples,¹²⁹ while the average revenue from apple sales is around Rs. 14,000 crores per annum.¹³⁰

As a fruit trader from Sopore commented, “Almost all apple dealers are defaulters of different banks. The internet, especially 4G network, being non-functional makes the major difference and has hit hard the apple trade in all its parameters. Online payments, transport availability, was hampered and the transport charges went up three times high. The quality of pesticides couldn’t be scrutinized online and there was a complete monopoly of pesticide dealers selling substandard pesticides on exorbitant prices. Proper marketing of the crop couldn’t be done which was only possible when the dealers could check the market position of different *mandis*. That was possible comparatively only when we would have had access to the internet.” (Questionnaire response).

Moreover, another respondent said, that despite the damage caused by both the lockdown and natural causes such as early snowfall, “the Lieutenant-Governor’s administration only paid a few hundred rupees to farmers as ex gratia relief. At present, Covid-19 has given another serious jolt to the farmers as various cash crops are ready in the field viz. strawberry, cherry, but ironically the major fruit wholesale markets are closed and Kashmiri horticultural products have no market available to sell to.” (Questionnaire response).

2 Tourism

The tourism industry reportedly contributes 8 percent of the state’s gross domestic product. By the end of 2019, tourist receipts were down 71 percent, according to government figures and between 86-90 percent according to industry reports;¹³¹ with the internet closed, bookings were near impossible to make and anyway no one wanted to go to a valley under siege. According to government statistics provided to parliament on December 9, 2019, tourist figures declined from over quarter of a million in 2018 to just over 43,000 between August-December. As a result, there were an estimated 144,500 jobs lost in the tourism and handicrafts sector alone.¹³²

129 ‘Economic development of Jammu and Kashmir after the abrogation of Article 370’, Press Information Bureau, Government of India, Ministry of Home Affairs, February 4, 2020, <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1601843>

130 Haseeb A. Drabu, ‘A \$5 Trillion Economy By 2025? Why Kashmir Can Be The Apple Of India’s Eye’ Outlook magazine, 12 August 2019, <https://www.outlookindia.com/magazine/story/india-news-a-5-trillion-economy-by-2025-why-kashmir-can-be-the-apple-of-indias-eye/302000#:~:text=Kashmir%20contributes%20%20mn%20metric,capacity%20is%20in%20the%20state>.

131 Aniket Aga and Chitraganda Choudhury, ‘RTI Reveals Union Minister Lied to Parliament about Hit to Tourism in J&K’, *The Wire*, January 3, 2020, <https://thewire.in/government/rti-reveals-union-minister-lied-to-parliament-about-hit-to-tourism-in-jk>.

132 Athar Parvez, ‘Kashmir tourism has dropped 86% since Article 370 was hollowed out’, Scroll.in, Jan 29, 2020, <https://scroll.in/article/951354/abrogation-of-article-370-has-broken-the-back-of-kashmirs-tourism-industry>.

Table 2: Number of tourists visiting Jammu and Kashmir from August to November: 2017-2019

| Month | 2017 | 2018 | 2019 |
|--------------|----------------|----------------|---------------|
| August | 164,395 | 85,534 | 10,130 |
| September | 135,751 | 103,195 | 4,562 |
| October | 133,071 | 55,971 | 9,327 |
| November | 112,300 | 33,720 | 12,086 |
| December | 65,837 | 38,024 | 6,954 |
| Total | 611,534 | 316,424 | 43,059 |

Source: JK Tourism Department.¹³³

In March 2020, the Jammu and Kashmir administration introduced a draft tourism policy, and in July a draft houseboats policy, which lays down norms and guidelines for registration, renewal, and operation of houseboats in the Dal and Nageen lakes. Under the draft policy, houseboat owners require no-objection certificates from the Power Development Department, the PHE Department, the Fire and Emergency Services Department, the Pollution Control Board, LAWDA, and any other authority/departments the registering authority considers relevant. According to India Today, “Operators are labelling the policy as ‘draconian and harsh’ because it expects them to shape up or shut shop within a three-month deadline to refurbish as per renewed regulations. Anyone even remotely familiar with the houseboat business knows that refurbishing a unit that has not been fully operational is a process that takes much longer than three months.” The magazine points out that houseboats provide a source of livelihood to lakhs of people both directly and indirectly, including shikarawallas, flower sellers, fishermen, floating handicraft markets, photographers, woodcarvers, khatamband craftsmen, vegetable growers, handicraft hawkers, carpenters specialising in hull-making, and crewel fabric makers among others.¹³⁴

The Jammu and Kashmir administration has announced that the former state will reopen for tourism soon, but they also plan a much restricted Amarnath Yatra, allowing only 7,500 pilgrims (generally the Yatra saw upwards of 100,000 tourists every year to the valley).

3 IT and e-commerce dependent industries

The worst affected industries are those that are directly connected to or solely reliant on the internet. Many of them were forced to shift base, leaving their local workforce jobless. Some were forced to close down altogether. According to one IT company owner: “While I live in the US, I have an IT company with a work force and operations facility based in Kashmir. Ever since the government has imposed a lockdown and then reduced the Internet speed in the valley, our facility in Kashmir is non-functional. Our company was

¹³³ Muzamil Bhat and Chitrangada Choudhury, ‘Number of Tourists in Kashmir Down by 86% in August-December 2019: RTI’, *The Wire*, January 26, 2020.

¹³⁴ Perna Koul Mishra ‘New guidelines deliver final blow to Kashmir’s iconic houseboat industry’, *India Today*, July 3, 2020, <https://www.indiatoday.in/india/story/kashmir-s-ionic-houseboat-industry-gets-a-final-blow-1696751-2020-07-03>.

forced to move base temporarily to Delhi, due to which the workforce in Kashmir was laid off. Our staff in Kashmir has been out of work since August 2019.” (Questionnaire response). According to another: “I have a software development company in Srinagar. In August 2019, it was clear internet services will be banned for a long period of the time. I had to close the office and shift operations outside Kashmir. Even now we can work from home and support many families if 4G is available. Since Aug 2019, we are losing clients, all our employees were from Kashmir. They lost their jobs and we lost skilled resources. Our income became negative with viabilities piling up.” (Questionnaire response).

Similarly, the carpet and garments industries, which too depended on online orders, have been heavily hit. “About 20,000 weavers were employed by units making silk carpets. The communication and internet did not restore on time and the importers have gone elsewhere.” (Questionnaire response, Srinagar)

Village and home-based industries too have been hard hit. “Before the August 2019 lockdown, I used to work from my home on the computer. However, the internet ban did badly affect my work as a small entrepreneur. Restoration of 2G facilities did help but little and the internet works too slowly and I can’t work properly.” (Questionnaire response, village level entrepreneur, Handwara). “My sister’s homemade cake business runs on Facebook and Instagram. With the internet blocked, she doesn’t get any orders.” (Questionnaire response, teacher).

4 Transport

According to the KCCI, the transport and communications sector suffered a loss of 2,267 crores between August-December 2019 due to the lockdown imposed in August. Some part of these losses was also due to the ban imposed on truck drivers seeking to collect harvested apples from Kashmir for sale in the rest of India, by militants opposed to the government’s demotion and division of Jammu and Kashmir state in August. In October, for example, two truck drivers were shot in Shopian and their trucks burned.¹³⁵

Public transport was also closed, including private buses, first due to the August lockdown and then the COVID-19 lockdown. As a young unionist from the valley commented, “There was an absolute dysfunctionality of public transport in the valley from the August lockdown up to December 2019. The transporters, who also cater to the large weaker section of population in the valley, were badly affected economically. The Covid-19 threat has shattered their business up to 100%, hence thousands of people associated with the transport business are in distress.” (Questionnaire response). Added a teacher from Jammu, “Most transporters cannot even pay the instalments on their loans.” (Questionnaire response, Udhampur)

135 Hakeem Irfan, ‘2 truck drivers killed, 1 injured as militants set apple-laden vehicles on fire in J&K’s Shopian’, *The Economic Times*, October 25, 2019, https://economictimes.indiatimes.com/news/politics-and-nation/2-truck-drivers-killed-1-injured-as-militants-set-apple-laden-vehicles-on-fire-in-jks-shopian/articleshow/71749952.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

5 Start-ups, small businesses, shops

Figures on aggregate losses suffered by start-ups, small businesses and shops are not available, but there are innumerable individual accounts in the media, as well as from responses to the Forum's questionnaire. A few examples are excerpted below:

"I am a pharma businessman, I run a clinic with a medical shop attached. I've 6 employees. Post abrogation, for at least 3 months, there was a total lockdown. We had 0% income, my family's daily needs had to be taken care of from past savings. I earn Rs.2 lakhs per month on an average, post abrogation it has gone to less than half of it, out of which 6 employees have to be paid, clinic rent and school fees of my 2 children who also haven't been to school since then. From August 2019 to June 2020 our business has dropped to 50% profit than usual." (Questionnaire response, pharma businessman, Srinagar).

"Shopkeepers said that vital supplies like insulin and baby food, which they typically ordered online, were running out. Cash was scarce, as metal shutters covered the doors and windows of banks and A.T.M.s, which relied on the internet for every transaction. Muheet Mehraj, founder and chief executive of Kashmir Box, a start-up that buys traditional handicrafts like pashmina shawls and pottery from local artisans and sells them online, said he could not check incoming orders or communicate with his suppliers. His 25 employees were sitting idle." (Questionnaire response).

According to Aaditya Kitroo, co-founder of *Jos&fine*, who asked his artisans to work from home after reassembling handlooms there, "We ensured our production continued without any hassle." However, demand decreased and half of his looms were not running. The more important thing, Kitroo said, was to make sure that they did not have to fire anyone. "But sadly, we're getting close to that." Anam Siraj, owner of *Closet Cloud by Anam*, a self-made fashion brand, added: "My store was largely closed after the August lockdown. Even online work was not possible as deliveries were stopped."¹³⁶ Parvaiz Ahmad Bhat, a local YouTube satirist who had nearly 500,000 subscribers, said his show was making more than \$1,500 every month from advertisements before the August shutdown. "Now I worry that I will have to start from scratch... My audience doesn't have Internet access, so what's the point of making new work?"¹³⁷

6 The media

For the first couple of months following the August 2019 lockdown, newspapers were not published, either in print or online. Newspaper circulation was restricted thereafter and advertisements from both government and private institutions declined. Journalists were unable to travel to report and, since criticism of government actions could lead to stoppage of advertisements and even arrest, opinion became anodyne. As a result,

¹³⁶ Swati Joshi, 'Gordian Knot in Enterprise: What's Happening to Kashmir-Based Startups?', *Kashmir Observer*, June 22, 2020 <https://kashmirobservers.net/2020/06/22/gordian-knot-in-enterprise-whats-happening-to-kashmir-based-startups/>.

¹³⁷ Niha Masih, Shams Irfan and Joanna Slater, 'India's Internet shutdown in Kashmir is the longest ever in a democracy', *The Washington Post*, Dec. 16, 2019.

newspapers halved in size and saw a sharp fall in content, which further resulted in loss to their customer base and, in a domino effect, dozens of journalists lost their jobs.

“I have had 60-80% decrease in readership and viewership,” said a print media professional based in Srinagar (Questionnaire response). According to the head of a newspaper publishing house in Jammu, “In the pre-Covid lockdown, we were unable to connect to our offices and staffers in many parts of the state – Kashmir, Doda, Bhandarwah, Kishtwar, Rajouri and Poonch. The Srinagar edition could not be published for three months after August 5, 2019. For several months thereafter, the information being published was sketchy in both editions. The Covid-19 lockdown has further disabled us from printing (the hawkers have refused to circulate newspapers, the technical staffers cannot reach the printing press) and we are presently managing to publish only online despite low connectivity. Right now, both editions are not being printed. This irregularity leads to massive financial losses and also impacts our circulations and credibility.” (Questionnaire response).

The hardest hit were reporters in the field. “After the restoration of 2g internet services none of the media houses rehired their district reporters. I am one among them. Many of my media friends had the same tale and are still without jobs.” (Questionnaire response).

7 Employment

Jammu and Kashmir’s unemployment rate is almost twice that of the national average, at 17.9 percent in July 2020, as compared to the national average of 9.5 percent.¹³⁸ Almost a quarter of its educated young are unemployed, again twice the national average. The new domicile rules announced by the Ministry of Home Affairs in March 2020 have created fears of even greater unemployment, since they laid down that anyone who had lived in the state for 15 years, or had studied there for 7 years, would be eligible for domicile. Domicile certificates could be issued by the local tehsildar (tax collector) not, as formerly, by the district magistrate. People with domicile certificates would have the right to apply for government jobs, the main source of employment after agriculture. Prior to the new domicile rules, government jobs were reserved for permanent residents of the state (those whose parents and grandparents had been given permanent resident certificates under the citizenship rules of 1952).

138 The Centre for Monitoring the Indian Economy (CMIE), Unemployment Rate in India, July 7, 2020, <https://unemploymentinindia.cmie.com/>

IMPACT ON THE MEDIA

The Jammu and Kashmir media were among the first to bear the brunt of the August 4, 2019 lockdown. With all communications snapped and Section 144 imposed across the state, newspapers did not publish for two months. When they did restart publication, said an independent journalist, “Pre-abrogation (of Article 370) we could write our stories with full dissent. The media platforms were also publishing their editorials with full dissent. That is not the case anymore.” (Questionnaire response, Pulwama).

A reader commented: “The media has suffered tremendously in Kashmir after the end of Article 370 and 35-A. The policy after August 5 (2019) was to foster the “normalcy narrative”. The long-term motive is to censor the media and restrain it from advancing an opinion/narrative which run counter to Indian claims. As such, the daily newspapers in Kashmir have become a mouthpiece of the government. Editorials and Op-eds in leading dailies run health, education, philosophical debates and international news – things that are unconnected with the ground situation. No one has been allowed to situate the removal of autonomy with the implications it has on the ground unless the changes are portrayed in a positive light. A body without a soul. This is what the media and its infrastructure are left with, post-August.” (Questionnaire response, research scholar).

Apart from both direct and indirect intimidation of editors and proprietors, curbs on movement and restriction to 2G services severely restricted information flow. According to a freelance journalist from Kulgam, “First we were denied curfew passes and when someone somehow got it, his movement was restricted. At times the internet is banned on the same day as we have to submit our story on which we have spent days and nights. Sometimes we film videos of great importance but can’t upload because of reduced net speed. Higher quality pictures suffer.” The impact on their readership was considerable, she added: “there is a relationship of mutual symbiosis between our readers and us. Our readers are our source of income. We provide them factual and detailed information. They trust us. They pay us. Our readers are gradually losing their interest in us because we fail to get them updated (on events and processes). Because the internet fails us, we can’t reach our readers on time. Our subscribers quit us.” (Questionnaire response).

1 The new media policy and media scene

A full-fledged mechanism, with its many aspects worked out in careful detail, designed to very closely monitor – or police – the media, can be said to be the first major policy

intervention of the Jammu and Kashmir administration after New Delhi brought the former state directly under its charge on August 5, 2019 by converting it into two Union Territories. It is in this atmosphere that the MHA's "revised media policy" for Jammu and Kashmir, which shall be valid for a period of five years unless changed earlier, was introduced.¹³⁹ The media is unlikely to have missed seeing the intention of the government and the direction in which it was seeking to move.

The policy is not coy. It states without mincing words:

"Jammu and Kashmir has significant law and order and security considerations. It has been fighting a proxy war supported and abetted from across the border....it is extremely important that the efforts of anti-social and anti-national elements to disturb the peace are thwarted. In order to ensure the above, it shall be made incumbent that before the empanelment of newspapers/news portals for release of advertisements by government, the antecedents of the paper/news portal as well as that of the publishers/editors/, key personnel are gone into. ..."

Then the details of day-to-day supervision of the media are delineated in the following terms: "DIPR [The Directorate of Information and Public Relations] shall examine the content of the print, electronic and other forms of media for fake news, plagiarism, and unethical or anti-national activities. Any individual or group indulging in fake news, unethical or anti-national activities or in plagiarism shall be de-empanelled besides being proceeded against under the law... Any fake news or any news inciting hatred or disturbing communal harmony shall be proceeded against under IPC/cyber laws."

And further, "A suitable mechanism with specific ToRs [Terms of Reference] shall be set up by the DIPR for monitoring the above and ensuring adherence to the guidelines... With respect to all such matters (as) may involve fake news or news with anti-social, communal or anti-national content, the implementing agency, viz DIPR will also device (sic) a suitable coordination and information-sharing mechanism with the security agencies."

It is not difficult to see that there are two distinct aspects – both egregious and injurious to democracy – of policing the media evident in the above, in addition to checking the antecedents of a newspaper's publishers and other senior personnel before empanelment for receiving a share of the government's advertising spend. The first is that the bureaucracy is under instruction to sit in judgment over what constitutes anti-social and anti-national news, and then act as censors, though that particular expression is not used.

The second is that the DIPR must devise a suitable "coordination and information-sharing mechanism with the security agencies." Here the department of information practically collapses into the domain of the security agencies, meaning the intelligence services,

¹³⁹ In supersession of all previous orders, the UT of Jammu and Kashmir issued a Revised Media Policy of the Information and Public Relations Department vide Order General Administration Department OM No. GDC-89/CM/2020 dated May 12, 2020. The policy approval came under Administrative Council Decision No. 61/8/2020 on April 29, 2020. The 50-page long policy is set out in Kashmir Life, June 11, 2020. Quotations from it below are from this source.

the police, the paramilitary forces and the army. In such a coordination mechanism, it is clear who will be in the lead role – the DIPR, or security personnel. This is the kind of format operated by ISPR in Pakistan or can be thought of being successful in one-party states such as China or North Korea.

The Kashmir valley has about a dozen English-language dailies and around 15 Urdu dailies. Perhaps each of these is able to meet the circulation criterion for daily newspapers for purposes of empanelment to be eligible for government advertising, as laid down in the new Media Policy.

The minimum circulation requirement for English dailies is pegged at 2,000 copies, and for other languages (in the valley chiefly Urdu, though Jammu has Hindi and Dogri as well) 500 copies. The ask is slightly more for bi-weekly/weekly, fortnightly and monthly offerings.

On the whole, it may be safe to presume that the government has designed its empanelment requirement for circulation well within marks already achieved by the papers. This points to its willingness to keep the newspaper owners flush with funds derived from the government's ad spend, although "under the New Media Strategy, the department now proposes to increasingly look toward leveraging electronic and online media to widen the scope and import of information dissemination."

In the main, news establishments in Jammu and Kashmir are unlikely to turn down such a plum proposal. All that is required of them is to pack their wares with the editorial matter offered by the government, and eschew anything the government is likely to frown upon. Through a not-so-disguised 'stick-and-carrot' policy, the Jammu and Kashmir administration has set down the template for the open subversion of journalism in Jammu and Kashmir, especially in the Kashmir valley.

The charges against journalists such as Masrat Zahra and Gowher Geelani (referred to in the section on civilian security) have evidently been taken as appropriate lessons by Jammu and Kashmir's newspaper owners, as a contemporary news report suggests: "The local newspapers have been playing it safe since August 5, mostly avoiding any independent coverage of the aftermath of the clampdown and the communications blockade, fearing reprisal from the government agencies... Several local English dailies have avoided publishing any editorials and regular columns on the ongoing situation in the Valley."¹⁴⁰

The above report wryly notes that while these newspapers carry "no informed critique/opinion pieces", the government's advertisement "blitzkrieg" promises "new dawns" even as "the siege and the communications gag is yet to be lifted."

People in the valley have begun to migrate from newspapers to the radio, the report informs us. "People are listening to the radio as they did during the 1990s [a reference to the first militancy and its aftermath in Kashmir] when there was no internet and cable

140 Report by Majid Maqbool, 'The Wire', September 17, 2019.

television network”, it says, quoting a businessman of Sopore in North Kashmir. Evidently, “BBC London and VOA” are the sought-after radio stations. These bring “authentic news of the current situation in the region, and what the world is saying about the scrapping of Article 370 or the bifurcation of the state.” Ominously, in contrast, “The Indian media is not a trusted source of news. It is repeating what their government says about what is happening here.”

2 Internet freedom, internet speed, two Supreme Court judgments

Two judgments of the Supreme Court – *Anuradha Bhasin*, delivered on January 10, 2020, and *Foundation of Media Professionals*, pronounced on May 11, 2020¹⁴¹ – are key judicial delineations on the subject of the freedom of expression, media freedoms, whether or not the right to access the internet is a human right, and whether or not the right to have high speed internet (in India’s case the 4G speed, currently the maximum speed for ordinary transactions available in the country, including in Jammu and Kashmir before the lockdown effected in August 2019) is a fundamental right/human right. Justice N. V. Ramana led the Bench in both cases and authored the two judgments.

He cited constitutional principles, and case law, but permitted the government’s contention that cited serious security considerations in light of Kashmir’s specific circumstances in relation to terrorism, to prevail above every other consideration, without submitting the government’s case to scrutiny, which it deserved in light of the case presented by the petitioners.

The nub of both judgments turned on the impoverished logic of security concerns to prove which numbers were thrown by the respondents of deaths and injuries and violent incidents over extended periods of time that look to be far from comparable.

Both judgments cited the state’s right to bring reasonable restrictions – Article 19(2) of the Constitution of India – to the freedom of expression available through Article 19(1). They also emphasized the need for proportionality in the state’s actions. Yet, the state came away smiling.

From the media perspective, these judgments offer not the slightest relief. This is borne out by the feedback of respondents to the Forum’s questionnaires cited above and in various sections of this report.

The most glaring defect in the approach of the Bench is to readily accept the state’s version. The most primary of these is the most conspicuous. To find out the extent of the freedom under which the media operates in Jammu and Kashmir, especially the valley, all that is needed is to send for a few copies of the prominent dailies published in the former state. These would have revealed straightaway that little else is being carried these days,

141 *Anuradha Bhasin v Union of India*, AIR 2020 SC 1308; *Foundation of Media Professionals v UT of Jammu and Kashmir*, Writ Petition No. 10817 of 2020, judgement carried on indiankanoon.org/doc/123992151/.

besides official handouts. This would have punctured the state's case that the media was facing no problems in its operations that were anything out of the ordinary.

Regrettably, the Supreme Court appears to have lost an opportunity to further develop the jurisprudence on the question of access to the Internet being a fundamental right (if not a human right), with the question of the speed (2G or 4G) at which it is available to the daily user being of paramount consideration, in running media operations specially.

Decades ago, a bicycle and a typewriter or a simple camera was all that newsmen needed. Today the work processes – produced by the march of technology – are such that quality media operations are hard to conceive without high speed data transfers. It is to be hoped that the day is not far when the judgments referred to above will be reviewed and improved upon. For a country claiming to be a democracy, this is critical.

In both the cases brought as writ petitions before the Supreme Court, government representatives presented arguments that terrorists can easily exploit high-speed internet because this permits two-way communication. This is the sole basis on which the continued banning of 4G was sought to be sustained. The top court appeared to accept this logic avidly. It might as well then accept that the movement of planes or trains or motor vehicles should be eliminated or restricted in society, especially in Jammu and Kashmir, since terrorists are also known to use these modern devices.

In *Anuradha Bhasin*, the top court observed in paragraph 27 of its order, “[In this context], we need to note that the internet is also a very important tool for trade and commerce. There is no doubt that there are certain trades which are completely dependent on the internet...”.

In the very next paragraph, it is therefore not a little surprising to see the court's language: **“None of the (petitioners') counsels have argued for declaring the right to access the internet as a fundamental right.”** (Emphasis supplied) This became the ground for the Supreme Court to not express a view on the matter.

Instead of pursuing such a course of self-denial, although the communications lockdown and internet deprivation hampering the media were at the heart of the case being brought, the Bench hearing so crucial a matter could conceivably have seized on the opportunity to expand the jurisprudence in this sphere. This might have been the making of case law apt to be cited around the world.

Again, in paragraph 6 of judgement on the *Foundation of Media Professionals'* petition, the Bench took up an important question raised by the petitioner, noting, **“Lastly, Respondent No. 1 has failed to provide any rational nexus between the restriction of internet speed and national security (and) that since the introduction of the internet in the UT of J&K, the number of incidents relating to terrorism in the region have actually reduced.”** (Emphasis supplied).

In spite of flagging this point, the Bench takes no note of it in the final order, which seems something of an anti-climax. It merely calls for the constitution of a special committee to be headed by the Union Home Secretary, with the UT's Chief Secretary on it. This committee is directed to look into the points made by both sides in the case.

It should occasion little surprise that, given the quality of the two crucial judgments in discussion – which go over the ground of media freedoms and the availability of 4G internet – the Jammu and Kashmir administration would have found itself in no way constrained in declaring a media policy that may seem better suited to dictatorial regimes.

CONCLUSIONS AND RECOMMENDATIONS

As the preceding sections show, the Government's prioritization of counter-insurgency concerns over human security has led to an across the board violation of human rights, including the vitiation of protections such as habeas corpus, prevention of illegal detention, strict restrictions on arrest and detention of children, right to bail and fair and speedy trial, and misuse of draconian legislation, such as the Public Safety Act (PSA) and the Unlawful Activities Prevention Act (UAPA), to stifle dissent.

In the same manner, the 11 months of lockdown—comprising closures, barricades, checkpoints and restrictions on mobile telephony and internet connectivity—have enormously impacted public health, and caused trauma and stress amongst the people of Jammu and Kashmir, violating the rights to health and medical care under the Indian, and Jammu and Kashmir, constitutions. The rights of children to a trauma-free environment have been arbitrarily ignored.

The impact on education has been particularly severe. Schools and colleges functioned for barely 100 days between 2019 and 2020. After the pandemic lockdown, limiting networks to 2G has made it impossible for online classes to function adequately. Graduate students and teachers have been unable to participate in conferences or have their papers published, causing wilful harm to their careers and violating the rights to education under the Indian, and Jammu and Kashmir, constitutions.

Local and regional industries have suffered large losses in almost every sector. Companies that are heavily or solely reliant on 4G networks that are available in the rest of the country, such as tourism and cottage industries, have been forced out of business. The new domicile rules introduced by the Ministry of Home Affairs and the Jammu and Kashmir administration, moreover, erode prior employment protections for permanent residents of the former state.

The local media has been one of the worst sufferers. Journalists have been harassed and even had draconian charges slapped on them, for example under the Unlawful Activities Prevention Act (UAPA). Their content, readership and revenues have suffered such a sharp decline that dozens of journalists have lost their jobs. The new media policy is a death blow to an independent media and the freedom of expression.

Based on these findings, the Forum makes the recommendations listed below. They are all eminently feasible, requiring chiefly a rollback of the August 2019 Jammu and Kashmir

policy, and the measures that have followed from it, to the policy and practices that prevailed earlier, in particular those espoused from 2000-2013. There is, indeed, a considerable pool of administrative experience from that period that can be deployed to not only respect human rights as they were respected then, but also to improve upon the record of that time (which was a phase of conflict reduction and initial peace-building).

Recommendations

1. Release all remaining political detainees that were taken into preventive detention on or after August 4, 2019. Strictly follow jurisprudence on the rights to bail and speedy trial.
2. Amend the Public Safety Act and any other preventive detention legislation so that they cannot be misused against political opposition and remove all restrictions on freedom of representation and expression.
3. Strictly implement juvenile protection legislation in letter and in spirit. Release all detained juveniles and withdraw charges against them. Initiate enquiries followed by criminal and civil actions against personnel of police, armed forces and paramilitary forces found guilty of violation of child rights.
4. Withdraw charges under the Unlawful Activities Prevention Act against journalists and activists.
5. Curb the application of Section 144 to only those instances in which there is clear and present danger. Ensure that District Magistrates strictly follow judicial guidelines restricting the use of Section 144.
6. Balance security considerations against public interest, giving the upper hand to the latter. In this connection, restore in practice the humanitarian guidelines to be followed when conducting Cordon and Search Operations, to prevent civilian deaths, injuries or any other damage or loss.
7. Adequately compensate innocent citizens whose houses have been destroyed in Cordon and Search Operations.
8. Hold police and paramilitary personnel who harass civilians at checkpoints accountable.
9. Restore 4G internet and mobile services in toto. Noting that Jammu and Kashmir has below average access of children to online facilities (see section on children and youth, make additional efforts to provide access for such children.
10. Reinstate all the former state's statutory oversight bodies, especially those monitoring human rights, such as the Jammu and Kashmir Human Rights Commission and the Jammu and Kashmir Women and Child Rights Commission.
11. Ensure that police and paramilitary forces at checkpoints allow smooth passage for medical personnel and patients. Where patients lack transport to hospital, provide aid by making vehicles available.
12. Compensate local businesses that were forced to shut down due to the government lockdown between August 2019 and March 2020 and ensure that they are given the government aid they require to the fullest extent possible.
13. Rollback the new media policy and encourage all shades of opinion to be freely and peacefully expressed.

Kashmir has in many ways been the litmus test of Indian democracy. As this report indicates, we have failed miserably.

List of abbreviations

- BJP: Bharatiya Janata Party
CASO: Cordon and Search Operations
CRPF: Central Reserve Police Forces
DIPR: The Directorate of Public Information
GOJK: The Government of Jammu and Kashmir
IED: Improvised Explosive Device
MHA: The Ministry of Home Affairs
PSA: The Public Safety Act
SATP: South Asia Terrorism Portal
SC: Supreme Court of India
SOP: Standard Operating Protocol
UAPA: The Unlawful Activities Prevention Act

APPENDIX A

About the Forum for Human Rights in Jammu and Kashmir

The Forum for Human Rights in Jammu and Kashmir comprises a group of concerned citizens who believe that, in the prevailing situation in the former State, an independent initiative is required so that 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* note of any violation, irrespective of whether or not a formal complaint is received. On issues of common concern, the Forum may include Ladakh in its purview.

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.

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.

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 award-winning 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).

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 (co-chair) 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) and the Foundation for Communal Harmony and is currently a member of the United Nations University Council (which she chaired from 2016-19), and 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 (co-chair) 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 (reted.) H S Panag is former GOC-in-C of the army's Northern Command, Udampur, 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 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 is currently president of the Press Club of India.

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 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.

Dr. R D Sharma is a business education expert and former Vice Chancellor of Jammu University (2015-2018). He has written extensively on business education and management over his forty-year career as a teacher, and has guided over fifty M Phil and Ph D students. He was also Vice Chancellor of Noida International University, Chairman of the JK Board of Professional Examinations and a Fullbright Scholar. Besides publications in business education, Sharma also co-edited a book entitled *Politics of Autonomy in Jammu and Kashmir*.

Shantha Sinha, is the Founder Secretary of M V Foundation which withdrew over a million children from child labour and enabled completion of their education up to class 10. She headed the National Commission for the Protection of Child Rights as its first Chairperson for two consecutive terms from 2007-2013. She also served as a Professor, Department of Political Science, University of Hyderabad. She is a recipient of the Ramon Magsaysay Award, 2003, for community leadership and was awarded the Padma Shri in 1998 by the Government of 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.

APPENDIX B

THE KASHMIR CHAMBER OF COMMERCE AND INDUSTRY TABLE A

Estimates for 10 districts of the Valley for 120 days starting August 5, 2019

| SUBSECTOR | SECTOR | COL 3 | COL 4 | COL 5 | | NET LOSS |
|--|--------------------|--|--|---|-----|------------------|
| | | Previous year (2017-18) annual economic output from entire J&K (Sub Sector Specified) (approx in Rs. Crores) at current prices | Previous year contribution at 60% from 10 districts of Kashmir Valley (60% of col 3) | Interpolating the annual output for a duration of impact (120 days of peak season). Assuming contribution 40% of the annual output (40% of col 4) | | In Rs. Crores |
| Agriculture/ Horticulture/ Other | Agriculture | 15,119 | 8,315 | 3,326 | 499 | 2,727 |
| Livestock | | 9,435 | 5,189 | 2,076 | 311 | 1,764 |
| Forestry/Logging | | | | | | |
| Fishing/ Aquaculture | Allied Services | | | | | |
| Manufacturing | | 11,211 | 6,166 | 2,466 | | 2,468 |
| Construction | | 8,712 | 4,792 | 1,917 | 287 | 1,629 |
| Mining/Quarrying | Industries | | | | | |
| Electricity, gas, water and other utility services | | | | | | |
| Trade/Hotel/ Restaurant | | 13,983 | 7,690 | 3,076 | 461 | 2,615 |
| Transport/ Communication | | 12,125 | 6,669 | 2,667 | 400 | 2,267 |
| Financial Services | Services | 6,331 | 3,482 | 1,393 | 209 | 1,184 |
| Real Estate/ Ownership of Dwelling & Professional Services | | 16,712 | 9,192 | 3,677 | 551 | 3,125 |
| Public Administration and Defence | | | | | | |
| Other Services | | | | | | |
| TOTAL EST. LOSS | | | | | | 17,878.18 |

**THE KASHMIR CHAMBER OF COMMERCE AND INDUSTRY
TABLE B**

| S. NO | SECTORWISE | PER DAY | 120 DAYS | JOB LOSS-ES |
|--------------|--|-----------------------|--------------------------|--------------------|
| 1 | Tourism | 8,80,27,200 | 10,56,32,64,000 | 74,500 |
| 2 | Handicrafts/Kashmiri Carpets | 6,00.81,667 | 7,20,98,00,040 | 70,000 |
| 3 | Horticulture/Floriculture/Agriculture/sericulture | 16,66,66,667 | 20,00,00,00,040 | 12,000 |
| 4 | Industry | 21,00,00,000 | 25,20,00,00,000 | 70,000 |
| 5 | General Trade | 26,48,33,334 | 31,78,00,00,080 | 1,20,000 |
| 6 | Transport | 13,43,00,000 | 16,11,60,00,000 | 60,000 |
| 7 | Contractors and Infrastructural Construction & Power Projects, etc | 13,33,33,334 | 16,00,00,00,080 | 20,000 |
| 8 | Medical & Healthcare | 45,00,000 | 54,00,00,000 | 2,500 |
| 9 | Service Sector | 5,81,00,000 | 6,97,20,00,000 | 66,000 |
| 10 | Education Sector | 40,00,000 | 48,00,00,000 | 0 |
| 11 | Finance SEctor | 6,75,00,000 | 8,10,00,00,000 | 1,000 |
| | TOTAL | 1,19,13,42,202 | 1,42,96,10,64,240 | 4,96,000 |

APPENDIX C

THE FORUM FOR HUMAN RIGHTS IN JAMMU AND KASHMIR

Questionnaire

1. What is the impact of the several lockdowns since August 2019 in JK? Is there a distinction between pre-Covid and current Covid conditions and what is it?
2. How does the lack of functioning internet impact on you? Would 4G make a substantive difference?
3. JK has suffered several lockdowns over the past decades. Are there lessons learned from previous experiences for the present situation?
4. What impact do the lockdown and communications closures have on your work?
5. Any other observations you would like to make?

Name:

Designation:

Address:

Telephone number/email:

Your details are required for our records. They will be kept confidential. If we wish to quote you, we will seek your permission in writing.

Please send completed questionnaires to hrforumjk@gmail.com

