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A Never-Ending Struggle: Violation of Human Rights in Jammu and Kashmir

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ABSTRACT

Human rights are arguably violated in almost every corner of the world, but for them to be continuously violated over decades in a democratic nation might be considered rare. However, this is the exact scenario in Jammu and Kashmir. The violations spreads over heinous acts of torture, arbitrary detention, imposition of curfews with internet service suspension and countless more violations of human rights present in international law as well as the Constitution of India. Due to its controversial geographic location, the state faces tension from two rival countries and it is due to this very tension, that people in this region suffer. This article aims to explore the history of the violations, show which rights are being violated and how the abrogation of Article 370 which initially gave hope as a silver lining, merely turned into a dark cloud for many. It then goes on to explore the global perspective and display the varying opinions of nations. The article ends with a call, urging people and the government to take measures that help in reducing the tension of this issue in order to ensure that humans everywhere can exercise their basic rights..

Keywords: *Jammu & Kashmir, Human Rights violation, Article 370, International & Indian law.*

I. INTRODUCTION

Since the time of Indian independence, there has been an omnipresent tension and sense of conflict between India and Pakistan. Caught between this tension and political conflict, was the Union Territory of Jammu & Kashmir, now the Union Territories of Leh & Ladakh and Jammu-Kashmir. Despite this change in name and the abrogation of Article 370, the turmoil hasn't decreased, the region continues to be caught between the crossfires of the two neighboring nations. As a result of this, human rights continue to be violated on a day-to-day basis in this region of the country, and the residents are left helpless. Due to the deep-rooted violation that has been taking place for decades, the question which arises the most when thinking about Kashmir is simply, when will the infringement of rights end? Presently, many believe that the infamous abrogation of Article 370 has worsened the living conditions for the

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residents of the region, and today, more suffering and conflict are being observed.

II. AFTERMATH OF 370

So, the question of what exactly the abrogation of Article 370 seems to do on paper and how it's different from its reality, arises. In August of 2019, the Government of India revoked the special status that was put into place by Article 370. At the time of independence, the state was granted a special status as it was the only Muslim majority state at the time. The special status essentially respected the differences between the people and allowed Kashmiri Muslims, Pahari Sikhs, and many other minorities to buy property, own land, and access other certain state jobs. When the Article was taken down, it gave other Indian citizens a way to gain property rights and settle down in Jammu & Kashmir and, this might, in turn affect the current resident's ability to exercise their rights.² Along with Article 370, Article 35 A was also abrogated. The latter defined who the permanent residents of the states were and shed light upon the rights bestowed upon them.³ Naturally, the abrogation invited a great amount of criticism and opinions due to its controversial nature. The government justified their actions by arguing that they aimed to put the territory on the same level as the rest of India and unite it completely. The Modi government has also been vocal time and again, about how they oppose Article 370, and thus, this move didn't come as a surprise to many. Furthermore, the area has been one of great dispute between Pakistan and India and is thus, quite problematic to the Indian government. However, many question whether the ulterior motive of the action was to change the demographic nature of the only Muslim majority state in the country by now allowing permanent residency to every other citizen.⁴ Some of the other residents also second this motive of the government and fear that their autonomy will be taken away, further challenging their ethnic and religious way of living. This article however does not aim to decide whether the abrogation was good or bad, it simply aims to bring another big issue to light, that of human rights in the region.

The month of August in 2019 had begun with a feeling of confusion and anxiousness in the region, even before the announcement of the abrogation. The reason for this was that thousands of troops were sent to Jammu and Kashmir, schools were shut down, the residents found themselves completely cut off from the rest of the world due to suspension of telephone and

² *Loss of autonomy in Indian-administered Jammu and Kashmir threatens minorities' rights – UN independent experts*, (2021), <https://news.un.org/en/story/2021/02/1085112> (last visited Aug 9, 2021).

³ Jahnvi Sodhi, *The Article 370 Amendments on Jammu and Kashmir: Explaining the Global Silence* Observer Research Foundation (2021), <https://www.orfonline.org/research/article-370-amendments-on-jammu-and-kashmir/> (last visited Aug 9, 2021).

⁴ *Article 370: What happened with Kashmir and why it matters*, BBC News (2019), <https://www.bbc.com/news/world-asia-india-49234708/> (last visited Aug 9, 2021).

internet services, which they had no prior information of.⁵ One does not have to think much about how tough it must've been, to live through those days with lives been turned upside down multiple times. First, with no access to the outside world, living in constant fear of the thousands of troops around them, and then, with the information that their special status has been revoked and they will now have to abide by the Indian constitution and Flag. The right to freedom of speech and expression is arguably one of the most important, impactful, and popular rights granted not just by the Constitution of India but also by International Law. The question then arises, when internet and telephone services have been suspended, and the people are essentially locked down in their houses, how does any government, expect the people to exercise this right, especially during times when they are in the most need of it. Moreover, the Universal Declaration of Human Rights through Article 19 establishes the internet as an important means by way of which individuals can exercise their right to freedom of speech and expression.⁶ Thus, one can see how the human rights of people are being violated in context with both Indian and International law.

III. HUMAN RIGHTS: LAWS IN PLACE, INSTANCES OF VIOLATION, ETC

In addition to this violation, several others take place daily. The Armed Forces act which has been prevailing in Jammu and Kashmir since 1990 is extremely problematic and something that human rights activists have been critical of right from its onset. The act establishes Kashmir as a disturbed area, but what is ironic is that the act itself gives no precise definition of what a "disturbed area" is.⁷ The unfortunate reality of the situation is that Kashmir was never free from the shackles of armed conflict taking place by armed militant groups, the presence of the Indian Armed Forces in this region has sadly increased the sense of conflict and tension and made the human rights situation worse. The list of complaints filed by residents of the area for the infliction of torture and arbitrary detention is endless.⁸ The literal possibility that residents of the area can wake up one morning and find any member of their family missing shows the grim reality that many might face especially since thousands have already disappeared since the beginning of the conflict.⁹ Putting aside every other human right which may be argued

⁵ *Id.*

⁶ Stephanie Borg Psaila, *UN declares Internet access a human right' – did it really?* Diplo (2011), <https://www.diplomacy.edu/blog/'un-declares-internet-access-human-right'---did-it-really> (last visited Aug 9, 2021).

⁷ *Human Rights Violations in Jammu & Kashmir - A Report*, Outlook (2001), <https://www.outlookindia.com/wbsite/story/human-rights-violations-in-jammu-kashmir-a-report/211099> (last visited Aug 9, 2021).

⁸ *Getting Away With Murder 50 Years of the Armed Forces (Special Powers) Act*, Human Rights Watch (2008), https://www.hrw.org/legacy/backgrounder/2008/india0808/india0808.htm#_Toc206492927 (last visited Aug 9, 2021).

⁹ *Id.*

against, one which cannot be questioned is the right to life itself. However, because of the arbitrary nature of the act, this very right has been snatched away from people who live in areas where the act is in place. The right to life is violated by section 4 (a) of the AFSPA which allows the armed forces to shoot and kill people without any consideration of the human rights of those in front of them.¹⁰ The mere idea that such a law could firstly be accepted by the legislature of a country, and is being implemented in many parts of the country is bound to be shocking to human rights activists as well as people of countries everywhere. Moreover, due to section 6 of the AFSPA. The officers who commit the acts mentioned above are also provided with immunity and thus, cannot be held legally accountable.¹¹ So, people in the so-called “disturbed areas” can potentially see others being killed right in front of their eyes, sometimes with no rhyme or reason, and cannot even demand justice from the courts. Thus, the presence of the Armed Forces is a great danger to any progress in the area of Jammu and Kashmir for human rights.

Apart from the right to life which has been granted in Section 3 of the UDHR, the prevailing situation in Kashmir violates many other rights present in the declaration. Article 5 protects all humans from torture and inhuman treatment, something which is violated every time a curfew is imposed in the region.¹² Torture takes place in the forms of rape, unlawful detention, the killing of people, etc. The curfew also limits the movement of people as they aren’t allowed to leave their houses much less the area of Jammu and Kashmir. This is violative of Section 13 of the UDHR. The grave violation of Article 19 has already been discussed in this article, but one can’t help but mention it over and over again, to show the wrongfulness of it especially while living in the 21st Century. We are living in a world where one part is focused on developing the services of 5G and the other part, of Kashmir, is either being restricted to 2G or has the entire service of internet services being taken from them. People in this region are restrained from forming groups and associations, violating rights in both the Indian Constitution and UDHR. The longest curfew in history in Kashmir, from 5th August 2019 has hampered every sort of development and progress of life and society in the valley, people have been denied their education, their entire security a good living standard, they have been denied their right to live.¹³

Just when residents were hopeful that things would get better after the abrogation of 370, even

¹⁰ *Supra* note 8.

¹¹ *Supra* note 8.

¹² Amber Mastoi, *Human rights abuses in Kashmir—an urgent call for the international community to act*, Human Rights Pulse (2020), <https://www.humanrightspulse.com/mastercontentblog/human-rights-abuses-in-kashmir-an-urgent-call-for-the-international-community-to-act> (last visited Aug 9, 2021).

¹³ *Id.*

that glimmer of hope was snatched away from them. Many supported the abrogation thinking that it would be beneficial for them, that it would perhaps provide them with peace and a sense of belonging. However, to their shock, they now regret the support they had given. People of both Jammu as well as Kashmir felt betrayed over the actions of the government and now want the rights guaranteed by Article 370 back.¹⁴ A few residents spoke up about how their lands were taken away from them, how they lost their jobs after the abrogation.¹⁵ This is another violation of the right to life which is guaranteed to humans, as one's source of livelihood is being taken from them with no alternate relief. To cite instances of further violations, a few residents have also said that if any individual expresses their resentment towards the current situation and speaks about the restoration of Article 370 in Jammu, they are arrested.¹⁶ Where is the individual's right to speech and expression in this reality, in a situation where they are in dire need of it? How can people be expected to live in this reality? A reality where people are stuck with an invisible tape of sorts imposed on them, one where soldiers open fire on a group of boys playing cricket and kill them, due to their suspicions of a militant being present which turned out to be wrong.¹⁷ So, one can see with the help of official reports as well, that the aftermath of the abrogation not only took away the resident's hope but also many of their other rights. The Forum for Human Rights in Jammu & Kashmir released a report stating that most violations are continuing even 18 months after the abrogation, and there seems to be no end to these violations.¹⁸ The lockdown continues, people are left feeling helpless, confused, and unaware of what the future might bring.

IV. GLOBAL STANDS ON THE ISSUE

The years of suffering and new amendments quickly gained the attention of the international community. Many leaders have voiced their discontent with the prevailing situation in the region and urged the Indian Government to do everything in their power to bring an end to the unfortunate violations and mend relations between India and Pakistan. The United States, the United Kingdom, France, and many other nations had a diplomatic reaction to the situation, they expressed the importance of restoring human rights in the valley and how important it is for the people as well as the democracy.¹⁹ They emphasised mainly the idea that the issue was

¹⁴Muhammad Raafi, 'Betrayed': In Jammu, Growing Regret Over Support for Scrapping of Article 370, *The Wire* (2020), <https://thewire.in/rights/jammu-kashmir-amendments-article-370-bjp> (last visited Aug 9, 2021).

¹⁵ *Id.*

¹⁶ *Supra* note 14.

¹⁷ *Supra* note 8.

¹⁸*Rights violations continue in Jammu & Kashmir: independent body led by former SC judge*, *The Hindu* (2021), <https://www.thehindu.com/news/national/other-states/rights-violations-continue-in-jammu-kashmir-independent-body-led-by-former-sc-judge/article33832600.ece> (last visited Aug 9, 2021).

¹⁹ *Supra* note 3.

a bilateral one and should be solved between India and Pakistan through dialogue so that each country can respect and provide human rights and end the suffering.²⁰ However, it must be mentioned that many countries might have refrained from commenting on the issue as strongly as they did for instances starkly similar to that of China and Hong Kong because of other interests with India and in order to prevent any issue in the relationships of India and the other countries.²¹ Perhaps the strongest reaction was given by countries of the Middle East, who after a joint meeting urged India to withdraw these actions and respect the perspective of the Kashmiris.²² Coming back to the role of China, it is imperative to note the resemblance of the relationship between China and Hong Kong, and India and Jammu & Kashmir. China's relation with Hong Kong has long been defined as "One Country, Two Systems", which eventually changed when China passed the new security law which many argue took away Hong Kong's autonomy.²³ One can see how the situations of China and India are similar, Kashmir too had a separate constitution than that of India and had different rules and laws which they had to live by. The abrogation of 370 in a way stripped the region of their regional autonomy as well, just as Hong Kong was. Thus, there are protests taking place for a similar cause of human rights in both these regions. The major difference to be noted is how differently the international community responded and opposed China's actions, but there was barely any strong resistance or stand against India's actions.²⁴ If one thing is clear from the reactions of other nations, it is that no nation can or will force India to make a change. If a change is to happen, it will happen truly like an internal affair that takes place due to the actions of the Indian government.

V. CONCLUSION

The aim of this paper is not to criticise the Indian Government and stand against their actions, it is to shed light on the suffering that people in the affected region are going through, as collateral damage. It is to show how their human rights are being violated. The region of Jammu & Kashmir, as mentioned at the start of the paper has always been an area filled with conflict and terror. What had started simply as a King's refusal to join either nations of India or Pakistan, has continued to adversely impact the lives of people who live there, almost seven decades later. It would be absurd to avoid the importance that Kashmir holds for India and it cannot be denied that many of our leaders have taken a stand to sort out issues to bring a better, more peaceful tomorrow for their citizens. However, unfortunate happenings like those of the

²⁰ *Supra* note 3.

²¹ *Supra* note 3.

²² *Supra* note 3.

²³ *Supra* note 3.

²⁴ *Supra* note 3.

attack on the Pathankot Air Force Station have just increased the tensions in the region.²⁵ Hence, it can be seen how the government has also faced its fair share of challenges in the entirety of the situation. That being said, imposing a curfew for such a long time, suspending telephone and internet services, arresting and detaining innocent people, are actions that can't be justified, and that is what this article aims to highlight. Jammu and Kashmir have been named as the "Crown of India" by many, and thus, the government must take necessary actions to ensure that the people of their crown are being treated fairly and are allowed to exercise their rights. The time has come now, for the people to feel free, to feel like a part of the country and as they belong, and most of all, for them to feel empowered and supported to exercise their human rights.

²⁵Ayjaz Wani, *Life in Kashmir after Article 370*, Observer Research Foundation (2020), <https://www.orfonline.org/research/life-in-kashmir-after-article-370-60785/> (last visited Aug 9, 2021).

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