

## Indian Kashmir \*

**Country:**

Indian Kashmir \*

**Year:**

2018

**Freedom Status:**

Partly Free

**Political Rights:**

4

**Civil Liberties:**

4

**Aggregate Score:**

49

**Freedom Rating:**

4.0

**Overview:**

Control of Kashmir has been divided between India and Pakistan since 1948, and Indian-administered Kashmir enjoys substantial autonomy under Article 370 of India's constitution. However, separatist and jihadist militants continue to wage a protracted insurgency against the government. Competitive elections are held, but they are often marred by violence. Indian security forces are frequently accused of human rights violations, but few are punished. Civil liberties are curtailed, particularly during times of unrest.

**Political Rights and Civil Liberties:**

### **POLITICAL RIGHTS: 22 / 40**

#### **A. ELECTORAL PROCESS: 9 / 12**

**A1. Was the current head of government or other chief national authority elected through free and fair elections? 3 / 4**

A chief minister—typically the head of the largest party in the lower house—is entrusted with executive power. The process for selecting the executive is an internal party matter.

Mehbooba Mufti, president of the ruling People's Democratic Party (PDP), became the state's first female chief minister in 2016, following the death of Chief Minister Mufti Mohammad Sayeed, her father.

**A2. Were the current national legislative representatives elected through free and fair elections? 3 / 4**

Elections for national parliamentary seats and the state assembly in 2014 were broadly free and fair, with reduced levels of voter intimidation, harassment, and violence compared with past elections. However, in the April 2014 national elections, turnout was less than 40 percent in all districts in the Kashmir Valley due in part to threats of violence. State assembly elections held in November and December 2014 were marked by higher turnout.

A by-election held in April 2017 was held amid heightened tensions related to activism by separatists, who called for a boycott of the polls. Despite a heavy security presence, several people were killed in election-related violence, including attacks on polling stations. Turnout was just 7 percent. A by-election for a national parliament seat, scheduled for May, was canceled due to ongoing insecurity.

**A3. Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies? 3 / 4**

The legal framework governing elections is broadly perceived as fair. Elections are overseen by the Election Commission of India, a well-respected and largely independent body. However, intimidation of election workers and electoral authorities by militant groups can interfere with the orderly implementation of electoral laws and regulations.

**B. POLITICAL PLURALISM AND PARTICIPATION: 9 / 16**

**B1. Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings? 2 / 4**

The state is governed under a multiparty system. While new political parties must register with the Electoral Commission, parties may generally form freely, and there are mechanisms by which independent candidates may stand for office. However, normal party politics are often disrupted by militant violence, intimidation, and separatist boycotts. Moreover, parties are heavily dynastic, making it difficult for independent candidates and less established outsiders to gain political influence.

**B2. Is there a realistic opportunity for the opposition to increase its support or gain power through elections? 3 / 4**

For more than a decade, state-level power has rotated between the two largest Kashmiri parties, the PDP, and the Jammu and Kashmir National Conference (JKNC). The ruling coalition formed by the PDP and the Bharatiya Janata Party (BJP) in early 2015 marked the first time that the Hindu nationalist BJP entered government in this Muslim-majority state.

**B3. Are the people's political choices free from domination by the military, foreign powers, religious hierarchies, economic oligarchies, or any other powerful group that is not democratically accountable? 2 / 4**

Militant violence, intimidation, and separatist boycotts negatively affect the ability of people in many areas to assert their right to participate in political processes.

**B4. Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities? 2 / 4**

The state constitution allows all permanent residents over 18 the right to vote in state assembly elections. However, refugees from Pakistan are not entitled to permanent residency rights, and may not vote in state elections. They may vote in parliamentary elections.

While Kashmir's chief minister is a woman, women are generally underrepresented in politics.

## **C. FUNCTIONING OF GOVERNMENT: 4 / 12**

**C1. Do the freely elected head of government and national legislative representatives determine the policies of the government? 2 / 4**

India has never held a referendum on allowing Kashmiri self-determination, as called for in a 1948 UN resolution. However, Jammu and Kashmir enjoys substantial autonomy under Article 370 of India's constitution. All laws passed by the Indian parliament, except those related to defense, foreign affairs, and financial matters, require the assent of the Kashmiri legislature to come into force in the state.

**C2. Are safeguards against official corruption strong and effective? 1 / 4**

Corruption in Jammu and Kashmir is widespread, and while the government has taken some steps to combat it, these have yet to bring about lasting improvements. A 2011 law established an anticorruption commission with far-reaching investigatory powers. The commission has processed more than a thousand complaints since the first commissioners were appointed in 2013, and has filed a handful of bribery charges against public officials. However, few corruption cases result in convictions.

**C3. Does the government operate with openness and transparency? 1 / 4**

The government of Mehbooba Mufti has asserted a commitment to transparency, and has introduced some systems to increase accountability among public-sector workers. However, the state administration generally operates with opacity.

# **CIVIL LIBERTIES: 27 / 60 (-1)**

## **D. FREEDOM OF EXPRESSION AND BELIEF: 9 / 16**

### **D1. Are there free and independent media? 2 / 4**

Print media thrive in Jammu and Kashmir, and online media have proliferated, providing new platforms for public discussion. However, threats of government reprisal, including the detention of journalists under the Public Safety Act, continue to intimidate the media. Journalists also face threats from militant groups.

In December 2017, French documentary filmmaker Comiti Paul Edwards was arrested while taking footage for a documentary about people injured by the use of pellet guns at demonstrations. He was released on bail in late December, having apparently been charged with violating the provisions of his business visa.

### **D2. Are individuals free to practice and express their religious faith or nonbelief in public and private? 2 / 4**

Freedom of worship is generally respected by the authorities. However, communal violence between Muslims and Hindus periodically flares up, and many have been injured and killed as a result. In January 2017, more than 20 people were killed in clashes between Muslims and Hindus. In July, seven Hindu pilgrims were killed when their tour bus became caught in a shootout between militants and security forces. The annual pilgrimage event, the Amarnath Yatra, was considered sensitive and had reportedly drawn militant threats before it took place.

Separately, a ban against Muharram processions, which take place during a Shia period of mourning at the Islamic New Year, has been upheld for decades.

### **D3. Is there academic freedom, and is the educational system free from extensive political indoctrination? 2 / 4**

Academic freedom is often circumscribed. Authorities monitor the research produced at Kashmiri universities, and a combination of official and self-censorship discourages students and professors from pursuing sensitive topics of inquiry. Colleges and universities were closed for over half of 2016 owing to unrest. Further closures took place in 2017.

### **D4. Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? 3 / 4**

While private discussion is often robust, fear of reprisals by government or militant forces can serve as a deterrent to uninhibited speech. Free expression was seriously curbed between April and May 2017, when the government issued a sweeping clampdown on social media; 22 platforms, including Facebook, Twitter, and WhatsApp, were blocked. Mobile internet services were also suspended. Two UN special representatives deemed the actions “collective punishment” against the people of Kashmir and Jammu.

## **E. ASSOCIATIONAL AND ORGANIZATIONAL RIGHTS: 5 / 12**

### **E1. Is there freedom of assembly? 1 / 4**

Freedom of assembly is frequently restricted during times of unrest. Requests for permits for public gatherings submitted by the separatist All Parties Hurriyat Conference (APHC) are often denied. Separatist leaders are frequently arrested prior to planned demonstrations. Curfews were repeatedly imposed in parts of the state in 2017 in response to unrest and militant violence. Thousands of protesters defied a curfew in May to attend the funeral of Sabzar Ahmad Bhat, a commander killed by Indian security forces.

### **E2. Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights– and governance-related work? 2 / 4**

Although local and national civil rights groups are permitted to operate, they are sometimes harassed by security forces. The separatist APHC is technically allowed to function, but its leaders are frequently subjected to short-term detention.

### **E3. Is there freedom for trade unions and similar professional or labor organizations? 2 / 4**

Although workers have the right to form unions and engage in collective bargaining under Indian law, protection of union rights in Kashmir are inconsistently enforced.

## **F. RULE OF LAW: 5 / 16 (–1)**

### **F1. Is there an independent judiciary? 1 / 4**

Courts are politicized, and act as an extension of Indian executive and military authority. The government and security forces frequently disregard court orders.

### **F2. Does due process prevail in civil and criminal matters? 2 / 4**

The courts in Jammu and Kashmir, already facing large backlogs of cases, are further hampered by intermittent lawyers' strikes.

Broadly written legislation, such as the unpopular Armed Forces Special Powers Act (AFSPA) and the Disturbed Areas Act, allow security forces to search homes and arrest suspects without a warrant, shoot suspects on sight, and destroy buildings believed to house militants or arms. Under the AFSPA, prosecutions of security personnel cannot proceed without the approval of the central government, which is rarely granted. The state's Public Security Act allows detention without charge or trial for up to two years, though 2012 amendments barred the detention of minors under the law.

### **F3. Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? 1 / 4 (–1)**

Indian security personnel have continued to carry out arbitrary arrests and detentions, torture, forced disappearances, and custodial killings of suspected militants and their alleged civilian sympathizers, and generally enjoy impunity.

Militant groups based in Pakistan have killed pro-India politicians, public employees, suspected informers, members of rival factions, soldiers, and civilians. The militants also engage in kidnapping, extortion, and other forms of intimidation in Jammu and Kashmir. After several years of relative stability, the situation in the state deteriorated sharply in 2016 after the killing of Burhan Muzaffar Wani, a popular separatist militant leader. The situation worsened in 2017, when more than 300 civilians, security personnel, and militants were killed in militant-related violence.

**Score Change: The score declined from 2 to 1 due to an increase in militant-related violence during the year.**

**F4. Do laws, policies, and practices guarantee equal treatment of various segments of the population? 1 / 4**

A pattern of violence targeting Pandits, or Kashmiri Hindus, has forced several hundred thousand Hindus to flee their homes in the region over the years, and many continue to reside in refugee camps. Other religious and ethnic minorities, such as Sikhs and Gurjars, have been targeted in the past, but such reports have been less frequent in recent years.

## **G. PERSONAL AUTONOMY AND INDIVIDUAL RIGHTS: 8 / 16**

**G1. Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education? 2 / 4**

Freedom of movement is curtailed by both state and federal authorities. Curfews were repeatedly imposed in parts of the state in 2017 in response to unrest and militant violence. Thousands of protesters defied a curfew in May to attend the funeral of Sabzar Ahmad Bhat, a commander killed by Indian security forces.

While the Indian government has loosened restrictions on the travel of foreigners to some areas within Jammu and Kashmir, internal movement is disrupted by roadblocks, checkpoints, and periodic protest-related shutdowns or curfews. Kashmiri residents face delays of up to two years to obtain and renew passports due to heightened levels of scrutiny.

**G2. Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors? 2 / 4**

Property rights are undermined by displacement and military activity related to the conflict, and the regulatory environment constrains the establishment and operation of new businesses. While Jammu and Kashmir permanent residents can exercise property rights, outsiders are prohibited from acquiring property in the state.

**G3. Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance? 2 / 4**

Women face some societal discrimination as well as domestic violence and other forms of abuse. Female civilians continue to be subjected to harassment, intimidation, and violent

attacks, including rape and murder, at the hands of both the security forces and militant groups.

**G4. Do individuals enjoy equality of opportunity and freedom from economic exploitation? 2 / 4**

Affirmative action in areas such as employment exists for members of several marginalized social groups. Child labor is reportedly prevalent in the region, but the government has taken few steps to combat it.

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