

## Pakistani Kashmir \*

**Country:**

Pakistani Kashmir \*

**Year:**

2018

**Freedom Status:**

Not Free

**Political Rights:**

6

**Civil Liberties:**

5

**Aggregate Score:**

28

**Freedom Rating:**

5.5

**Overview:**

Pakistani Kashmir is administered as two territories: Azad Jammu and Kashmir (AJK) and Gilgit-Baltistan (GB). Each has an elected assembly and government with limited autonomy, but they lack the parliamentary representation and other rights of Pakistani provinces, and Pakistani federal institutions have predominant influence over security, the courts, and most important policy matters. Politics within the two territories are carefully managed to promote the idea of Kashmir's eventual accession to Pakistan. Freedoms of expression and association, and any political activity deemed contrary to Pakistan's policy on Kashmir, are restricted.

**Political Rights and Civil Liberties:**

### **POLITICAL RIGHTS: 9 / 40**

#### **A. ELECTORAL PROCESS: 4 / 12**

**A1. Was the current head of government or other chief national authority elected through free and fair elections? 1 / 4**

Both AJK and GB have locally elected executive leaders. However, the Pakistani government also controls—directly and indirectly—key executive functions, and it is not accountable to voters in the two territories.

Under AJK's 1974 interim constitution, a president elected by the Legislative Assembly serves as head of state, while the elected prime minister is the chief executive. After the 2016 elections, the new assembly elected the local leader of Pakistan's ruling Pakistan Muslim League–Nawaz (PML-N), Raja Farooq Haider, as prime minister, and Masood Khan, formerly a senior Pakistani diplomat, as president.

An AJK Council is based in Pakistan's capital, Islamabad, consisting of both Kashmiri and Pakistani officials and chaired by the Pakistani prime minister. The council holds a number of executive, legislative, and judicial powers, such as control over the appointment of superior judges and the chief election commissioner.

GB's basic law, the 2009 Gilgit-Baltistan Empowerment and Self-Governance Order (GBESGO), can only be amended by the Pakistani government. Executive functions are shared between a Pakistani-appointed governor and a chief minister chosen by the GB Legislative Assembly (GBLA). The governor signs legislation and has significant power over judicial appointments; his decisions cannot be overruled by the GBLA. After the 2015 elections in GB, Hafiz Hafeezur Rehman of the PML-N became chief minister. Later that year, the federal government installed Mir Ghazanfar Ali Khan, also of the PML-N, as governor.

A 15-member Gilgit-Baltistan Council (GBC), headed by the Pakistani prime minister and vice-chaired by the GB governor, includes six members of the GBLA and nine Pakistani parliament members appointed by the governor. The GBC retains control over strategically important subjects and key fiscal matters.

## **A2. Were the current national legislative representatives elected through free and fair elections? 2 / 4**

Of the AJK Legislative Assembly's 49 seats, 41 are filled through direct elections: 29 with constituencies based in the territory and 12 representing Kashmiri "refugees" throughout Pakistan. Another eight are reserved seats: five for women and one each for representatives of overseas Kashmiris, technocrats, and religious leaders. In the 2016 elections, the PML-N won with 31 seats. The local branch of the Pakistan People's Party (PPP) won three seats, as did the Muslim Conference, and the Pakistan Tehreek-e-Insaf (PTI) secured two. The remaining two seats were won by the Jammu Kashmir Peoples Party and an independent. The election process was largely peaceful, though both the PPP and the local PTI leader complained of preelection manipulation, including the use of federal development funds to boost support for the PML-N.

The 33-member GBLA is composed of 24 directly elected members, six seats reserved for women, and three seats reserved for technocrats; the reserved seats are filled through a vote by the elected members. The GBESGO sets limits on the assembly's legislative power, allowing it to introduce bills on 61 subjects. GBLA elections were held in 2015. In keeping with the well-established pattern of victory by the party in power in Islamabad, the PML-N took 15 of the 24 directly elected seats. No other party won more than two seats, including the previously governing PPP.

**A3. Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies? 1 / 4**

The electoral framework in both territories facilitates indirect control by the Pakistani authorities. For example, the AJK Council appoints the chief election commissioner, and the electoral system for the AJK Legislative Assembly disproportionately favors nonresident refugees over AJK residents. The nonresident elections are more vulnerable to manipulation by federal Pakistani authorities, and the party in office at the federal level tends to win these seats. Candidates in the AJK elections must formally endorse “the ideology of Pakistan” and Kashmir’s accession to Pakistan.

Elections in GB are governed by Pakistani election law and a code of conduct drawn up by the local election commission. The first clause of the code of conduct dictates that parties and candidates must refrain from any action or speech which could be deemed contrary to the ideology of Pakistan or the country’s security. This vague provision can be used to exclude candidates associated with nationalist parties or those disapproved of by the Pakistani authorities.

**B. POLITICAL PLURALISM AND PARTICIPATION: 4 / 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? 1 / 4**

Politics are dominated in both AJK and GB by local branches of the main Pakistani parties and some local parties, such as AJK’s Muslim Conference, that are closely allied with the Pakistani establishment. Small nationalist parties that are opposed to union with Pakistan are actively marginalized or barred outright from the political process. Activists accused of opposition to Pakistani rule have been subject to surveillance, harassment, and sometimes imprisonment. The interim constitution of AJK bans political parties that do not endorse the territory’s eventual accession to Pakistan, and similar rules prevail in GB.

In January 2017, police in GB announced the arrest of 12 activists associated with the Balawaristan National Front (BNF) and charged them under Schedule 4 of Pakistan’s Anti-Terrorism Act with conspiracy and possession of weapons. They were accused of receiving Indian funds to undertake armed subversion against CPEC projects. The activists joined a number of other political prisoners in GB, including Baba Jan, a leader of the left-wing Awami Workers Party.

**B2. Is there a realistic opportunity for the opposition to increase its support or gain power through elections? 1 / 4**

There is ample precedent for transfers of power between the major parties, though these are typically dictated by parallel changes at the federal level in Pakistan. The PML-N Pakistani government’s decision to replace the GB governor in early 2015 was criticized as a bid to ensure the party’s victory in the GBLA elections, and federal authorities were similarly accused of working to manipulate the 2016 AJK Legislative Assembly elections in favor of the PML-N.

**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? 1 / 4**

Because voters in GB and AJK cannot participate in Pakistani elections, Pakistani federal officials and entities are not democratically accountable to them. Security agencies operating in both territories are federal institutions. They work to block and suppress any parties or politicians that adopt positions deemed to conflict with Pakistani interests.

**B4. Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities? 1 / 4**

Men and women have the right to vote in both territories. Although there is no bar on women contesting general seats, prevailing norms mean that women rarely exercise this right. Instead, general seats tend to be filled by men. The seats reserved for women in the two legislative assemblies are filled proportionally from party lists based on the general vote, meaning the parties themselves determine who will represent women's interests.

## **C. FUNCTIONING OF GOVERNMENT: 3 / 12**

**C1. Do the freely elected head of government and national legislative representatives determine the policies of the government? 1 / 4**

The powers of the elected chief executives in AJK and GB are limited by the fact that the Pakistani prime minister, the Pakistani minister for Kashmir Affairs and Gilgit-Baltistan, and through them the federal civil service, exercise effective control over government operations in both territories. As in Pakistan, federal military and intelligence agencies also play a powerful role in governance and policymaking.

The territories lack any meaningful fiscal autonomy, as federal taxes are imposed on both, and they receive a share of the resulting funds from the federal government. The territories' local representatives are excluded from the Pakistani bodies that negotiate interprovincial resource allocation.

During 2017, debate continued on the idea of enhancing GB's status in the Pakistani constitution by designating it a provisional province and granting its legislators powers on par with those delegated to Pakistan's four existing provinces. Proponents claimed that this would reduce any legal concerns that could hamper Chinese investment as part of the CPEC project. However, figures associated with the struggle against Indian control of Kashmir criticized the GB proposal as a weakening of the commitment to full Kashmiri accession to Pakistan.

A Pakistani parliamentary committee reviewing the constitutional status of GB submitted its report to the federal government in March, recommending greater integration but not full provincial status. A supplementary report with further detail was submitted in September, but at year's end the federal ministry responsible for GB affairs had yet to present the proposal to the cabinet for approval.

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

Both territories have formal safeguards against official corruption, and GB is within the jurisdiction of Pakistan's National Accountability Bureau, which has an office in Gilgit. However, as in Pakistan, corruption is believed to remain endemic, with enforcement actions subject to political influence.

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

Transparency and access to government information are limited in practice. The AJK government has made a gesture toward transparency by posting basic information about its departments online. The GB chief minister in 2017 similarly committed his administration to adopting an e-governance approach, according to which departments will post a record of their proceedings online, but it was unclear when the plan would be implemented.

**ADDITIONAL DISCRETIONARY POLITICAL RIGHTS QUESTION**

**Is the government or occupying power deliberately changing the ethnic composition of a country or territory so as to destroy a culture or tip the political balance in favor of another group? -2 / 0**

The Sunni Muslim share of the population in GB—historically a Shiite-majority region—has increased significantly in the decades since a pre-1947 rule was abolished to allow immigration from different parts of Pakistan. State agencies are suspected of deliberately encouraging this migration to engineer a demographic change. Under the 2009 GBESGO, settlers were given formal citizenship rights in GB. The pre-1947 restrictions on acquiring residency and citizenship are still in place in AJK.

**CIVIL LIBERTIES: 19 / 60**

**D. FREEDOM OF EXPRESSION AND BELIEF: 6 / 16**

**D1. Are there free and independent media? 1 / 4**

AJK and GB are subject to laws that curb freedom of expression, particularly related to the political status of the regions. Media houses need permission from the AJK Council and the federal Ministry of Kashmir Affairs and Gilgit-Baltistan to operate. A wide range of media are present and active. However, coverage of news and politics does not diverge from official Pakistani narratives, including that India's hold over the Kashmir Valley is illegitimate and all Kashmiris aspire to Pakistan accession. This compliance is achieved through a mixture of censorship, self-censorship, and harassment. A number of outlets have faced closure by authorities in recent years.

**D2. Are individuals free to practice and express their religious faith or nonbelief in public and private? 1 / 4**

Both territories have a predominantly Muslim population, and there is no official or social tolerance of nonbelief. Tools used to compel expressions of belief and conformity with official interpretations of religious doctrine include laws criminalizing blasphemy, rules requiring observance of Ramadan, and an obligation to denounce the heterodox Ahmadi

sect to obtain a Pakistani passport. Although there is a history of Sunni-Shiite sectarian violence in GB, there were no major outbreaks in 2017.

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

Each territory is home to a growing education system, and education is much valued as a path to migration and employment. However, in academia there are acute sensitivities around the issue of constitutional status and no tolerance of debate or materials questioning Pakistan's claims over Kashmir. Student union activity has long been under state surveillance for signs of nationalist political views. Local languages and scripts are not taught in government schools.

**D4. Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? 2 / 4**

Federal intelligence agencies maintain a prominent and intrusive presence in both territories. Expression of heterodox political or religious views consequently carries significant risks. The authorities have increased their monitoring of social media and sporadically punish expression of anti-Pakistan or separatist opinions. For example, activists attributed the August 2017 arrest of Hasnain Ramal, a member of the leftist Awami Action Movement, to his social media postings.

**E. ASSOCIATIONAL AND ORGANIZATIONAL RIGHTS: 4 / 12**

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

The authorities' observance of freedom of assembly is highly discretionary. Protests that do not directly challenge Pakistani control or the territories' constitutional status tend to be tolerated. For example, a series of tax protests by GB traders from October to December 2017 ended with concessions by the government. In AJK there is official encouragement of demonstrations to condemn Indian atrocities on the other side of the Line of Control (LoC). However, protests and other activity by local nationalist groups are harshly punished.

**E2. Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights– and governance-related work? 1 / 4**

Humanitarian nongovernmental organizations (NGOs) are subject to strict registration requirements and thus operate at the pleasure of the authorities. NGOs working on political or human rights issues face more intrusive government scrutiny and, in some cases, harassment.

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

AJK is subject to labor laws similar to those in Pakistan. However, unions and professional organizations are frequently barred. Labor laws and union activities are poorly developed in GB.

## **F. RULE OF LAW: 3 / 16**

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

Both territories have nominally independent judiciaries, but the Pakistani federal government plays a powerful role in judicial appointments. On politically sensitive issues, the AJK and GB courts are not considered to operate independently of the executive in Pakistan.

The president of AJK, in consultation with the AJK Council, appoints the chief justice of the territory's Supreme Court. Other judges of the superior courts are appointed by the AJK president on the advice of the council, after consultation with the chief justice. The chief judge and other judges of GB's Supreme Appellate Court are appointed on a contractual basis by the prime minister of Pakistan in his capacity as chairman of the GBC, on the recommendation of the governor.

### **F2. Does due process prevail in civil and criminal matters? 1 / 4**

The civilian court system in both territories features basic due process guarantees, including defense lawyers and a right to appeal, but arbitrary arrests and other violations are not uncommon, particularly in security-related cases. Since 2015, the Pakistani government has allowed civilians facing charges of terrorism or sectarian violence to be tried in military courts, which have fewer due process protections and can impose the death penalty.

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

Torture and deaths in custody at the hands of security forces have been reported, especially for independence supporters and other activists. Separately, extremist groups devoted largely to attacks on Indian-administered Jammu and Kashmir operate from AJK and GB and have links with similar factions based in Pakistan and Afghanistan. The threat of death and destruction from intermittent shelling across the LOC persisted in 2017. AJK officials reported that 46 civilians were killed and 262 injured during the year.

### **F4. Do laws, policies, and practices guarantee equal treatment of various segments of the population? 0 / 4**

As in Pakistan, women in the territories face economic discrimination, disadvantages under personal status laws, and abusive customary practices, the perpetrators of which often enjoy impunity. LGBT (lesbian, gay, bisexual, and transgender) people, ethnic minorities, and non-Sunni religious groups also suffer from discrimination, and Afghan refugees have encountered increased harassment and pressure to return to Afghanistan since 2015. Pakistani authorities have been reluctant to offer citizenship to migrants displaced from Indian-administered Jammu and Kashmir. Periodically these refugees have been subjected to abuse and arbitrary arrest for demanding greater rights.

## **G. PERSONAL AUTONOMY AND INDIVIDUAL RIGHTS: 6 / 16**

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

The people of AJK and GB have Pakistani national identity cards and passports. They are internationally recognized as Pakistani nationals. However, there are reports of passports being denied or not renewed for citizens suspected of questioning Pakistani control over the region. The territories' heavy military presence and the threat of shelling and other violence along the LoC restricts internal movement for civilians.

### **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**

AJK's pre-1947 state subject law, which bars outsiders from seeking permanent residency, allows only legal residents to own property. Procedures for establishing private enterprises are onerous in practice.

### **G3. Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance? 1 / 4**

In both territories, the legal framework criminalizes domestic violence and so-called honor killing, but harmful traditional practices often prevail amid weak enforcement of formal protections, especially in more conservative areas. Informal justice mechanisms operating at the village level are often the first point of recourse for incidents involving sexual or domestic violence against women, and their judgments can inflict further harm on victims.

### **G4. Do individuals enjoy equality of opportunity and freedom from economic exploitation? 1 / 4**

Both territories, but particularly GB, have historically been less economically developed than Pakistan, and their population has depended on labor migration to supplement incomes. The lack of local control over extractive industries prompts periodic complaints that residents are being deprived of the benefits of natural resources. There are divergent views in GB regarding the extent to which local people stand to gain from economic activity generated by the centrally managed CPEC.

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