

**House Foreign Affairs Committee  
Tom Lantos Human Rights Commission**

**Hearing  
on  
Jammu and Kashmir in Context**

**Date: Thursday, November 14, 2019 - 2:00pm  
Location: 2200 Rayburn House Office Building**

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Since the 1930s, before the creation of India and Pakistan as we know it, Kashmiris have been fighting for representative government and the right to decide their own future. Inevitably, these aspirations are crushed by violent state repression, until one generation ages and relents, and another one comes of age. In the three generations before me, many of my uncles and great-uncles, and my great-grandfather have been either jailed, tortured, or killed for speaking the same truths that I am here to share with you today. Speaking openly about the plight of Kashmir, without fearing for my life, is a privilege that I do not take for granted.

When Article 370 was unilaterally abrogated by the BJP-led government<sup>1</sup>, I was dismayed but not surprised. The revocation of Kashmir's so-called special status has long been a target of the BJP, as far back as 1953, when it was the subject of a major campaign by the BJP's predecessor party.

This unilateral and unconstitutional action impacts all 12 million indigenous residents of the State, including those who ascribe to various religions (including Islam, Hinduism, Buddhism and Sikhism) and have various ethnicities (including Kashmiri and Dogra).

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<sup>1</sup> The plain text of Article 370 requires consultation with the government of Jammu and Kashmir before extending any powers from the Central government over the state.  
<https://indiankanoon.org/doc/666119/>

Representatives of all significant sub-populations within the State have expressed concern about the abrogation.<sup>2</sup>

Article 370 was intended to limit the powers of the Indian state over J&K, and Article 35A enshrined a longstanding law in Kashmir pre-dating independent India and Pakistan, which defined state subjects, now called permanent residents. State subjects were to be given preferential treatment in government employment and land ownership was to be restricted to state subjects only.<sup>3</sup>

India's repeated failure to abide by the constitutional provision of Article 370 from the outset has resulted in *de facto* annexation of the Kashmir. India achieved this by engaging in a pattern of jailing political activists until they conceded to the demands of the Central Government, preventing free assembly of civilians, punishing journalists who reported truthfully, and packing the territory with Indian military personnel to terrorize the local population, all of which is justified by invoking the specter of national security<sup>4</sup>. With the current siege and the abrogation of Article 370, India's longstanding project to unlawfully annex Kashmir is complete. The consequences have already proven disastrous.

The Indian government's position on the abrogation of Article 370 is captured neatly in an op-ed written by Ambassador Harsh Shringla in the New York Times. It is rife with factual

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<sup>2</sup> <https://thewire.in/rights/kashmir-petition-condemn-abrogation-article-370>  
<https://thewire.in/rights/as-ladakh-separates-from-jk-protests-break-out-in-kargil>  
[https://www.business-standard.com/article/politics/congress-azad-says-economic-activity-in-both-jammu-and-kashmir-is-zero-119093001293\\_1.html](https://www.business-standard.com/article/politics/congress-azad-says-economic-activity-in-both-jammu-and-kashmir-is-zero-119093001293_1.html)

<sup>3</sup> At the time the rule was promulgated by the Dogra Hindu Maharajah, very few people owned land, and only a tiny portion of landowners were Kashmiri Muslims, who were the majority of the poor underclass. The primary purpose of the rule was to protect government employment prospects for Dogra and Kashmiri Hindus, who were facing competition from outside the state. In later years, the state subjects rule became more relevant to the greater proportion of the population, as sweeping reforms caused more people to become landowners and as the state government remained a large employer in a region marked by unrest.

<sup>4</sup> The central government finds cover for the excesses of its military occupation in a draconian framework of laws that are designed to protect human rights violators, including a law called the Armed Forces Special Powers Act. Applied to Jammu & Kashmir by the Indian Central Government in 1990, the AFSPA expressly permits an Army officer to murder a civilian who is suspected of breaking a law, such as the law prohibiting the assembly of more than 5 persons, for the maintenance of public order.

errors, mischaracterizations of the law, and predictable complaints about Pakistan. There are mainly three arguments: development, women's rights, and LGBTQ rights. I'll address all three.

First, Article 370 has not been an impediment to development in Kashmir.

Notwithstanding the dire situation of Kashmir over the last many decades, the human development indicators in Kashmir are still higher than the national average, and in some areas among the best in the nation, despite disproportionately low levels of public investment from India.<sup>5</sup> Kashmir's remarkable development indicators can be attributed directly to Kashmir's sweeping land reforms that dismantled the feudal system, only made possible by its separate constitution in the 1950s (which was enabled by Article 370), and the resilience of its people.

To be clear, the goal of the BJP is not development but demographic change<sup>6</sup> and exploitation of abundant natural resources. Having failed to quell a near century old fight for representative government and self-determination in Kashmir, demographic change is now the BJP's strategy. By resettling Kashmir with non-Kashmiris, it can further its project<sup>7</sup> to enshrine the Hindu identity of the nation. Analysts have remarked that this mirrors Beijing's strategy of encouraging Han Chinese to move to Xinjiang, a northwestern province with Muslim ethnic groups.

Within days of announcing the abrogation, the federal government announced that it had prepared a "development plan" that would facilitate private investment and industry that would now be possible due to industries' ability to buy land in Kashmir. This is a false premise, as corporations are expressly permitted to become permanent residents in Kashmir, and foreign corporations often hold land in 99 year leases<sup>8</sup>. And of course, the Government of India has faced no barriers in expropriating an enormous amount of land, roughly the size of my

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<sup>5</sup> <https://www.livemint.com/opinion/columns/opinion-was-special-status-a-development-dampener-in-j-k-1565248797810.html>

<sup>6</sup> <https://www.washingtonpost.com/world/2019/08/08/kashmirs-new-status-could-bring-demographic-change-drawing-comparisons-west-bank/>

<sup>7</sup> [https://www.washingtonpost.com/world/asia\\_pacific/modis-radical-move-on-kashmir-takes-india-into-uncharted-territory/2019/08/08/7a533130-b94a-11e9-8e83-4e6687e99814\\_story.html](https://www.washingtonpost.com/world/asia_pacific/modis-radical-move-on-kashmir-takes-india-into-uncharted-territory/2019/08/08/7a533130-b94a-11e9-8e83-4e6687e99814_story.html)

<sup>8</sup> <https://economictimes.indiatimes.com/blogs/et-commentary/blame-disputed-tag-not-article-35a/>

hometown, Dallas, Texas, for its own security camps and armed forces.<sup>9</sup> The expropriated land is land otherwise suitable for housing, recreation, and agriculture across the Kashmir region.

Indigenous Kashmiris are right to be apprehensive that the government of India intends to develop subdivisions (called ‘housing colonies’ locally) under the guise of providing housing facilities for employees/workers who are expected to come to Kashmir as part of this “development”, program whereas India (actually) wants to change the demographic composition of the region. This militaristic-driven displacement is going to worsen given that India is now in full control of the land in Kashmir and indigenous Kashmiris having no means of dissenting.

*Down to Earth*, a prominent environmental magazine in India, reports that since August 5<sup>th</sup> to now, the Forest Advisory Committee of the state, responding to federal dictates, has given the green signal for moving forward with 125 development projects that involve pristine forest lands in Kashmir.<sup>10</sup> Projects include laying of transmission lines, drilling of tube wells, etc. Note that the sheer number of project approvals in the last two months (August, September, and October) is higher than the 97 projects approved in the entire 2018 calendar year.

In other words, the federal government of India is moving fast and stealthily in wreaking havoc on the ecology and environment *before* global powers take heed. Note that the development plan was announced with zero participation of indigenous Kashmiris – to be clear, indigenous Kashmiris were under a lockdown with the government restricting free movement within Kashmir, and no communication with the outside world.

The next argument is that this step was required to protect Kashmiri women from gender discriminatory laws. Kashmir state subject women do not lose their property rights if they marry a non-Kashmiri, and in fact, non-Kashmiri women obtain state subject status if they marry a Kashmiri man. This has been settled law since the J&K High Court case of *State and others versus Dr. Susheela Sawhney and others*<sup>11</sup>. With respect to family law, the issue of instant divorce was already remedied in detail by the J&K High Court in 2012, in the case of

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<sup>9</sup> <https://www.beyondintractability.org/casestudy/navlakha-kashmir>

<sup>10</sup> <https://www.downtoearth.org.in/news/forests/with-state-under-lockdown-j-k-fac-issues-record-forest-clearances-67322>

<sup>11</sup> <https://indiankanoon.org/doc/1409240/>

*Mohammed Naseem Bhat vs. Bilquees Akhter*<sup>12</sup>, when the court ruled that a husband does not have “absolute and unqualified power to pronounce divorce” on his wife. Regardless, there is absolutely no evidence that “instant divorce” occurs with any frequency in Kashmir. Additionally, revoking Article 370 to address marital law in the state stands in direct contrast to the will of Kashmiri women, who, alongside men, have repeatedly been protesting in favor of the rights of Kashmiris to have self-determination, and an end to the Indian army’s abuses in Kashmir.

Finally, Article 370’s revocation does absolutely nothing legally to benefit LGBTQ+ Kashmiris. As in rest of India, homosexuality was decriminalized in Kashmir after section 377 of Indian Penal Code was decriminalized, since Ranbir Penal Code 377 is *in pari materia* with IPC 377. As with all Kashmiris, the LGBTQ community also wants an end to the military occupation of Kashmir. As countless legal scholars have explained<sup>13</sup>, the Court’s decision in 2018 to legalize homosexuality extends to all state High Courts, including the High Court of Jammu and Kashmir. There is no special law under Jammu and Kashmir’s Constitution which otherwise criminalizes homosexuality.

While it is claimed the legal maneuvers by the Government of India will specifically facilitate the return of Kashmir Pandits to Kashmir,<sup>14</sup> Kashmiri Pandits have had always had the freedom to live anywhere in, and to return to, the State. Several State governments went further to create incentive packages to encourage Pandits who had migrated out of Kashmir to return. While some factions of the Pandit community have advocated for a separate homeland<sup>15</sup> within Kashmir and consequently supported the legal maneuvers of the Government of India,

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<sup>12</sup> <https://www.casemine.com/judgement/in/56b48cb7607dba348ffee667>

<sup>13</sup> <https://www.dnaindia.com/india/report-top-court-order-on-section-377-applicable-in-jk-too-state-2660965>

<sup>14</sup> <https://timesofindia.indiatimes.com/india/kashmiri-pandits-hail-celebrate-scraping-of-article-370/articleshow/70537434.cms>

<sup>15</sup> <https://economictimes.indiatimes.com/news/politics-and-nation/separate-homeland-would-satisfy-aspirations-of-kashmiri-pandits-panun-kashmir/articleshow/28052075.cms?from=mdr>

other Pandits have rejected<sup>16</sup> the communalization<sup>17</sup> of the Kashmir dispute and the present government's use of Kashmir Pandits' pain to "achieve its agenda of establishing a Hindu Rashtra."<sup>18</sup>

India's approach to Kashmir can be summed up by an adaptation of Carl Sandburg's famous quip: If the facts are against you, argue the law. If the law is against you, argue the facts. If the law and the facts are against you, pound the table and yell about Pakistan. But as Gandhi said, truth never damages a cause that is just.

Revealing the truth in Kashmir is absolutely critical to address the human rights violations in this volatile region, and the Indian government has time and again demonstrated its dishonesty in Kashmir, whether it is murdering civilians in Kashmir to further a narrative of terrorism as it did in the case of Chittisinghpura in 2000<sup>19</sup>, or repetitively contradicting papers of record like the Washington Post and New York Times who are accurately reporting on the siege in 2019<sup>20</sup><sup>21</sup>.

It is for this reason that I fully support the recommendations of Office of the United Nations High Commissioner for Human Rights Report on the Situation of Human Rights in Kashmir, with an important caveat.

OHCHR asks India to conduct to "independent, impartial and credible investigations" on a wide range of human rights violations that have transpired in Kashmir, but the Government of India has time and again demonstrated its absolute unwillingness or inability to approach any fact finding in Kashmir in the manner demanded by the OHCHR. Compounded by its dismal

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<sup>16</sup> <https://www.aljazeera.com/indepth/opinion/2017/07/kashmir-communalisation-political-dispute-170725082030871.html>

<sup>17</sup> <https://thewire.in/communalism/kashmiri-pandits-are-a-pawn-in-the-games-of-hindutva-forces>

<sup>18</sup> <https://caravanmagazine.in/conflict/celebrating-kashmir-decision-misplaced->

<sup>19</sup> <http://edition.cnn.com/2002/WORLD/asiapcf/south/07/16/kashmir.incident/index.html>

<sup>20</sup> <https://www.washingtonpost.com/politics/2019/08/23/kashmir-indian-government-versus-facts-ground/>

<sup>21</sup> <https://www.nytimes.com/2019/08/10/world/asia/kashmir-india-pakistan.html?auth=login-email&login=email>

record on the due process of law in Kashmir, the Indian government may not retreat from its international law obligations by attempting to treat all human rights violations in Kashmir as an internal matter for which it is the sole administrator of justice.

I respectfully ask, therefore, that US lawmakers support diplomatic efforts with the UN to convene a Commission of Inquiry comprising members of the international community, to conduct credible, independent investigations of human rights violations in Kashmir, including those perpetrated against ethnic and religious minorities. The Government of India has conclusively demonstrated that it is not up to the task.

I also ask that members of the Commission demand that India lift the telecommunications ban immediately, allow freedom of speech and movement with Kashmir, and permit US lawmakers, many of whom have long enjoyed a deep and abiding friendship with India, to visit Kashmir, which India has otherwise maintained is an integral part of its nation.

Finally, I ask US lawmakers to recognize that, while our shared goal is an immediate cessation of the human rights violations ongoing in Kashmir, a political solution that allows the Kashmiri people to determine their own future is the only path to ensuring a durable and just peace.

Thank you for convening this hearing to bring out the truth of the tragedy unfolding in Kashmir. I look forward to your questions.