



Tom Lantos Human Rights Commission

“Jammu and Kashmir in Context”

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November 14, 2019**

Thank you for inviting me to testify today.

Human rights are under threat in the province of Jammu and Kashmir, and in India more generally. The Lantos Commission deserves praise for recognizing that the human rights problems in both Kashmir and India generally, while distinct in the details, are linked. The focus of my testimony is that connection, and how the US government can most effectively voice its concerns about these issues to the government of India.

Overview

Since the Bharatiya Janata Party (BJP) won national elections in May and returned Prime Minister Narendra Modi for a second term, government authorities have continued harassing, and sometimes prosecuting, outspoken rights groups, human rights defenders, and journalists for criticizing the government, while failing to credibly investigate increasing numbers of mob attacks, often led by BJP supporters, against religious minorities and other vulnerable communities. There also continues to be major ongoing concerns with freedom of expression, women’s rights, children’s rights, and rights of Dalits, tribal groups, and religious minorities.

In August, the government revoked the special constitutional status of Jammu and Kashmir and split the state into two separate federally-governed territories. Before announcing the decision, the government deployed additional troops to the region, shut down the internet and phones, and placed thousands of people in preventive detention, including elected leaders, prompting international condemnation. Meanwhile, in the northeast state of Assam, a citizenship verification project excluded nearly two million people, mostly of Bengali ethnicity, many of them Muslim, putting them at risk of statelessness.

Jammu and Kashmir

Allow me to first focus on the specifics of the situation in the province of Jammu and Kashmir, particularly in the Muslim-majority Kashmir Valley.

On February 14, a [suicide attack on a security forces convoy](#) in Pulwama district killed over 40 Indian troops. The bombing was claimed by Pakistan-based militant group Jaish-e-Mohammad. It led to a [military escalation](#) between India and Pakistan, and at least four civilians were killed in a shelling at the de facto international border in the disputed territory. Following the attack, Kashmiri students and businessmen in other parts of India were [harassed or beaten up](#), even forcibly evicted from rental housing and dorms.

On August 5, the government revoked the special autonomous status of the state. Thousands were [detained without charge](#), including former chief ministers, political leaders, opposition activists, lawyers, and journalists, and the [internet and phones were shut down](#). There were severe restrictions on movement and public gatherings were forbidden. The government said these measures were necessary to prevent loss of life during violent protests, but there were still credible, serious allegations of [beatings and torture](#) by security forces. In September, a 15-year-old boy [committed suicide](#) hours after an alleged beating by the army in Chandgam village, Pulwama. The army denied the allegation. While a number of restrictions have since been lifted, hundreds remain in detention and mobile phone services and internet access are still limited. Many parents are still too scared for the safety of their children to send them to schools or colleges.

In July, the Office of the United Nations High Commissioner for Human Rights [released an update](#) on its 2018 Kashmir report, raising [serious concerns](#) about abuses by state security forces and armed groups in both Indian and Pakistani parts of Kashmir, and said neither country had taken any concrete steps to address the concerns raised in the earlier report. In India, the report decried the lack of justice for past abuses, such as killings and threats by militant groups against Hindu Kashmiris, leading to their forced displacement; abuses by militant groups that received backing in Pakistan; as well as security forces violations, including enforced disappearances, extrajudicial killings, indiscriminate use of force leading to injuries from shotgun pellets, and alleged sexual violence.

In August, the UN Security Council held a [closed meeting on Jammu and Kashmir](#) for the first time in decades. China, which called the meeting at Pakistan's behest, said members were concerned about human rights, and the increasing tensions between India and Pakistan. In September, the [European Union](#) raised the situation in Jammu and Kashmir at the UN Human Rights Council, encouraging India to lift remaining restrictions and to maintain the rights and fundamental freedoms of the affected population. The European Parliament also held a special debate on Kashmir, urging both India and Pakistan to respect their international human rights obligations.

The Indian government has largely dismissed the international attention, calling [the July UN report](#), for instance, a “false and motivated narrative” that ignored “the core issue of cross-border terrorism.” There are legitimate security concerns about militant groups operating in Jammu and Kashmir, and Pakistan has supported militant groups that have carried out attacks. This, however, does not absolve Indian authorities of holding to account security forces responsible for serious violations of human rights.

India has advanced a narrative that its main purpose in revoking Jammu and Kashmir’s autonomous status, a longtime goal of the BJP, was economic development. India’s ambassador to the US wrote in an [op-ed in the New York Times](#) that its actions in August were intended to “deliver social and economic justice.” So far, however, we have only seen an intensification of the repression of Kashmir’s population.

The government’s focusing all blame for Kashmir’s past problems on outside factors—cross border militant groups and Pakistan’s support for them—ignores the government’s abusive and rights-violating tactics that over decades has increased support and recruits for militant groups.

There has been a spike in violent protests and militant attacks in Kashmir in recent years. Indian security forces have often used excessive force to respond to protests, including using pellet-firing shotguns as a crowd-control weapon, which have caused several protester deaths and many serious injuries. Indian troops have seldom been held accountable for human rights violations that have occurred during counter-insurgency operations. The Armed Forces Special Powers Act (AFSPA) continues to provide Indian soldiers effective immunity from prosecution for serious human rights abuses. Since the law came into force in Kashmir in 1990, the Indian government has not granted permission in any case to prosecute personnel in civilian courts.

The Indian government has also repeatedly imposed internet shutdowns in Kashmir, restricting mobile and broadband internet services. There have already been 55 instances of shutdowns in the state in 2019, the largest number in the country.

This is the legacy of abuses that the people of Jammu and Kashmir have suffered. Successive Indian governments have not been willing to confront these problems. And here we come to the crux of the issue: until the Indian government acknowledges and addresses how their own abuses impact the situation, problems in Kashmir are likely to endure.

This is where Congress can act. While encouraging Pakistan to end their support to militant groups committing abuses in Kashmir, members of Congress should communicate to Indian government officials that their actions in Kashmir are adding to the human rights problems. Members of Congress should challenge Indian officials to reexamine their rights-abusing practices in Kashmir. US officials should insist that political leaders and others arbitrarily detained are released, that restrictions on communications are lifted, and that independent observers, including diplomats, foreign journalists, and rights activists, are able to travel freely in Kashmir.

Worsening Problems for Freedom of Expression Across India

Let me now turn to India's general human rights situation and speak briefly about how the worsening situation in Jammu and Kashmir fits into it.

Indian authorities, since the BJP first came to power in 2015, have been increasingly using sedition and criminal defamation laws to stifle dissent. Journalists have been harassed, and at times detained, for their reporting or critical comments on social media, and faced increasing pressure to self-censor—including on matters connected to Jammu and Kashmir.

At the same time, the authorities have failed to properly prosecute or end political patronage to pro-BJP interest groups that have engaged in threats and violent attacks to shut down speech that “offends” them. [Mob violence against minorities, especially Muslims, by extremist Hindu groups](#) affiliated with the BJP have continued amid rumors that they traded or killed cows for beef. Since May 2015, [50 people have been killed](#) and over 250 people injured in such attacks. Muslims were also beaten and [forced to chant Hindu slogans](#). Police have largely [failed to properly investigate](#) the crimes, stalled investigations, ignored procedures, and filed criminal cases against witnesses to harass and intimidate them.

India has continued to lead the world with the largest number of internet shutdowns as state governments resorted to blanket shutdowns, either to prevent violence and social unrest or to respond to ongoing law and order problems. As of November, authorities in India had ordered [85 shutdowns](#), including, of course, those in Jammu and Kashmir.

In July, the parliament passed amendments to the biometric identification project, [Aadhaar Act](#), paving the way for the collection and use of biometric data by private parties. The amendments raised concerns over privacy and data protection, and were made despite a September 2018 [Supreme Court ruling](#) restricting the use of Aadhaar for purposes other than to access government benefits and to file taxes.

In December 2018, the government proposed new [Information Technology \(Intermediary Guidelines\) Rules](#) that would greatly undermine rights to freedom of expression and privacy of users. They would also require all companies to enable tracing of the origin of information on their platforms, weakening encryption used by messaging platforms to protect the privacy and data security of their users.

The social media company WhatsApp, owned by Facebook, has confirmed that 121 users in India were [targeted by surveillance software](#) owned by NSO, an Israeli firm, out of which [at least 22](#) were human rights activists, journalists, academics, and civil rights lawyers. Although the government has denied purchasing the software, it has not addressed calls for full disclosure or an independent investigation into the allegations.

Meanwhile, authorities have continued to use the Foreign Contribution (Regulation) Act (FCRA) to harass outspoken rights groups and restrict their ability to obtain foreign funding. In June, authorities filed a criminal case against [Lawyers Collective](#)—a group that provides legal aid, advocates for the rights of marginalized groups, and campaigns to end discrimination against LGBTQ people. Now, the authorities have [sought the court's permission](#) to arrest the organization's founders for custodial interrogation despite their cooperation in the investigation.

Nine prominent human rights activists remain in prison today, [arrested in 2018](#) under a counterterrorism law, the Unlawful Activities (Prevention) Act (UAPA). They are accused, without basis, of being members of a banned Maoist organization and of inciting violent protests. For the same case, in September, the authorities conducted a [raid on the home of a Delhi University professor](#) who had been vocal on the rights of persons with disabilities and against caste discrimination.

In August, the government passed amendments to the [UAPA that](#) allow individuals to be designated as terrorists. Human rights groups expressed concerns over how the law already infringes on due process rights and has been [misused](#) to target religious minorities, critics of the government, and social activists. The amendments have been [challenged in the Supreme Court](#) as unconstitutional.

Most of these worsening trends appear to be connected to the increasingly nationalist rhetoric and actions of the ruling BJP party—reflecting a link to the human rights problems in Jammu and Kashmir.

For this reason, Human Rights Watch recommends that members of Congress, when raising issues of Jammu and Kashmir, should raise these other broader problems as well. The larger concern here is that India's democratic traditions are being put under intense stress. To riff off the cliché phrasing, leaders in the world's oldest democracy should be speaking to members of the largest democracy, as colleagues in the democratic tradition, to voice their concerns about common threats facing many democracies around the world: overwrought nationalism that demonizes minorities or critics or journalists, xenophobic rhetoric, and the relentless blaming of outsiders.

I have included in my written submission a more comprehensive treatment of these issues with additional sections on other human rights issues in India, and would ask that it be submitted into the written record.

Appendix: Other Human Rights Issues

Impunity for Security Forces

Despite numerous independent recommendations, including by UN experts, the government continues to refuse to repeal the Armed Forces (Special Powers) Act, which gives soldiers effective immunity from prosecution for serious human rights abuses—including forces stationed in Jammu and Kashmir. The law is also in force in several states in northeast India.

In Uttar Pradesh state, extrajudicial killings by police continued with impunity. At least [77 people were killed](#) and over 1,100 people injured since the BJP government led by Chief Minister Adityanath took office in March 2017. In January, four [UN rights experts](#) raised concerns over the killings as well as reports of police threatening and harassing family members of victims and human rights defenders working on the cases.

A petition seeking a court-monitored independent investigation was pending in the Supreme Court at time of writing. The killings highlighted continued lack of accountability for police abuses and the failure to enforce police reforms.

Dalits and Tribal Groups

Dalits, formerly “untouchables,” continue to face discrimination in education institutions and in jobs. [Violence against Dalits](#) persisted, in part as a reaction to their more organized and vocal demands for social progress. In September, however, the Supreme Court issued notices to the authorities to [examine caste-based discrimination at universities](#) across India; this followed a petition filed by mothers of two students—one Dalit and one from a tribal community—who committed suicide allegedly due to discrimination.

Meanwhile, nearly two million people from tribal communities and forest-dwellers remain at risk of forced displacement and loss of livelihoods after a February [Supreme Court ruling](#) to evict persons whose claims under the Forest Rights Act were rejected. Amid [concerns over flaws](#) in the claim process, the court stayed the eviction temporarily. In July, [three UN human rights experts](#) urged the government to conduct a transparent and independent review of the claims, and evict only after it exhausted all options, and with consent of affected people, ensuring redress and compensation.

Refugee and Citizenship Rights

In August, the government in Assam published the National Register of Citizens, aimed at identifying Indian citizens and legitimate residents following repeated protests and violence over irregular migration from Bangladesh. The list [excluded nearly two million people](#), mostly of Bengali ethnicity, many of them Muslims, raising the likelihood of arbitrary detention and statelessness.

In 2019, the government deported eight Rohingya Muslims to Myanmar, [a family of five members](#) in January, and a [father and his two children in March](#), after deporting seven people in October 2018. In April, [five UN human rights experts condemned](#) the deportations saying they violated international law. They also raised concerns over indefinite detention of some Rohingya in India.

Women's Rights

Two high-profile [complaints of rape](#) involving [senior BJP leaders](#) highlighted how women who complain, especially against powerful men, still face significant barriers to justice, such as victim blaming, intimidation, and lack of witness protection. The accused leaders were arrested only after widespread condemnation, including on social media. Women who have lodged complaints about powerful men have also become vulnerable to [criminal defamation](#) cases filed against them by the men they named.

Children's Rights

Child labor, child trafficking, and poor access to education for children from socially and economically marginalized communities have remained serious concerns throughout India.

In August, India's parliament [amended the Protection of Children from Sexual Offences Act](#) 2012, introducing the death penalty for aggravated penetrative sexual assault of anyone under 18 years and increased the penalty for all sexual offenses. This was despite [concerns raised by child rights groups](#) that it could lead to a decrease in police complaints because in nearly 95 percent of reported cases, the perpetrator is known to the victim, in positions of authority or family members.

In September, following a petition by child rights activists, the Supreme Court sought a report from the juvenile justice committee of the Jammu and Kashmir High Court on the [alleged detention of children and other abuses](#) during the lockdown imposed since August.

Sexual Orientation and Gender Identity

In August 2019, the lower house of parliament passed the Transgender Persons (Protection of Rights) Bill. Rights groups criticized the proposed law for failing to provide full protection and recognition to transgender people. The bill is unclear on a [transgender person's right to self-identify](#), which India's Supreme Court recognized in a landmark judgment in 2014. Its provisions are also contrary to international standards for legal gender recognition.

In a welcome development in September 2018 that will impact the community in other parts of the Commonwealth, India's Supreme Court, in a landmark ruling, [struck down the colonial-era section 377](#) of India's penal code, decriminalizing consensual same-sex relations.

Freedom of Expression

In October 2019, police in Bihar state [filed a case of sedition](#) against 49 people, including well-known actors, filmmakers, social activists, and intellectuals for [writing an open letter](#) to Prime Minister Narendra Modi, expressing concerns over mob violence targeting minority communities, lack of accountability for hate crimes, and crackdown on dissent. Following widespread condemnation, the authorities closed the case within days.

In 2019, police in Uttar Pradesh arrested, investigated, and filed complaints [against several journalists](#). In September, they filed a [criminal case against a journalist](#) for exposing mismanagement of the free meal scheme in government schools. In June, they [arrested three journalists](#) for posting the video of a woman claiming to be in love with the state's chief minister, accusing them of defaming him.

Foreign Policy

Relations with Pakistan have continued to deteriorate over the year. A Pakistan-based Islamist militant group Jaish-e-Mohammad claimed responsibility for the attack in February targeting a security forces convoy, which led to retaliatory airstrikes. In August, after India's decision to revoke special status for Jammu and Kashmir, Pakistan [downgraded its diplomatic relations](#) and [expelled the Indian High Commissioner](#). Diplomats from both countries exchanged allegations and counter allegations over Kashmir at the UN Human Rights Council in Geneva in September.

India did not raise rights protections publicly during bilateral engagement with other neighbors including Bangladesh, Nepal, Sri Lanka, and Afghanistan. In August, [India's foreign minister](#), during his visit to Bangladesh, expressed willingness to provide more assistance to displaced Rohingya in Bangladesh and toward development in Rakhine state in Myanmar. On concerns over

deportation of nearly two million people excluded from the citizenship verification project in Assam, he assured Bangladesh that it was India's internal matter.

In July, India maintained its past position and [abstained from voting](#) at the UN Human Rights Council on the renewal of the mandate for an independent expert on protection for LGBTQ rights. This is despite the Supreme Court decriminalizing consensual same-sex relations in 2018.