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# Freedom in the World 2013 - Indian Kashmir

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## Trend Arrow ↑

Indian Kashmir received an upward trend arrow due to the partial easing of draconian detention laws.

## 2013 Scores

Status: Partly Free  
Freedom Rating: 4.0  
Civil Liberties: 4  
Political Rights: 4

## Overview

**In April 2012, the government amended the Public Safety Act to prohibit the detention of minors and reduce periods of detention. The government has also signaled that it might phase out the Armed Forces Special Powers Act.**

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When British India was partitioned into India and Pakistan in 1947, the Hindu maharajah of Jammu and Kashmir tried to maintain his principality's independence, he eventually ceded it to India in return for autonomy and future self-determination. Within months, India and Pakistan went to war over the territory. As part of a UN-brokered ceasefire in 1949 that established the present boundaries, Pakistan gained control of roughly one-third of Jammu and Kashmir, leaving India with the remainder. The territory received substantial autonomy under Article 370 of India's constitution and a 1952 accord, but India annulled such guarantees in 1957 and formally annexed the portion of Jammu and Kashmir under its control. Since then, it has largely been governed as other Indian states, with an elected legislature and a chief minister. Under the 1972 Simla accord, New Delhi and Islamabad agreed to respect the Line of Control dividing the region and to resolve Kashmir's status through negotiations.

The pro-India National Conference (NC) party won state elections in 1987 that were marred by fraud, violence, and arrests of members of a new, Muslim-based opposition coalition, leading to widespread unrest. An armed insurgency against Indian rule gathered momentum after 1989, waged by the Jammu and Kashmir Liberation Front (JKLF) and other proindependence groups

that consisted largely of Kashmiris, as well as Pakistani-backed Islamist groups seeking to bring Kashmir under Islamabad's control.

New Delhi placed Jammu and Kashmir under federal rule in 1990 and attempted to quell the uprising. The Armed Forces Special Powers Act (AFSPA) was extended to the territory, allowing the army to make arrests and conduct searches without a warrant, and to use deadly force with virtual impunity. The JKLF abandoned its armed struggle in 1994, and Pakistani-backed extremist groups, which included fighters from elsewhere in the Muslim world, thereafter dominated the insurgency.

Although opposition parties joined together to form the All Parties Hurriyat Conference (APHC) in 1993, they boycotted the 1996 state elections, and the NC was able to form a government. The APHC also declined to participate in the 2002 elections, but the NC nevertheless lost more than half of its assembly seats, allowing the Congress Party and the People's Democratic Party (PDP) to form a coalition government.

Despite several setbacks, relations between the Indian government and moderate Kashmiri separatist groups generally improved after the 2002 elections. In 2004, talks were held for the first time between Kashmiri separatists and the highest levels of the Indian government. Moderate APHC leaders reiterated their renunciation of violence in 2005 and called for Kashmiris to become more deeply involved in the negotiating process. However, the talks were hampered by an emerging split within the APHC between those who favored a continuation of the insurgency and those who favored a political and diplomatic solution.

The coalition government collapsed in June 2008, when the PDP withdrew its support amid a high-profile dispute over land set aside for a Hindu pilgrimage site. State elections were held in November and December. Turnout was higher than expected, exceeding 60 percent on most polling dates, as voters largely ignored separatist groups' calls for a boycott. While early voting dates were generally peaceful, some violence pervaded later polling – particularly in early December – when antielection protesters clashed with security forces. The elections were considered mostly free and fair, however, with significantly reduced levels of voter intimidation, harassment, and violence compared with previous elections. The NC won a plurality of 28 seats, followed by the PDP with 21 seats and Congress with 17. The NC allied itself with Congress to form a governing coalition.

The security situation improved during 2009, with the number of militancy-related fatalities decreasing for the seventh consecutive year. In October, New Delhi announced plans to withdraw 15,000 troops from the Jammu region, granting local police more responsibility over the area.

In 2010, prompted by the police killing of a 17-year-old boy in June, opposition groups organized a protest movement called Quit Kashmir. They demanded that the Indian government recognize the Kashmir dispute as an international conflict, demilitarize the region, release all political prisoners, and revoke the AFSPA. For about three months, police and soldiers engaged in regular clashes with youthful, stone-throwing protesters, leaving more than 100 civilians dead. Tensions began to ease in September, when the central government announced plans to reduce the security presence in the territory, release jailed protesters, compensate the families of slain civilians, and reopen schools and universities. However, police arrested protest organizer Masrat Alam in October, and curfews and unrest continued sporadically for the rest of the year.

Calm was largely restored in 2011, and 2012 featured the lowest level of violence since 1989. This new stability has had economic benefits; the government reported that over 1.3 million tourists visited Kashmir in 2012, the highest number in years. From April to June 2011, *panchayat* (local council) elections were held across Kashmir for the first time since 2001; they represented the first truly open panchayat elections in Kashmir since 1978. Although separatist groups urged citizens to boycott the polls, turnout was reported at about 80 percent. However, problems remained; in

November 2012, over 700 panchayat leaders resigned as a result of death threats after several were assassinated.

In April 2012, the Public Safety Act (PSA), which allows detention without charge or trial, for "the security of the State and public order," was amended; changes included the prohibition of the detention of minors and new rules that are expected to reduce the amount of time prisoners are held before trial. Chief Minister Omar Abdullah has also supported phasing out the AFSPA, though he has refused to commit to a timeline for doing so.

### **Political Rights and Civil Liberties**

Jammu and Kashmir, like India's other states, is governed by an elected bicameral legislature and a chief minister entrusted with executive power. An appointed governor serves as symbolic head of state. Members of the 87-seat lower house, or state assembly, are directly elected, while the 46-seat upper house has a combination of members elected by the state assembly and nominated by the governor.

India has never held a referendum allowing Kashmiri self-determination as called for in a 1948 UN resolution. The state's residents can change the local administration through elections, which are supposed to be held at least once every five years. The Election Commission of India monitors the polls, but historically they have been marred by violence, coercion, and ballot tampering. Militants have enforced boycotts called for by separatist political parties, threatened election officials and candidates, and killed political activists and civilians during balloting. The 2002 campaign period was especially violent, but the 2008 legislative elections were considered generally free and fair, being largely peaceful despite some violence. Municipal elections originally slated for 2011 have been repeatedly delayed until 2013.

Corruption remains widespread, though the government has taken some steps to combat it. The legislature enacted the Jammu and Kashmir State Vigilance Commission Bill in February 2011, establishing an anticorruption commission with the power to investigate alleged offenses under the state's 2006 Prevention of Corruption Act.

India's 1971 Newspapers (Incitement to Offences) Act, which is in effect only in Jammu and Kashmir, gives district magistrates the authority to censor publications in certain circumstances, though it is rarely invoked. The protest-related violence in 2010 led some newspapers to suspend circulation, and curfews inhibited journalists from covering important stories, though conditions have improved. Foreign journalists are generally able to travel freely, meet with separatist leaders, and file reports on a range of issues, including government abuses. As in the rest of India, print media are thriving in Kashmir, and online media have proliferated, providing new platforms for public discussion. By the end of 2012, there were over 1,100 registered publications in Jammu and Kashmir, compared to 30 in 1989. Journalists remain subject to pressure from militants and the authorities. At times, the PSA has been used to arrest journalists and the government has withheld official advertising in disfavored media outlets. Journalists also face threats from militant groups.

Freedom of worship and academic freedom are generally respected by the authorities. Since 2003, the state government has permitted separatist groups to organize a procession marking the prophet Muhammad's birthday. However, militants at times attack Hindu and Sikh temples.

Freedoms of assembly and association are often restricted. Although local and national civil rights groups are permitted to operate, they sometimes encounter harassment by security forces. The separatist APHC is allowed to function, but its leaders are frequently subjected to short-term preventive detention, and its requests for permits for public gatherings are often denied. Protection of labor union rights in Kashmir is generally poor and has resulted in prolonged strikes by both public and informal sector workers.

The courts in Kashmir, already backlogged by thousands of pending cases, were further hampered in 2011 by intermittent lawyers' strikes triggered in part by the July 2010 arrest of Kashmir High Court Bar Association president Mian Abdul Qayoom under the PSA. Qayoom, who was accused of speaking out against Indian rule and fomenting protests, was released from detention in April 2011. Separately, in November 2011 members of the Jammu and Kashmir High Court Bar Association went on strike for 27 days to demand the revocation of a cabinet decision transferring the power to register land and property from judicial officers to the revenue department. In December, the High Court intervened in the matter with a stay order on the transfer of powers, and directed the lawyers to resume work.

The government and security forces frequently disregard court orders. Broadly written legislation such as the 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 government amended the PSA in 2012 after a particularly critical 2011 report by Amnesty International (AI). However, a follow-up report from AI indicated some continuing problems, including "revolving door" detentions in which detainees reaching the maximum detention threshold are released and re-arrested shortly thereafter.

Indian security personnel based in Kashmir carry out arbitrary arrests and detentions, torture, forced disappearances, and custodial killings of suspected militants and their alleged civilian sympathizers. Meanwhile, militant groups based in Pakistan continue to kill 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. However, violence associated with the struggle between security forces and militant groups continued a multiyear decline in 2012. According to the SATP, a total of 117 civilians, security personnel, and militants were killed during the year, down from 183 in 2011 and 375 in 2010.

Violence targeting Pandits, or Kashmiri Hindus, is part of a pattern dating to 1990 that has forced several hundred thousand Hindus to flee the region; many continue to reside in refugee camps near Jammu. Other religious and ethnic minorities such as Sikhs and Gujjars have also been targeted.

As in other parts of India, 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.

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