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# Freedom in the World 2014 - Indian Kashmir

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## 2014 Scores

Status: Partly Free

Freedom Rating (1 = best, 7 = worst): 4.0

Civil Liberties (1 = best, 7 = worst): 4

Political Rights (1 = best, 7 = worst): 4

## OVERVIEW

Negotiations between India and Pakistan over the divided region of Jammu and Kashmir were threatened in 2013 as each side accused the other of gunfire and incursions across the Line of Control. These incidents increased around a September meeting between the two countries' prime ministers in New York. In October, Indian military officials said they had challenged up to 40 armed militants entering from Pakistan, though the details remained unclear. Exchanges of fire across the de facto border that month wounded at least 10 civilians in Indian-held regions and displaced dozens more. Nevertheless, a 2003 cease-fire remained in place, and the peace talks tentatively continued. Hundreds of people attended a political rally for peace in the summer capital, Srinagar, in November.

Pakistani-backed Islamist militants and proindependence groups continued to orchestrate attacks against Indian rule during the year. Militant assaults on police and army bases in March and September killed more than a dozen people. However, the level of violence has declined over the past decade. New Delhi withdrew 15,000 troops from the southern Jammu region in 2009 after the number of militancy-related fatalities decreased for seven consecutive years. Despite this improvement, the unpopular Armed Forces Special Powers Act (AFSPA) has remained in effect. Extended to the territory in 1990 after an armed insurgency gained momentum in 1989, the AFSPA allows the army to make arrests and conduct searches without a warrant, and to use deadly force with virtual impunity. Though Chief Minister Omar Abdullah supports partially revoking the act, his efforts bore no fruit in 2013.

Relations between the Indian government and moderate Kashmiri independence movements, though significantly improved in the past decade, remained brittle during the year. Three people were killed in February when civilians defied curfews to protest the execution of a militant convicted of involvement in a 2001 attack on the Indian Parliament. The execution, which many locals believed was the result of an unfair trial, and the mysterious death of a Kashmiri student

who led a related protest in Hyderabad three weeks later, continued to fuel unrest. Though security forces responded better than they had in 2010, when weeks of clashes with protesters left more than 100 civilians dead, they were accused of fatally shooting another protester in March, and two more in June, prompting further demonstrations. In September, security forces in southern Shopian district killed four supposed militants. Police subsequently identified three of them as local civilians, and hundreds of people protested, resulting in a fifth death after security forces fired on protesters throwing stones. The state government launched a judicial investigation.

Communal violence was also reported during 2013, as local tensions were exacerbated by activists promoting the Hindu nationalist Bharatiya Janata Party ahead of national elections scheduled for 2014. Dozens of houses were burned and at least two people killed during riots between Muslim and Hindu populations of Kishtwar in August. Local authorities imposed curfews in several towns.

## **POLITICAL RIGHTS AND CIVIL LIBERTIES**

### **Political Rights: 20 / 40**

#### *A. Electoral Process: 8 / 12*

Jammu and Kashmir 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. It is largely governed like other Indian states, with 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 legislative assembly, are directly elected, while the 36-seat upper house has a combination of members elected by the 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 six 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.

In the most recent state elections, held in November and December 2008, 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 affected 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 pro-India National Conference (NC) party won a plurality of 28 seats, followed by the People's Democratic Party (PDP) with 21 seats and the Congress party with 17. The NC allied itself with Congress to form a governing coalition. The next elections are scheduled for 2014.

*Panchayat* (local council) elections were held across Kashmir in 2011 for the first time since 2001, and were described as the first truly open panchayat elections since 1978. Although separatist groups urged citizens to boycott the polls, turnout was reported at about 80 percent. Unfortunately, more than 700 panchayat leaders resigned in 2012, facing death threats after several were assassinated. Municipal elections originally slated for 2011 have been repeatedly delayed.

#### *B. Political Pluralism and Participation: 8 / 16*

The state is governed under a multiparty system, but normal party politics and electoral activities are often disrupted by militant violence, intimidation, and boycotts. The NC won state elections in

1987 that were undermined by arrests of members of a new, Muslim-based opposition coalition, leading to widespread unrest. 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, which were particularly violent, but the NC nevertheless lost more than half of its assembly seats, allowing the Congress party and the PDP to form a coalition government. That coalition collapsed in June 2008, when the PDP withdrew its support amid a high-profile dispute over land set aside for a Hindu pilgrimage site, leading to that year's elections. Women and minority religious groups are underrepresented in government, though the PDP is headed by a woman, Mehbooba Mufti.

#### *C. Functioning of Government: 4 / 12*

Corruption remains widespread, though the government has taken some steps to combat it. The 2011 Jammu and Kashmir State Vigilance Commission Act established an anticorruption commission with the power to investigate alleged offenses under the state's 2006 Prevention of Corruption Act. Its first commissioners were appointed in 2013.

#### **Civil Liberties: 29 / 60**

#### *D. Freedom of Expression and Belief: 9 / 16*

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. During the February 2013 unrest over the executed militant, authorities temporarily shut down mobile internet service to discourage protests, and blocked journalists from visiting Kishtwar during the communal riots in August. Protest-related violence in 2010 had led some newspapers to suspend circulation, and curfews inhibited journalists from covering important stories, though conditions have since 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 with 30 in 1989. At times, the Public Safety Act (PSA), which allowed detention without charge or trial before it was partially amended in 2012, has been used to arrest journalists, and the government has withheld official advertising from 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.

#### *E. Associational and Organizational Rights: 6 / 12*

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.

#### *F. Rule of Law: 6 / 16*

The courts in Kashmir, already backlogged by thousands of pending cases, are further hampered by intermittent lawyers' strikes. These were particularly severe in 2011, mounted in part to protest the 10-month PSA detention of Kashmir High Court Bar Association president Mian Abdul

Qayoom for speaking out against Indian rule and fomenting protests, and separately to force the High Court to stay a cabinet decision transferring the power to register land and property from judicial officers to the revenue department. The Bar Association implemented several short-term strikes in 2013 to protest against alleged human rights violations.

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. In April 2012, the PSA was amended after a particularly critical 2011 report by Amnesty International (AI); 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. 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 quickly rearrested. Chief Minister Omar Abdullah has supported revoking the AFSPA in six districts where militant activity is rare, but says the army opposes the move.

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. Terrorist-related violence reached the lowest point in more than 20 years in 2012, according to the South Asian Terrorist Portal, but increased again slightly in 2013. A total of 181 civilians, security personnel, and militants were killed, up from 117 the previous year.

A pattern of violence targeting Pandits, or Kashmiri Hindus, dates to 1990 and has forced several hundred thousand Hindus to flee their homes in region over the years. Many continue to reside in refugee camps near Jammu. Other religious and ethnic minorities such as Sikhs and Gujjars have also been targeted.

#### *G. Personal Autonomy and Individual Rights: 8 / 16*

Freedom of movement and property rights are hampered by transient factors such as police curfews, checkpoints, and military activity, as well as by long-term obstacles and displacement related to the standoff with Pakistan.

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.

#### **Scoring Key: X / Y (Z)**

X = Score Received

Y = Best Possible Score

Z = Change from Previous Year

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