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Freedom in the World 2010 - Kashmir [India]

Capital: N/A

Population: 12,219,000

Political Rights Score: 4 *

Civil Liberties Score: 4 *

Status: Partly Free

Ratings Change

Indian Kashmir's political rights rating improved from 5 to 4 due to reports that the December 2008 elections were generally fair and competitive, drawing a comparatively high voter turnout despite militant groups' calls for a boycott.

Overview

Talks between India and Pakistan on the resolution of Kashmir's status continued in 2009, and in November Kashmiri separatist leaders agreed to meet with the Indian government for the first time in four years. In the wake of successful elections in late 2008, the overall level of violence declined, continuing a seven-year trend; in October India announced plans to withdraw 15,000 troops from the Jammu region. Nevertheless, separatist violence continued during the year, and a number of noncombat killings by security forces were reported. Impunity for human rights abuses remained the norm.

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, but 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-day boundaries, Pakistan gained control of roughly one-third of Jammu and Kashmir. India retained most of the Kashmir Valley, along with Jammu and Ladakh. Under Article 370 of India's constitution and a 1952 accord, the territory received substantial autonomy, 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 like other Indian states, with an elected legislature and chief minister. Under the 1972 Simla accord, New Delhi and Islamabad agreed to respect the Line of Control (LOC) dividing the region and to resolve Kashmir's status through negotiation.

The pro-India National Conference (NC) party won state elections in 1987 that were

marred by widespread 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 consisting 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 by force. The JKLF abandoned its armed struggle in 1994, and the insurgency was thereafter dominated by Pakistani-backed extremist groups, which included fighters from elsewhere in the Muslim world.

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 latter was hampered by an emerging split within the APHC between those who favored a continuation of the insurgency and those who favored a political solution.

The PDP-Congress alliance 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 from November 17 to December 28. Turnout was higher than expected, exceeding 60 percent on most polling dates, as voters largely ignored calls for a boycott from separatist groups. While early voting dates were generally peaceful, some violence marred 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 then allied itself with Congress to form a coalition government.

Umar Farooq, chairman of one APHC faction, offered in November 2009 to begin direct talks with the Indian government within the next few months. The talks would be the first of their kind in four years. The security situation also improved during 2009, with the number of fatalities decreasing for the seventh consecutive year. According to the South Asia Terrorism Portal (SATP), about 377 people were killed during the year, compared with 541 in 2008. In October New Delhi announced plans to withdraw 15,000 troops from the Jammu region, granting local police more responsibility over the area. Nevertheless, there were several incidents of violence, including bombings in public places and other attacks directed at security forces, politicians, and minority groups.

Relations between India and Pakistan improved somewhat in mid-2009 following a rift over a November 2008 terrorist attack in Mumbai that was linked to a Pakistani-based militant group. In July the two sides agreed to separate their Kashmir talks from discussions related to terrorist attacks, but India was forced to backtrack from that position due to vocal domestic criticism.

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 titular 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 polls are monitored by the Election Commission of India, but historically they have been marred by violence, coercion by security forces, and balloting irregularities. Militants have enforced boycotts called for by separatist political parties, threatened election officials and candidates, and killed political activists and civilians during balloting. More than 800 people were killed during the 2002 campaign period, including over 75 political activists and candidates.

However, the November and December 2008 legislative elections, which were considered generally free and fair, were largely peaceful despite some cases of violence. Turnout was significantly higher than in previous years, according to a *Times of India* report. A January 2009 ReliefWeb report noted that the election was the most peaceful in two decades.

Political violence has included high-profile assassinations of party and government officials, although the number of political killings has fallen somewhat in recent years. A prominent NC activist was killed by separatists in Srinagar in September 2009.

Corruption remains widespread despite apparent government efforts to combat it. The State Vigilance Organization has been active in recent years, charging several local officials with fraud and misappropriation of funds. Nevertheless, higher officials are seldom targeted, and convictions are rare. In January 2008, Education Minister Peerzada Mohammad Sayeed resigned after being charged with receiving a bribe, but he rejoined the cabinet in January 2009. Several whistleblowers have reported harassment after filing complaints. Indian-controlled Kashmir was not ranked separately on Transparency International's 2009 Corruption Perceptions Index.

Though it is generally not used, 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. Pressure to self-censor has been reported at smaller media outlets that rely on state government advertising for the majority of their revenue. Despite these restrictions, newspapers report on controversial issues such as alleged human rights abuses by security forces. The authorities generally allow foreign journalists to travel freely, meet regularly with separatist leaders, and file reports on a range of issues, including government abuses. As with the rest of India, print media are thriving in Kashmir, with 145 dailies available across the state.

Journalists remain subject to pressure from militants, and many practice some degree of self-censorship for this reason. Militant groups threaten and sometimes kidnap, torture, or kill journalists. Reporters are also occasionally harassed or detained by the authorities. Incidents of violence against the press declined in 2009, with no reported cases of assault or murder, although journalists reporting on the alleged rape and murder of two women by Indian police in Shopian faced harassment and death threats. In July, police threatened two Srinagar-based journalists for reporting on the suspected disappearance of a youth while in police custody.

Freedom of worship and academic freedom are generally respected by Indian and local authorities. Since 2003, the state government has permitted separatist groups to organize a procession marking the prophet Muhammad's birthday. However, Islamist militants at times attack Hindu and Sikh temples or villages. The offer and subsequent retraction of land for a Hindu pilgrimage site in June 2008 inspired large and sometimes violent protests throughout the summer. However, pilgrimages to the site began again in mid-2009 and continued peacefully for the rest of the year.

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 preventative detention, and its requests for permits for public gatherings are often denied. Politically motivated general strikes, protest

marches, and antigovernment demonstrations take place on a regular basis, though some are forcibly broken up by the authorities. During the summer protests of 2008, there were several reports of police shooting indiscriminately into stone-throwing crowds. The February 2009 killing of two unarmed youths by police in Bumai led to mass protests in the area in March; four people were injured when a mob attacked a police station, and local authorities imposed a day-long curfew to prevent further violence. In a separate incident, two people died during protests in June following the alleged rape and murder of two women by the police in Shopian.

Courts were regularly in session in Jammu and Kashmir in 2009, according to the U.S. State Department's human rights report. Nevertheless, judges, witnesses, and the families of defendants remain subject to intimidation by militants. In addition, the government and security forces frequently disregard court orders, including those quashing detentions. Two broadly written laws – the Armed Forces Special Powers Act (AFSPA) and the Disturbed Areas Act – allow Indian forces to search homes and arrest suspects without a warrant, shoot suspects on sight, and destroy buildings believed to house militants or arms. In a widely criticized decision in May 2007, India's Supreme Court effectively reversed previous rulings requiring the armed forces to involve civilian police in their operations and thus removed an important safeguard for detainees. Following the two killings in Bumai in February 2009, Chief Minister Omar Abdullah pledged to have the AFSPA repealed during his new government's six-year term; it was still in effect at year's end.

In a continuing cycle of violence, hundreds of militants, security personnel, and civilians are killed each year, although the number continued to decline in 2009. The SATP reported that 55 civilians, 78 security personnel, and 244 militants were killed during the year. The total of 377 was a significant decrease from the previous year's death toll of 541.

Indian security personnel based in Kashmir, numbering about 500,000, carry out arbitrary arrests and detentions, torture, "disappearances," and custodial killings of suspected militants and alleged civilian sympathizers. As part of the counterinsurgency effort, the government has organized former militants into progovernment militias. Members of these groups act with impunity and have reportedly carried out a range of human rights abuses against pro-Pakistani militants and civilians. Official figures released in August 2009 estimated that 3,429 people had disappeared between 1990 and July 2009. Human rights groups have suggested a number closer to 8,000. Security personnel are often rewarded – with either cash or a promotion – for producing a dead militant, and holding militants in custody is considered a security risk. This has led to the practice of fake "encounter" killings, in which militants as well as civilians are killed in custody and then passed off as combatants killed in battle.

While the state human rights commission examines several dozen complaints a year, it is hampered by inadequate resources and infrastructure. In addition, it cannot directly investigate abuses by the army or other federal security forces, nor can it take action against those found to have committed violations. Impunity for rights abuses by Indian armed forces has been the norm, in part because under the AFSPA, New Delhi is required to approve any prosecutions. However, the discovery of apparent victims of fake encounter killings in 2007 prompted an unusually thorough investigation, and at least 18 policemen were charged, including a number of senior officers and a former superintendent. While the government initially denied any wrongdoing in the two killings in Bumai in 2009, a subsequent investigation acknowledged that three police officers were guilty of "lapses," and disciplinary action was ordered against them. The Central Bureau of Investigation's probe of the alleged rape and murder of two women in Shopian was ongoing.

Armed with increasingly sophisticated and powerful weapons, and relying to a greater degree on suicide squads, militant groups based in Pakistan continue to kill pro-India politicians, public employees, suspected informers, members of rival factions, soldiers, and civilians. The roughly 800 active militants also engage in kidnapping, rape, extortion, and other forms of intimidation. 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.

Kashmiris are generally free to move around the state. A bus service across the LOC was launched in 2005, and trade across the line reopened in early 2008 for the first time in 60 years.

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.

**Countries are ranked on a scale of 1-7, with 1 representing the highest level of freedom and 7 representing the lowest level of freedom.*

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