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Freedom in the World 2009 - Kashmir [India]

Capital: N/A

Population: 12,000,000

Political Rights Score: 5

Civil Liberties Score: 4

Status: Partly Free

Trend Arrow 

Indian-controlled Kashmir received an upward trend arrow due to the holding of largely peaceful legislative elections in December in which opposition parties achieved notable gains.

Overview

Meaningful progress on a solution to the conflict over Kashmir remained elusive in 2008, though talks between India and Pakistan continued during the year, and the line of control was opened to trade in October for the first time in 60 years. Summer protests over the retraction of a gift of land to Hindu pilgrims turned violent in August, leading to several deaths and hundreds of injuries. However, the overall level of violence declined, continuing a six-year trend. Nevertheless, deaths in custody were reported in 2008, and impunity generally remained the norm. Elections held in several stages in November and December saw high voter turnouts and were largely peaceful in the early stages, although some violence broke out on later polling dates; the Jammu and Kashmir National Conference captured a plurality of seats.

For centuries, Kashmir was ruled by Afghan, Sikh, and local strongmen. In 1846, the British seized control and sold the territory to the Hindu maharajah of the neighboring principality of Jammu, who later incorporated surrounding areas into the new princely state of Jammu and Kashmir. When British India was partitioned into India and Pakistan in 1947, Maharajah Hari Singh tried to maintain Jammu and Kashmir's independence, but eventually ceded it to India in return for autonomy and future self-determination.

Within months, India and Pakistan went to war over Kashmir. 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, the territory has largely been governed as other Indian states, by an elected state legislature headed by a chief minister. Seeking strategic roads and passes, China seized a portion of Kashmir in 1959. India and Pakistan fought a second, inconclusive war over the territory in 1965. 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. Another round of fighting broke out between the two countries in 1999, when they engaged in a 73-day military conflict in Kargil.

In 1987, the pro-India National Conference (NC) party won state elections 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, when militant groups linked to political parties assassinated several NC politicians and attacked government targets in the Kashmir Valley. The militants included the Jammu and Kashmir Liberation Front (JKLF) and other pro-independence groups consisting largely of Kashmiris, as well as Pakistani-backed Islamist groups seeking to bring Kashmir under Islamabad's control.

As the violence escalated, New Delhi placed Jammu and Kashmir under federal rule in 1990 and attempted to quell the mass uprising by force. By the mid-1990s, the Indian army had greatly weakened the JKLF, which abandoned its armed struggle in 1994. The armed insurgency has since been dominated by Pakistani-backed extremist groups, which include non-Kashmiri 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 under party leader Farooq Abdullah. In 2000, Hizbul Mujahideen, the largest armed group in Kashmir, initiated a dialogue with the Indian government. However, after the talks broke down and a summit held in 2001 failed to resolve India and Pakistan's differences over Kashmir, militants again stepped up their attacks.

New Delhi encouraged all political parties to participate in the 2002 state elections but was unsuccessful in persuading the APHC. However, in a surprise result, the ruling NC lost 29 of its 57 assembly seats, while the Congress Party and the People's Democratic Party (PDP) made significant gains, winning 16 and 20 seats, respectively. In November, the two parties formed a coalition government headed by the PDP's Mufti Mohammad Sayeed. In October 2005, Sayeed stepped down as chief minister as part of the coalition agreement, and Congress leader Ghulam Nabi Azad was named as his replacement.

Though fighting continued, the number of casualties from militant attacks or actions by security forces steadily declined after the 2002 elections, as relations between the Indian government and moderate Kashmiri separatist groups improved. In 2004, talks were held for the first time between Kashmiri separatists and the highest levels of the Indian government. India enabled several separatist political leaders to travel to Pakistan and meet with Pakistan-based separatists in June 2005. At this gathering and a later meeting with Indian prime minister Manmohan Singh in September 2005, the moderate APHC leaders reiterated their renunciation of violence and called for Kashmiris to become more deeply involved in the negotiating process. However, the latter desire was hampered by an emerging split within the APHC between hard-liners, who favor a continuation of the insurgency, and moderates, who favor a political solution. This split worsened in 2007, as militants launched a grenade attack against the headquarters of the moderate bloc in January, and the two factions clashed in the streets of Srinagar in August. While tensions between moderate and hardliners continued in 2008, there were no further reports of related violence.

In July 2008, violence broke out in Kashmir when the Indian government rescinded a gift of protected forestland given to Hindu Pilgrims. The gift of a small tract of land to the trust running the Amarnath Hindu shrine in late June provoked nine days of massive street protests from Muslims. The subsequent revocation on July 1 sparked a series of strikes and protests from Hindus and counter-protests from Muslims. Hundreds were arrested and several killed in clashes with the police through August. Fifteen Muslim protesters were killed on August 11 when police fired into a stone-throwing crowd, and several more civilians were killed in protests the following day. Following an imposition

of a two-day curfew in late August, the violence ended when authorities reached a compromise with protest groups, agreeing to allow temporary use of the land during the pilgrimage.

Despite the summer violence, the number of fatalities decreased for the sixth consecutive year in 2008. According to the South Asia Terrorism Portal, approximately 475 people were killed during the year, in comparison to 777 in 2007. Nevertheless, additional incidents of violence occurred throughout 2008, including bomb attacks targeting public places and other attacks directed at security forces, politicians, and minority groups. Given the reductions in violence, the PDP threatened to withdraw from the state's ruling coalition in April 2007 unless troop levels were reduced and the Armed Forces Special Powers Act (AFSPA) was repealed. In response, India relocated thousands of troops in November 2007, but avoided a more substantive demilitarization.

Elections in 2008 were held in seven stages from November 17 to December 28. Turnout was higher than expected throughout, reaching above 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 stage five in early December – when anti-election protesters clashed with security forces. The elections were considered generally free and fair, however, with incidents of voter intimidation, harassment, and violence down significantly from previous years. The Jammu and Kashmir National Conference won a plurality of seats with 28, followed by the PDP with 21 seats. The BJP made significant gains, capturing 11 seats.

New Delhi continued its effort to improve relations with Pakistan in early 2008, although tensions flared following terror attacks in Mumbai in November. Talks between the two countries over the ultimate status of Kashmir, as well as other confidence-building measures, have occurred regularly since a ceasefire was instituted in November 2003. In April 2005, a bus service across the LOC was launched, linking the capitals of Indian and Pakistani Kashmir (PoK) and allowing Kashmiri civilians to reunite with family members. Nevertheless, due to onerous red tape, only several thousand Kashmiris have been able to avail themselves of this new opportunity. Talks continued in 2008, but tension over Indian accusations of Pakistani involvement in an attack on the Indian Embassy in Kabul in July stalled progress. In September, the two sides announced talks would resume within three months, and in October, trade reopened along the Pakistani-Indian line of control; the border had been closed to trade for 60 years. Terror attacks in Mumbai in November 2008 again strained relations between the two countries, however, with India contending that the attack was based from and supported by Pakistan. Increased tensions have once again stalled talks.

Political Rights and Civil Liberties

Each of India's states, including Jammu and Kashmir, is governed by an appointed governor who serves as titular head of state and an elected bicameral legislature headed by a chief minister. Members of the lower house or state assembly are directly elected, while the 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 nominally change the local administration through elections, which are held at least once every five years, but historically elections have been marred by violence, coercion by security forces, and balloting irregularities. Militants commonly enforce boycotts called for by separatist political parties, threaten election officials and candidates, and kill political activists and civilians during balloting.

In the campaign period leading up to the 2002 elections for the 87-seat state assembly, more than 800 people, including over 75 political activists and candidates, were killed. However, the balloting process itself was carefully monitored by India's Election Commission, and most independent observers judged the polls to be fair but not entirely free, largely because of the threat of violence. Municipal elections held in February 2005 were also largely peaceful, while four by-elections for the state legislature held in April 2006 yielded close to a 60 percent turnout, despite militant groups' calls for a

boycott. The November and December 2008 elections, which were considered generally free and fair, were generally peaceful despite some later incidents of violence.

Political violence has included high-profile assassinations, such as that of Education Minister Ghulam Nabi Lone in 2005. In April 2007, unidentified gunmen murdered a Congress party district president. Later that month, police reportedly foiled two plots to assassinate Chief Minister Ghulam Nabi Azad. A district president for the PDP was shot and killed by militants in September 2008.

Although Jammu and Kashmir was returned to local rule in 1996, many viewed the government as corrupt, incompetent, and unaccountable to the wishes and needs of Kashmiris. A 2005 survey by Transparency International found that Jammu and Kashmir was India's second-most-corrupt state. Since then, the government appears to have been making additional efforts to fight corruption, though it remains widespread. In 2006, a revision of the Prevention of Corruption Act was passed, and the State Vigilance Organization has been active in recent years, charging several local officials with fraud and misappropriation of funds. Nevertheless, higher-level officials are seldom targeted and convictions are rare. Several whistleblowers have reported harassment after filing complaints. Indian-controlled Kashmir was not ranked separately on Transparency International's 2008 Corruption Perceptions Index.

Primarily because of pressure from militants, conditions for the media remain difficult, and many journalists practice some level of self-censorship. Militant groups regularly threaten and sometimes kidnap, torture, or kill journalists. Journalists are also occasionally harassed or detained by the authorities. Photojournalist Maqbool Sahil was released in 2008 after four years in detention under the Public Safety Act, despite repeated court decisions calling for his release while in detention.

Though it is generally not used, India's 1971 Newspapers Incitements to Offenses Act (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. The curfew imposed by the government in August prevented the publication of several local and regional newspapers, and 13 journalists were beaten when they tried to get to work despite the curfew. A cameraman was killed by security forces while covering a protest in the same month. Officials banned local news during the crisis.

Freedom of worship and academic freedom are generally respected by Indian and local authorities. Since 2003, the state government has granted permission to 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 gift and subsequent retraction of land for a Hindu pilgrimage site in June 2008 led to an escalation of religious violence, inspiring large and sometimes violent protests throughout the summer. In July, a bomb exploded at a bus stop regularly used by Hindu pilgrims, killing four and injuring at least 21 others, including 14 pilgrims.

Freedoms of assembly and association are occasionally restricted. Although local and national civil rights groups are permitted to operate, they sometimes encounter harassment by security forces. The APHC, an umbrella group of 23 secessionist political parties, is allowed to operate, but its leaders are frequently subjected to short-term preventative detention, and its requests for permits for public gatherings are often denied. Politically motivated shutdowns, protest marches, and antigovernment demonstrations take place on a regular basis, though some are forcibly broken up by the authorities. During the violent summer protests in 2008, there were several reports of police shooting indiscriminately into stone-throwing crowds. Altogether, at least 40 protesters were killed and over 100 injured, with Muslims accounting for the majority of fatalities.

Courts were regularly in session in Jammu and Kashmir in 2008, according to the U.S. State Department's human rights report. Nevertheless, judges, witnesses, and the families of defendants remain subject to threats and intimidation from militants. In addition, the government and security forces frequently disregard court orders, including those quashing detentions. Two broadly written laws – the 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 dismissed a petition filed by the widow of a custodial killing victim who had been arrested under the AFSPA. According to local rights groups, the decision set a dangerous precedent, reversing previous rulings requiring the armed forces to involve civilian police in operations and thus removing an important safeguard for detainees. While the 50th anniversary of the AFSPA in 2008 brought renewed calls from local officials, nongovernmental organizations, and the media to repeal the act, the government had not done so by 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 2008. The SATP reported that 61 civilians, 84 security personnel, and 330 militants were killed during the year. The total of 475 was a significant decrease from the previous year's death toll of 777. Approximately 600,000 Indian security personnel based in Kashmir 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 and armed progovernment militias composed of former militants. Members of these groups act with impunity and have reportedly carried out a wide range of human rights abuses against pro-Pakistani militants and civilians. According to human rights groups, 60 people have reportedly disappeared since 2006, though only nine disappearances were recorded in 2007. No widely accepted data is available for disappearances in 2008, although three cases were reported between July and October. Eighteen cases of extrajudicial killing were also reported in 2007. In April 2008, the Association of Parents of Disappeared Persons reported that over 1,000 unmarked graves had been found across the state. The police claimed the graves belonged to foreign militants. Local human rights groups estimate that at least 8,000 people have "disappeared" since the insurgency began. Of particular concern is the continuing problem of killings in which security forces kill militants or civilians in their custody and then claim that they were "encounter" deaths, meaning they occurred during firefights. The practice is exacerbated by the fact that 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. Two men were reportedly executed in falsified encounter killings in June and July 2008 in Bandipora.

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 February 2007 prompted an unusually thorough investigation, and at least 18 policemen were charged, including a number of senior officers and a former superintendent. A commission appointed to investigate custodial killings and fake encounter deaths in April 2007 has had difficulties finding witnesses willing to give evidence, and no report was issued in 2008. While the state human rights commission examines several dozen complaints a year (it has received hundreds since its inception), 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.

Armed with increasingly sophisticated and powerful weapons, and relying to a greater degree on the deployment of suicide squads, militant groups backed by Pakistan continue to kill pro-India politicians, public employees, suspected informers, members of rival factions, soldiers, and civilians. The roughly 1,400 active militants also engage in kidnapping, rape, extortion, and other forms of intimidation. In December 2007, the largest active militant group, Hizbul Mujahideen, announced a suspension of all grenade attacks in public places. The move was seen as an effort to gain public support. However, grenade attacks and other violence continued through 2008. 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 attack, including rape and murder, at the hands of both the security forces and militant groups. In recent years, women and girls have also been targeted by Islamist groups and pressured to adopt more conservative styles of dress or stop attending school, but there were no reported instances of this in 2008.

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