

Principles for US Policy on Kashmir

OVERVIEW

The situation in Kashmir remains a source of ongoing instability in South Asia, and has deteriorated further under Prime Minister Narendra Modi's administration. Currently, Kashmiris face significant challenges with simple communication with each other and the outside world. Journalists and ordinary citizens are routinely detained under undemocratic laws without due process, and families live in a state of constant uncertainty and fear in the world's most militarized zone. On August 5, 2019, the Indian government unilaterally revoked Jammu & Kashmir's ("Kashmir") autonomous status while placing its population under total lockdown. These actions were carried out in contravention of international law and without the consent of the governed.

Since then, Prime Minister Narendra Modi has taken increasingly drastic steps to curtail Kashmiris' human and democratic rights. Most recently, the Indian government has passed laws (similar to policies enacted by the Chinese government in Tibet and Xinjiang province) that pave the way for forced demographic change in Kashmir. Once these laws begin to permanently alter the demographic make-up of the region, the likelihood of reaching a viable resolution on Kashmir and settling tensions between the region's nuclear powers will all but vanish. This erosion of human rights in Kashmir is taking place simultaneously as the Modi administration erodes democratic norms and institutions inside India, threatening a cornerstone of the U.S./India alliance: the mutual commitment to a pluralistic, secular democracy.

Top principles:

- **Communications ban:** India must restore all forms of communication for the people of Kashmir, including full access to the Internet at 4G speeds.
- **Release of detainees:** India must release all journalists, political leaders, children and leaders booked illegally or under the Public Safety Act, Unlawful Activities Prevention Act, and the new anti-democratic media policy in Kashmir.
- **End attacks on the free press:** India must cease the intimidation, assault, and detention of journalists in Kashmir and across the region.
- **India & China shared complicity:** the US acknowledges that both India and China have contributed to the current crisis through irresponsible regional action and domestic repression.
- **Halt demographic flooding:** the Indian government must halt the issuance of domicile certificates to non-Kashmiris and revert to previously relevant residency paperwork as this change threatens existing UN frameworks for a political settlement in Kashmir.

- **Restore the democratic rights of the Kashmiri people:** the US and the international community must affirm that the Kashmiri people have the right to determine their own future.
- **Uphold religious freedom in Kashmir and across India:** India must directly address the downward spiral of religious freedom and skyrocketing violent attacks by Hindu nationalists against Muslims, Christians, Dalits, and other minority faith communities in Kashmir and across the region.
- **No future trade or aid without accountability:** no new trade deal should be discussed without clear accountability for the Indian government's actions in Kashmir and across the region. A free press, an independent and unbiased judicial system, a withdrawal of Indian armed forces from residential towns and villages, and a respect for human rights must be preconditions for doing business with America. Similarly, future US military assistance to the Indian government should be suspended pending a comprehensive and independent review of human rights violations in Kashmir, in accordance with the Leahy Law.

DETAILED ANALYSIS & RECOMMENDATIONS

Addressing Freedom of Press, Internet Access and Civilian Detainees

A recently announced media policy gives the government the power to declare press reports “anti-social and anti-national” and leaves journalists and editors vulnerable to prosecution and “at the mercy of government clerks and police officials.” Local media have described it as a “death knell” for the free press. A cyber crimes department has been established to monitor the online activities of Kashmiris on social media, with civilians being threatened with jail for “anti-national” posts. This new policy builds upon a number of other troubling laws under which journalists have been charged and held without trial. These laws, which include the Public Safety Act (PSA) and the Unlawful Activities Prevention Act's terrorism statutes (UAPA), have been heavily criticized by human rights organizations. In this climate, art has also come under increased scrutiny.

Another aspect of the war on free expression is the curtailment of internet access in Jammu & Kashmir. The Indian Supreme Court first in January and then in May affirmed the right of Kashmiris to unfettered internet service subject to review by an appointed committee. However, the committee was constituted of the bureaucrats responsible for the imposition of throttled internet access itself. Predictably, despite the Supreme Court ruling, the overwhelming majority of Kashmiris have had no or heavily throttled internet access since August 2019. With businesses devastated and an entire school year lost for all children and college students, the COVID-19 lockdown has exacerbated an already difficult situation for Kashmiris. Kashmiri physicians have complained the internet curtailment has prevented them from accessing the latest international COVID-19 protocols and has prevented civilians from accessing public health information, fueling the spread of the virus.

The mass arrests of Kashmiri civilians conducted during the military lockdown of August 2019 included businessmen, clergy, journalists, politicians, and children. Indian officials did not follow habeas corpus procedures, and many were imprisoned on verbal orders alone. No trials were held. It is not known how many Kashmiris were arrested and remain detained. Human rights advocates estimate the number of those arrested to be in the tens of thousands, with the government having acknowledged over five thousand. Some individuals have been released on bail with the conditional promise they will not participate in “political activity.” Many were taken to prisons in mainland India, prisons that are notoriously overcrowded and unsanitary. The unsanitary and overcrowded conditions are of particular concern as COVID-19 outbreaks have been reported in Indian prisons where Kashmiris are being held. Among the most prominent detainees are the Jammu and Kashmir Bar Association President Mian Abdul Qayoom, for whom the American Bar Association, the UN, the Law Society of England and Wales, and Amnesty International have made pleas. Other prominent detainees include the National Press Club’s 2019 John Aubuchon Press Freedom Award winner, journalist Aasif Sultan, and Kashmir’s most prominent religious cleric, Mirwaiz Umar Farooq, who is under house arrest.

More background: [Indian Express](#); [The Scroll](#); [The Wire](#); [Times of India](#); [VOA News](#); [Republic World](#); [TIME Magazine](#); [The Telegraph](#); [Amnesty International](#); [NewsClick](#); [The New Indian Express](#); [Amnesty International](#); [The Wire](#)

Recommendations:

- 1) Publicly denounce laws clearly intended to limit the exercise of free press by the Indian government.
- 2) Make military aid and expanded trade with India dependent upon: (a) the removal of the new media policy; and (b) cessation of the use of the PSA and UAPA in targeting journalists and indefinitely detaining political leaders, civilians and children.
- 3) Commit to holding public hearings with experts from media watchdog organizations like Reporters Without Borders and the Committee to Protect Journalists to keep members and the public abreast of developments related to the free press and detainees in Kashmir.
- 4) Ask that the State Department engage directly with their Indian counterparts to demand the release of journalists, politicians, children and leaders booked illegally or under the PSA, UAPA and the new Kashmir media policy, and provide a report to Congress on the status of detainees imprisoned in Kashmir.
- 5) Engage with global health organizations such as the WHO to demand India comply with international standards related to the management of COVID-19. This would include a demand that residents of J&K have access to high speed internet, not only so that economic and educational activity can resume in Kashmir, but also so that doctors and those infected with the disease can communicate and have access to public health information.

Addressing Domicile Rules Changes Creating Conditions for Population Displacement

Background: Over the past year, the Indian government has pursued a number of policies meant to disenfranchise ethnic and religious minorities. First, the Indian government revoked

article 370 of the constitution in August of last year, removing the special status of Jammu and Kashmir and upending existing international frameworks for a political solution. Later, the BJP government established a registry of citizens designed to single out Muslim residents and citizens of India including those in Indian-administered Kashmir, namely the Citizenship Amendment Act (CAA) and the National Registry of Citizens (NRC). Under these laws, stateless Kashmiris would find themselves at the risk of incarceration and detention in camps in other Indian states and forced to leave the country. On May 18th, the unelected Indian bureaucracy administering Kashmir implemented its plan to change residency requirements to allow a wider range of non-Kashmiris to rapidly qualify and receive residence status within 15 days. The previous status under which Kashmiris were considered legal residents has been effectively stripped and rendered defunct, making their rights as residents in their homeland subject to approval under this new process. All Kashmiri political parties, including those who are pro-India, have vociferously objected to this move as they believe it is intended "to redesign the Union Territory's demography while the country is battling the COVID-19 pandemic." Making ethnic Kashmiris a minority in their homeland has been a longstanding goal of Hindu nationalists and would preemptively nullify existing frameworks for an international political settlement. These unilateral actions directly contravene multiple UN resolutions, international accords, and commitments from previous Indian administrations to maintain Kashmir's special status and to observe the right to self-determination. The unelected bureaucracy has begun issuing domicile certificates, the majority of which have thus far gone to non-native Kashmiris.

More background: [Indian Express](#); [Foreign Policy](#); [Voice of America](#); [The New York Times](#)

Recommendations:

- 1) Ask the UNSC to convene an emergency meeting on issues of demography in Kashmir and ask the Indian government to reify its commitments to not alter the ethnic and religious makeup of the region.
- 2) Demand that the Indian government halt the issuance of domicile certificates and revert to previously relevant residency paperwork as this change threatens existing UN frameworks for a political settlement in Kashmir. Further, ask both India and the United Nations for the resumption of a political process that includes legitimate representatives of Kashmir as one of the negotiating parties.
- 3) Designate funding for the State Department and other relevant agencies to track demographic shifts in Jammu and Kashmir and also provide a report to Congress on these developments.
- 4) Notify the Indian government that significant and ongoing changes to the ethnic and religious makeup of Jammu and Kashmir will have implications for diplomatic, economic and military ties with the United States.

Addressing the Conflict at the India-China Border

Background: Whatever the outcome of current negotiations between India and China, India's unilateral and provocative actions over the past year have increased the chances of war breaking out in the region. In addition to violating international law, India's moves in Jammu and Kashmir upset a de facto, but always tentative, regional peace. The motivation for the

abrogation of Article 370, as with the advancing of CAA/NRC legislation despite the ongoing domestic civil upheaval that has resulted, appear to be primarily driven by the BJP government's ideological commitment to Hindu nationalism and its militant, expansionist, authoritarian, and anti-minority ultranationalism. We are now seeing on-the-ground reactions from Pakistan and China, moving to improve their position in response to ongoing and increasing Indian aggression. Given the state of relations, the history of the region, and the stakes involved, there is no reason to think the cycle of aggression will stop of its own accord or that the fallout will be limited.

More Background: [Kashmir Walla](#); [Reuters](#); [South Asia Journal](#); [The National Interest](#)

Recommendations:

- 1) While the current administration has reflexively sided with India in its border dispute with China, the Democratic party should acknowledge that both parties have contributed to the current crisis through irresponsible regional action and domestic repression.
- 2) Democratic support to India must be contingent on India living up to its democratic ideals and constitution. The Democratic Party must not back India without conditions, and should only publicly support India in the conflict once domestic oppression has been addressed.
- 3) Engage with a number of regional parties who are threatened by both Indian and Chinese provocations in the region. These parties should include Pakistan and Nepal who both have their own interests in the border dispute, and are pushed towards Beijing by the current administration's siding with India in the dispute.
- 4) Congress should also devote resources to researching links between China and India that persist despite this conflict, including the Indian use of Chinese technology banned by the United States. These include technologies used explicitly in the suppression of the domestic population, such as the Chinese surveillance Hikvision technology, which the Indian government has used to identify and arrest peaceful protestors in Kashmir.