



Armed Conflict and Imposition of UAPA in J&K: The Role of Judiciary in Maintaining Law and Order

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ABSTRACT

The Jammu and Kashmir region has since long been a focal point of conflict and terrorism which has been having a multifaceted impact on the civil liberties in Jammu and Kashmir. This paper is focussed on exploring the historical antecedents, the nature of terrorist activities, and the legal frameworks employed to address these threats. The paper delves into the socio-economic repercussions of terrorism, human rights violations, and the responses from both governmental and non-governmental entities. By analysing these dimensions, the paper is an attempt to provide a comprehensive understanding of the delicate balance between maintaining security and preserving civil liberties in a region plagued by protracted violence.

Jammu and Kashmir region, located in the northern part of the Indian subcontinent, has been embroiled in conflict since the Partition of India and Pakistan in 1947. The historical backdrop of the region, characterized by territorial disputes and political strife, has significantly influenced its present condition. Terrorism, a critical component of this conflict, has had profound implications for the civil liberties of the residents of the Jammu and Kashmir region. The persistent insurgency and cross-border terrorism have necessitated stringent security measures, which, while aimed at curbing violence, have often led to severe restrictions on individual freedoms.

Key words: Civil liberties, terrorism, violence, human rights violations, security, international borders

Introduction

The Union Territory of Jammu and Kashmir, popularly known as J&K encompasses two distinct regions, namely Jammu region, the Kashmir Valley region, and the Union Territory of Ladakh (earlier a part of State of Jammu and Kashmir) covers Ladakh region. The Kashmir Valley is known the world over for its picturesque landscapes, including beautiful verdant Sonamarg and Gulmarg tracts as well as the famous Shalimar and Nishat gardens and the Dal Lake besides various other landmarks of tourist and local interest. It is a prominent tourism hub because of its pristine natural beauty and vast range of handicrafts ranging from lacquer work to exquisite embroideries on rare pashmina shawls and dresses and delicately woven silk and wool carpets. It has been the seat of learning and Buddhist literature since earliest times. Kashmir, currently has a pre-dominantly Muslim population.

Jammu, located to the South of the Kashmir valley, is characterized by its hilly terrain and is the commercial hub of the region. Being a religious centre of the Hindus it is the first step to the holy pilgrimage to Mata Vaishno Devi and has thousands of devotees thronging to it during the year, from all over the country and abroad. Jammu, currently, has a mixed population of Hindus and Muslims.

Ladakh, apart from these two regions, is situated in the North-East, it is a high-altitude desert region with a predominantly Buddhist population. The region's topography is framed by the Himalayan range making it an

internationally strategic and ecologically sensitive area. The major rivers, namely, Indus, Jhelum, Chenab, and Ravi flow from these ranges through the J & K region.

The Partition of 1947, which the British engineered to separate India and Pakistan, is the original cause of the Jammu and Kashmir conflict. The princely state of Jammu and Kashmir has a Muslim majority and a Hindu ruler; as a result, the region became contentious. When India gained control of Jammu and Kashmir, it sparked the first Indo-Pakistani war and drew a boundary line that is now known as the Line of Control (LoC). Conflicts and insurgencies in the region have their roots in this first confrontation.

Using a historical lens, this article investigates how terrorism has affected human freedoms in Jammu and Kashmir. Considerations such as these would encompass the dynamics between terrorism's characteristics, existing policy and legal frameworks, the crisis's socioeconomic impacts, human rights concerns, and reaction times. If we want to find a way to combine security concerns with protecting fundamental rights, we need to understand these issues. Jammu and Kashmir's complex political and historical past is the source of the region's terrorism.

Unresolved territorial disputes between Pakistan and India remained in the princely state of Jammu and Kashmir after the Partition of British India in 1947. Military skirmishes and political intrigue characterised the first confrontation, which paved the way for subsequent bloodshed. The 1980s saw a change in the character of the violence, from territorial disputes to insurgency stemming from local grievances. Jammu and Kashmir was ruled by Maharaja Hari Singh as a princely state when India gained its independence and partitioned in 1947.

With the assurance of independence and special status guaranteed by Article 370 of the Indian Constitution, the State's admission to India took place under exceptional conditions. By virtue of its unique status, Jammu and Kashmir enjoyed broad political freedom, with the exception of key domains including as defence, communications, and international relations. The Kashmir valley's demands for self-determination and greater political autonomy, as well as the protracted unresolved territorial dispute with Pakistan, which maintains its claim over Kashmir, have accentuated the persistent tensions that have characterised the relationship between Jammu and Kashmir State and the Indian union.

Throughout the '50s and '60s, Jammu and Kashmir saw sporadic civil disturbance, fighting, and agitation about the question of autonomy. Periodic turmoil and agitation surrounding the autonomy issue characterised the political landscape of J&K throughout the 1950s and 1960s. India deposed Sheikh Abdullah, the leader at the time, in 1953 on charges that he had supported an independent Kashmir and had subsequently removed him from power. After that, the central government installed a puppet administration and gradually undermined the autonomy of Jammu and Kashmir through the Indian and state constitutions.

At first, the Union Anti-Secession Act (UAPA) of 1967 had little direct bearing on Jammu and Kashmir because it was primarily intended to handle internal security issues and separatist movements throughout India. As each new government in Jammu and Kashmir and the federal government argued over the state's desire for more independence, dissatisfaction began to take root. The National Congress (NC), Abdullah's political party, negotiated a political accord that allowed him to become the chief minister of the state. While recognising the decline of Jammu and Kashmir's autonomy, the 1974 Indira-Sheikh deal strengthened and strengthened central power. A social accord that had previously limited the power of the federal government over Jammu and Kashmir and gave the state considerable autonomy was revoked by the federal government in tandem with the state's administration. In order to incorporate Jammu and Kashmir into India, New Delhi passed 262 laws pertaining to the union and 28 constitutional decrees between 1954 and the middle of the 1970s¹.

With Sheikh Abdullah's release and return from years of house confinement, politically conscious Kashmiris enjoyed renewed optimism in the mid-1970s, providing a little reprieve. It is safe to say that Abdullah returned to Kashmir victorious. In 1977, during one of the few transparent and properly contested elections in Kashmir, he assumed the roles of chief minister and National Conference leader, guiding his party to a comfortable majority in the following election. Unfortunately, Sheikh Abdullah's death in September 1982 meant that the relief would not last.

Rise of Insurgency in 1980s

In the Kashmir Valley, a large-scale insurgency began in the late 1980s. In the 1983 state assembly, the National Conference was victorious again under Farooq Abdullah's leadership. But in July 1984, Gandhi deposed Farooq Abdullah on thin grounds and appointed G.M. Shah, a National Conference dissatisfied member, to his position, with the aim of installing a Congress government in Kashmir. The reign of Shah was short and turbulent. Many in the politically conscious younger generation of Kashmiris were deeply hurt by Abdullah's

¹Surinder Mohan, "Democracy in Jammu and Kashmir 1947–2008" 16(3) World Affairs: The Journal of International Issues 100 (2012).

abrupt dismissal. Shah was seen as a pawn of the federal government and had little popularity within the state. Strikes, rallies, and bombings were among the political turbulence that rocked the state in the two years that followed. He was removed from office in 1986 due to his inability to control the situation in Kashmir. In November 1986, Farooq Abdullah and Prime Minister Rajiv Gandhi negotiated an agreement that reinstated Abdullah to the position of chief minister.²

During this time, the conflict shifted drastically from being characterised by political and territorial issues to being led by an ideologically motivated insurgency, which was more violent. Local grievances, political dissatisfaction, and outside pressures all contributed to an unstable climate that was ideal for rebellion, and this is where the insurgency began.

Public indignation and distrust in government were further exacerbated by the widely believed rigging of the 1987 Jammu and Kashmir Legislative Assembly elections. As a result of this betrayal, many people started to see militancy as a valid way to resolve their complaints, which gave insurgent groups a foothold. Insurgency in Jammu and Kashmir rose in large part due to the geopolitical realities of the 1980s. The area was profoundly affected by the 1979 Soviet invasion of Afghanistan and the ensuing Soviet-Afghan War. Indirectly impacting the insurgency in Kashmir, the conflict drew Islamist fighters and weapons flows from throughout the world. Pakistan started giving money and weapons to terrorist organisations because it wanted to take advantage of the unrest in the region. With the help of financial backing, weapons, and training, the insurgency was able to grow from a small-scale rebellion into a powerful and organised movement.

In the 1987 State elections, the then Prime Minister, Rajiv Gandhi and Farooq established an agreement to form a coalition government contingent upon their victory. The convergence of ideologically opposing parties, NC and Congress compelled adversaries to unite resolutely under the Muslim United Fronted (MUF) and oppose them in the upcoming elections. Nevertheless, upon witnessing the substantial backing for the MUF among the populace, the NC-Congress coalition reverted to traditional electoral manipulation³. This triggered massive dissatisfaction in the Kashmiri population. The elections are seen as a turning point which led to an unprecedented shift in the Kashmir issue, leading the region into perpetual unrest and human rights violations. In the wake of the "electoral looting," riots erupted in Kashmir in opposition to the Farooq–Rajiv plot. Following a loss of faith in the "doomed democracy," MUF members resigned from the legislative assembly and established an extreme organization known as Hizb-ul-Mujahideen (HuM). Subsequently, same year, these incidents motivated several youth to traverse "the permeable Indo-Pak border" and a significant proportion of the Kashmiri youth began taking up arms affiliate with "extremist organizations" leading to the emergence of militant organizations such as the Jammu and Kashmir Liberation Front (JKLF) and radical Islamist groups like Hizbul Mujahideen.⁴

There was a significant strain on Jammu and Kashmiri society due to the insurgency's emergence in the 1980s. Because so many people had to leave their homes because of the violence, the conflict caused a large-scale displacement. Businesses, schools, and healthcare facilities were among the many institutions that saw their regular operations interrupted. As a result of widespread anxiety and unease, tensions between rebels and the government deepened, leading to a vicious cycle of violence.

Accordingly, local dissatisfaction, governmental manipulation, and outside influences all played a role in the 1980s insurgency's ascent in Jammu & Kashmir. There were far-reaching effects on the security and stability of the region during this time due to the rise of militant groups and the sharp increase in violence. To grasp the intractable nature of the Jammu and Kashmir issue and the obstacles to finding a peaceful conclusion, one must be familiar with the dynamics of this era.

Historical Perspective on J&K Conflict Situation from the 1990s to the Present

As the situation of cross-border terrorism from Pakistan gradually escalated over the years, the Indian State responded with stringent counter-terrorism laws. These entailed the subsequent deployment of the PSA, UAPA and AFSPA. The late 1980s saw the situation in Jammu and Kashmir worsening due to the rise of insurgency which was consistently fuelled by local grievances and strong incendiary support from Pakistan. A violent campaign was promoted against the Indian authorities. This state of affairs altered the socio-political landscape of the region significantly.

The 2004 amendments to the Unlawful Activities (Prevention) Act (UAPA), introduced after the repeal of the Prevention of Terrorism Act (POTA), significantly broadened the scope of the legislation by explicitly defining terrorist activity as a punishable offense. This change brought Jammu and Kashmir fully under the UAPA's jurisdiction, greatly enhancing the government's powers to arrest, detain, and prosecute individuals suspected

² Sumit Ganguly, "Explaining the Kashmir Insurgency: Political Mobilization and Institutional Decay" 21(2) *International Security* 104 (1996).

³*Id.* at 105.

⁴ Surinder Mohan, "Democracy in Jammu and Kashmir 1947–2008" 16(3) *World Affairs: The Journal of International Issues* 108 (2012).

of involvement in terrorism or related activities. The definition of “unlawful activities” was expanded to encompass not only direct acts of violence but also any form of expression- speech, writing, or activity perceived as anti-national or secessionist. This broader interpretation has had profound implications in J&K, where political dissent is often equated with support for militancy, leading to widespread concerns about the suppression of free expression and the targeting of political activists.

The insurgency in Kashmir reached its peak in the 1990s, characterised by intense bloodshed, terrorist attacks across international borders, and the gross violation of human rights by both the militants and the security forces of the state. In the late 1980s, when militancy in Jammu and Kashmir (J&K) began to develop, the Indian government responded quickly and aggressively by bolstering its military presence. Disillusionment with what many saw as the manipulation of the 1987 state elections and growing international backing for terrorist organisations contributed to the insurgency's meteoric rise by the early 1990s. In response to the insurgency, the government wasted no time sending tens of thousands of extra security forces, notably the Indian Army, the Central Reserve Police Force (CRPF), and the Border Security Force (BSF), to quell the rebellion. A watershed moment in the social and political history of Jammu and Kashmir was this region's near-militarization. The climate was like being under siege due to the large number of security forces, who frequently conducted cordon-and-search operations in residential areas and instituted curfews and checkpoints. Human rights organisations have shown that this securitised strategy, which sought to reduce militancy, actually resulted in numerous abuses of human rights. Even though it meant sacrificing civil freedoms, the union administration saw preserving territorial integrity and preventing the growth of separatism as crucial.

The UAPA's application targeted individuals and groups suspected of involvement in insurgent activities, secessionist movements, and cross-border terrorism. Several organizations, including political outfits advocating for Kashmiri independence or greater autonomy, were declared “unlawful” under the UAPA. This period witnessed a massive crackdown on political dissent in the name of national security, with UAPA used as a legal instrument to justify arrests, raids, and detentions. The UAPA, allowed the central government to declare organizations as “unlawful” and prevent individuals from participating in “unlawful activities,” began to be applied more frequently in J&K, especially as political groups and militant organizations began being accused of advocating secessionism and anti-national activities. The sweeping powers of UAPA, combined with TADA, PSA and AFSPA, allegedly led to widespread allegations of human rights abuses, including arbitrary arrests, torture, and extrajudicial killings. The State's legal response to insurgency was seen by many as contributing to the alienation of Kashmiris, particularly the youth.

Role and sustained support of Pakistan in fostering insurgency

From the very beginning, Pakistan has contested India's sovereignty over Jammu and Kashmir, claiming the region as disputed and asserting its own right to its territory. The initial military interventions by Pakistan in the early years following partition laid the groundwork for a contentious relationship. The conflict over Kashmir was institutionalized in the two countries' national narratives, with Pakistan viewing the issue as a central element of its foreign policy and national identity. This perspective laid the foundation for Pakistan's subsequent involvement in supporting insurgency within the region. The 1980s saw a significant escalation in the insurgency in Jammu and Kashmir, coinciding with Pakistan's strategic shift towards supporting militant groups operating in the region. The Soviet invasion of Afghanistan in 1979 created a geopolitical context that Pakistan leveraged to its advantage. By fostering jihadist sentiment and supporting groups fighting the Soviet forces, Pakistan established connections with various Islamist and militant organizations. This environment of jihadist fervour and arms proliferation naturally extended into Kashmir, where Pakistan saw an opportunity to challenge Indian control over the region.

Pakistan's involvement was not solely driven by a desire to support a separatist cause but was also motivated by broader strategic interests. By supporting insurgency in Jammu and Kashmir, Pakistan aimed to keep India engaged in a prolonged conflict, thereby weakening its regional influence and diverting its resources. This strategy was part of a broader approach to counterbalance India's dominance in South Asia. Additionally, fostering insurgency served to rally domestic support and create a sense of national unity within Pakistan by portraying itself as a champion of the Kashmiri cause.

The support provided by Pakistan also had significant implications for the nature and dynamics of the insurgency. The influx of foreign militants and the introduction of more radical and extreme ideologies into the region altered the character of the conflict. While the early stages of the insurgency were driven by local grievances and demands for political autonomy, the increased involvement of global jihadist groups introduced a new dimension of religious extremism and violence. This transformation made the insurgency more challenging to address and contributed to the cycle of violence and retaliation.

The international community has often criticized Pakistan for its role in fostering insurgency in Jammu and Kashmir. Despite numerous calls for curbing support to militant groups, Pakistan has frequently denied direct involvement or claimed that its actions are in response to Indian aggression. The complexities of the conflict and the strategic interests at play have made it difficult to achieve a resolution, and Pakistan's actions have often been a point of contention in diplomatic discussions and peace negotiations.

Thus, Pakistan's role in fostering insurgency in Jammu and Kashmir has been a pivotal factor in the evolution and persistence of the conflict. Understanding this role is essential for comprehending the complexities of the Jammu and Kashmir conflict and the challenges involved in seeking a peaceful resolution.

Post- 2000 Legal Framework to Address Terrorism

The Kargil War in 1999, a conflict between India and Pakistan along the Line of Control (LoC) in Kashmir, underscored the ongoing threat of cross-border terrorism and infiltration. In this context, the Prevention of Terrorism Act (POTA) was introduced in 2002, following the 2001 Indian Parliament attack. POTA was aimed at providing more stringent measures to combat terrorism, and yet its controversial provisions, including allowing confessions made to police officers as evidence, led to widespread abuse and misuse. In 2004, POTA was repealed following significant public outcry, but its core provisions were incorporated into the UAPA through a series of amendments. This made UAPA the primary anti-terrorism law in India, with a broader mandate and more draconian measures. For J&K, this marked a new phase in the application of UAPA. The 2004 amendment brought terrorism within the purview of the Act which originally only addressed unlawful activity.

The 2008 Mumbai attacks perpetrated by Pakistan-based terrorist group Lashkar-e-Taiba, marked a turning point in India's counter-terrorism strategy. In response to the attacks, the Indian government established the National Investigation Agency (NIA), a specialized and premier counter-terrorism agency, and strengthened UAPA to empower the NIA to investigate terrorism cases across India, including the J&K. The law was expanded to cover not only acts of terrorism but also preparatory actions, such as organizing training camps and raising funds for terrorist activities. In J&K, the 2008 amendments to UAPA led to a heightened focus on curbing cross-border terrorism, particularly targeting Pakistan-based militant groups and their local sympathisers and support structures in Kashmir. The NIA played a crucial role in investigating cases of terror financing, particularly targeting separatist leaders and organizations accused of receiving funds from Pakistan. These measures had significant political implications. The arrest of separatist leaders under UAPA strained the fragile relationship between the central government and the Kashmiri population.

Post Revocation of Article 370

Jammu and Kashmir and Ladakh are now two distinct Union Territories as a result of the abrogation of Article 370 by the Indian government in August 2019. A watershed moment in Jammu and Kashmir's recent history occurred with the repeal of Article 370, which provided the region considerable autonomy, including the authority to write its own constitution and pass its own laws. Jammu & Kashmir and Ladakh were created as Union Territories with the abrogation. Many people were against this move and voiced their disapproval, both in India and around the world. Curfews, communication blackouts, and heightened security measures were all results of the abrogation's escalating crisis. There was a new crackdown on freedom of speech and movement in the area, and several people were arrested. The region's unique autonomous status came to an end in August 2019 with the revocation of Article 370. In an effort to achieve political and economic stability, the Indian government decided to repeal Article 370, which was ostensibly meant to further integrate J&K into India.

The decision was accompanied by communication blackouts and, a massive security crackdown including the detention of hundreds of political leaders, activists, and civilians, many of whom were arrested under UAPA because the abrogation of Article 370 led incited widespread protests across the Kashmir Valley. The Indian government managed to curb massive uprisings and retaliated by using stringent legal provisions of the UAPA and PSA to detain protestors and political leaders. The law's provisions were used to charge individuals for engaging in activities deemed to be anti-national or promoting secession.

The broad definitions of "unlawful activities" and "terrorism" under UAPA were used to arrest individuals involved in protests, whether or not they were directly or indirectly involved in acts of violence.⁵ Political leaders from parties like the People's Democratic Party (PDP) and the National Conference (NC), who traditionally advocated for greater autonomy for J&K, were targeted under UAPA for their opposition to the abrogation of Article 370. Separatist leaders and activists, associated with the Hurriyat Conference, faced arrests and detentions under PSA & UAPA for their alleged involvement in organizing protests and inciting unrest.⁶

Conclusion

The impact on Civil Liberties has no doubt been severely felt and has been covered widely by the national and the international press. The imposition of stringent security laws has led to restrictions on basic freedoms such as speech, assembly, and privacy. Censorship, surveillance, and arbitrary arrests have become common, affecting both the general public and political activists. The legal system's integrity has also been challenged by

⁵Samir Ahmad and Yelena Biberman, "Young Kashmiris Think India and Pakistan Can Resolve Their Differences Over Kashmir," *Washington Post*, Mar. 04, 2020.

⁶ International Crisis Group, "Raising the Stakes in Jammu and Kashmir" 10 (2020).

these measures. Internationally there is widespread concern for the Human Rights violations which are supposedly being perpetuated in the Kashmir region.

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