

SUBMISSION TO THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS ON FULL ENJOYMENT OF HUMAN RIGHTS BY WOMEN AND GIRLS IN HUMANITARIAN SITUATIONS

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Zanaan Wanaan (ZW) is an independent feminist collective based in Srinagar, Kashmir. Zanaan Wanaan are Kashmiri words for 'women speak'. ZW engages in feminist activism on the ground, produces independent scholarship, and works towards strengthening the women's movement in Kashmir. Our advocacy work is focused on bringing international attention to women's human rights and the crisis in Kashmir. ZW's action-research based approach is rooted in the commitment to upholding principles of peace, equality, and justice.

A. Executive Summary

1. This submission deals with the violations of women's rights in Indian-administered Kashmir due to ongoing conflict and humanitarian crises exacerbated by heavy militarisation and lockdowns.
2. The ongoing conflict and humanitarian crisis in Kashmir has had a deleterious impact on every aspect of the lives of women and girls in Kashmir. This has been worsened by Indian government's decision to revoke Kashmir's semi-autonomous status, marked by increased troop presence, and months of restrictions on mobility and communications. In this submission, the impact of the humanitarian crisis on health, gender-based violence, education and livelihood has been highlighted.
3. A culture of blatant impunity, violent suppression of dissent and an infrastructure weakened by years of crisis and militarisation has made access to justice for women and girls very difficult.
4. Repeated attacks on human rights defenders' freedom of speech has made the situation more precarious, as it is becoming increasingly difficult to draw attention to violation of human rights of women and girls and ensure continued working of women's rights organisations.

B. Context of humanitarian crisis in Indian-Administered Jammu & Kashmir

5. The crisis in Jammu & Kashmir can be traced back to an ongoing territorial war over Kashmir between India and Pakistan since 1947. While, the UN had recommended a plebiscite to determine the future of the territory², no such plebiscite has been held and India gradually increased the deployment of troops in Indian Administered Kashmir, particularly during the 1990s, in an attempt to crush the armed rebellion. At present, Kashmir is the most densely militarised zone in the world with some estimates suggesting a civilian to military ratio of 30:1³.
6. As a result, the region is facing one of the biggest humanitarian crises in the world. In addition to subjecting the entire civilian population to cycles of militarised curfews, severe restrictions on mobility, a maze of checkpoints, and frequent internet and communication shutdowns, the Indian armed forces have carried out numerous human rights violations⁴, including, but not limited to, extra judicial killings, sexual violence, use of lethal crowd control weapons like pellet-firing shotguns, etc. On 5th Aug 2019, India abrogated the Article 370 and 35A of its constitution⁵; ending the semi-autonomous status of the region and bringing the territory under the direct rule of the centre in New Delhi disregarding the wishes of people of Kashmir and usurping power. Subsequently, the government imposed an indefinite curfew and communication blackout in the region. This internet blockade was the longest internet shut down in the world⁶ with human rights defenders calling it a 'digital apartheid'⁷. This lockdown was followed by the nation-wide pandemic lockdown in March 2020, placing Kashmir under double lockdowns. These prolonged militarised lockdowns and curfews have left the people in a brutally precarious state- economically, socially, and mentally. This has been more so the case with women and girls who continue to be disproportionately affected by the different forms of violence prevalent in Kashmir.

C. Impact on gender-based violence, access to healthcare and information, education, and livelihood

C.1. Gender-based violence:

7. The cascading effect of prolonged conflict and militarisation on domestic violence in terms of significantly increasing instances of domestic violence, normalising violence, reducing decision making and bargaining power and constricting access to support services has been established across different regions⁸. The link between increase in domestic violence and armed conflict in the case of Kashmir is also well established.⁹ The erstwhile State Commission for Women had noted that cases of domestic violence and other forms of violence against women increased tenfold to more than 3,000 a year during 2016 and 2017, a period marked by increased unrest and clampdown.¹⁰ The recent National Family Health Survey conducted by the Union Ministry of Health noted that 9.6% of women in the age group 18-49 experienced domestic violence in 2019-20, with domestic violence being more widespread among rural women.¹¹ Repeated lockdowns and internet shutdowns further increase the vulnerability of women, as they are unable to leave abusive situations or seek support.
8. Instances of conflict-related sexual violence also abound in Kashmir. The Special Rapporteur on violence against women, its causes and consequences, in her 2013 report had noted that, “[W]omen living in militarized regions, such as Jammu and Kashmir and the north-eastern states, live in a constant state of siege and surveillance, whether in their homes or in public. Information received through both written and oral testimonies highlighted the use of mass rape, allegedly by members of the State security forces, as well as acts of enforced disappearance, killings and acts of torture and ill-treatment, which were used to intimidate and to counteract political opposition and insurgency.”¹² In instances from just 2021, three army personnel were found involved in the abduction and molestation of a nine-year-old girl in North Kashmir’s Bandipora district.¹³ In April 2021, four persons, including a policeman and a retired army man, were apprehended for raping and impregnating a minor girl in South Kashmir’s Kulgam district.¹⁴ These are not isolated incidents but are a part of a larger structure of impunity and gendered violence perpetrated by the Indian state forces in the region. Many such incidents often go unnoticed or are unreported due to fear of reprisal and/or the stigma associated with sexual violence. The chronic impunity for sexual violence has been noted by many international human rights groups.¹⁵
9. Post the abrogation of Article 370 in Kashmir, social media and digital spaces were replete with increased objectification, exoticism and sexualization of Kashmiri women. Even members of the ruling party made misogynist remarks against the women in the region noting that the abrogation will make it easier to marry “white-skinned” Kashmiri women.¹⁶ The online spaces became increasingly hostile for Kashmiri women as there was a surge in the online posts by men expressing a desire to marry the women after the removal of Kashmir’s special status.¹⁷
10. Women have also been killed in encounters between state and non-state armed forces¹⁸ as well as in cross-border firing between India and Pakistan.¹⁹ In these incidents of extra-judicial, arbitrary killings of civilians, there is no accountability for the excessive use of force or the failure to safeguard the right to life of civilians as required by international humanitarian standards.

C.2. Healthcare

11. Years of conflict, militarisation and humanitarian crisis has left a deep impact on the health care system²⁰ which is largely under-funded, lacking in infrastructure and staffing and is highly inaccessible. For instance, the doctor-to-patient ratio in the region is one doctor for 3866 persons as against the WHO recommended ratio of 1 doctor per 1000 persons.²¹ Furthermore, alarmingly, there is just one tertiary maternal health care hospital for the entire region, which is located in the capital city of Srinagar. With district hospitals severely lacking in advanced health care facilities, referrals are made to this one hospital, forcing people to travel long distances under heavy restrictions on

mobility. The severe clampdown enacted post August 5 and militarised lockdowns enforced to handle Covid-19 has only deepened the health crisis further.

12. Both local and international medical bodies have noted the severe impact on health care caused by the lockdown and communication blackout that accompanied the Indian government's decision to revoke Kashmir's semi-autonomous status. Heavy barricading, presence of armed personnel, and complete restriction on mobility made it difficult for women and girls to access critical health care. Doctors also reported facing shortages of medicines, patients not being able to travel to access routine care, difficulty in accessing ambulance services and staff finding it difficult to reach work.²²
13. Years of being subjected to conflict and protracted exposure to violence has also had a deep impact on the mental health of women and girls in Kashmir. A study by Médecins Sans Frontières and the Srinagar-based Institute of Mental Health and Neurosciences (IMHANS), indicated that 50 percent of women suffered from probable depression; 36 percent of women had a probable anxiety disorder; and 22 percent of women suffer from post-traumatic stress disorder (PTSD).²³ Yet, access to care remains difficult.²⁴ The military clampdowns have only added to the mental distress that is already rampant and made it even more difficult to access mental health services.²⁵
14. The right to sexual and reproductive health, an integral part of right to health²⁶, has also been drastically impacted with paediatrics and maternal health being one of the hardest hit by repeated lockdown measures. Pregnant women in Kashmir have reported instances of ambulances being stopped, searched, and even attacked by security forces.²⁷ In one instance a pregnant women reported being stopped at security check point en route to her delivery and was prevented from proceeding further.²⁸ She was turned away at different check points and forced to walk over 6 km on foot to reach the hospital for her delivery. Road closures have also forced people to seek reproductive medical care at district hospitals, which are often not equipped to provide the care needed by women. Menstrual health has also been significantly impacted with forced closure of shops making it difficult for women to buy sanitary products, exposing them to the risk of contracting infections and cervical cancer.²⁹ Rising levels of mental health issues such as anxiety, stress and depression have also detrimentally affected women's reproductive health in Kashmir.³⁰
15. Not only are there physical barriers and restrictions on mobility that have made access to health care more difficult, communication blockade and repeated deployment of internet shutdowns has further circumscribed access to health care. Post the communication blockade imposed after August 5, patients were unable to reach doctors, hospitals or even ambulances or receive follow-up care. Women have reported instances where even with a complicated pregnancy they were forced to walk for miles since they could not call for an ambulance and as a result lost the baby.³¹ Hospitals have also reported instances where they ran out of medicine and equipment, but could not place orders due to the communication blockade.³² The restrictions on internet speed and disruptions in access that are common place in Kashmir have been particularly debilitating in managing Covid-19 crisis, which has made it difficult for doctors to properly treat patients as they are unable to access updated information and guidelines that are regularly shared online.³³

C.3. Education

16. The education sector has suffered immensely on account of ongoing conflict and humanitarian crisis. Schools and colleges often remain shut for months when popular uprising in the valley reaches a peak. For instance, in 2016, only four months of schooling took place and only 50% of the intended curriculum was covered, with students being left to cover the rest of the curriculum on their own.³⁴ A survey by Chinara International found that over 60% of the respondents across 10 districts of Kashmir said that their education was impacted the most due to restrictions by security forces (including curfews).³⁵ The report also found that continued violence across the region has left many schools in dilapidated condition, lacking in basic facilities such as sanitation

facilities, water and boundary walls, which has severe repercussions on sexual and reproductive health rights of girls.

17. The shutdown implemented after August 5 and the communication blockade has only worsened the situation. Schools remained shut for months and even when they opened there was hesitancy among parents in sending the children to school, due to ongoing unrest and arrests by the state. The communication blockade and lowering of internet speed for almost a year made access to even online education a huge challenge, further compromising on the right to education.
18. Girls have been particularly impacted by this ongoing crisis. A study in 2013 found that 79% schools were at a distance of less than 1km from the nearest military camp/bunker, some shared common walls with camps, and some were even partially occupied by the military or para-military troops.³⁶ As a result, many times parents are hesitant in sending their daughters to school as there are risks of injuries from shelling. Close proximity to army camps and military personnel also raise fears of increased sexual harassment, abuse and other forms of harassment which further deter girls from going to schools. The heavy deployment of Indian armed forces and the local police in residential areas inter alia poses a serious threat to women's and girl's education in Kashmir. This is more so the case in rural areas with meagre public transportation services wherein people usually walk on foot to the town centres where schools and colleges are located. This is also indicated in the low literacy rates among women as compared to men and the high dropout rates among school-going adolescent girls³⁷. The troop deployment, which increased significantly after 5 Aug 2019³⁸, has converted the region into a maze of militarised check points, bunkers, with stretches of concertina wires, leading to heightened insecurity among women and girls to move freely³⁹.

C.4. Livelihood

19. The economic crisis in Kashmir has had devastating impacts on local and small business communities as well. This has particularly affected a lot of upcoming and young women entrepreneurs who had found a trusted market in the online space. However, post the abrogation of Article 370 and the consequent shutting down of all communication services, the space which had been nurtured by both women customers as well as sellers began to languish. The president of the Kashmir Chamber of Commerce and Industry estimated that at least 4,000 female-led internet-based businesses existed in Kashmir.⁴⁰ For many of these women these businesses were the only source of livelihood. He also estimates that at least 100,000 internet-based jobs have been lost since the lockdown of 2019.
20. While the impact of the economic crisis can be traced or studied with regards to the women within the organised sector, those in the unorganised sector are in a more precarious position. This includes loss of financial stability, susceptibility to domestic violence, food insecurity, and social exclusion. There is extensive criminalisation of daily wage laborers whose presence on the streets is made an offense and they are often arbitrarily brutalised. They are the most susceptible to violence both in terms of physical abuse from state authorities and economic exploitation as they are viewed as a dispensable class. In recent months many public transport owners, especially bus drivers, are selling their vehicles for parts because of the toll the lockdown has had on them.⁴¹
21. The transgender community in Kashmir has also been deeply impacted by both the lockdowns of August 2019 and the Covid-19 restrictions. As a group who largely earn their livelihood through community interaction- by singing and performing at weddings, their source of income has come to a standstill.⁴² As per official notices weddings have been downscaled to 25 persons during the Covid-19 lockdowns, and even post the lockdown of August 5 many weddings were cancelled, postponed, or limited to few family members. An already ostracised community, the transgender community in Kashmir fear for their safety in venturing into any other professions.

D. Barriers faced by women and girls in reporting and seeking justice

22. In a 2019 report on situation of human rights in Indian-administered Kashmir, OHCHR noted that “Indian authorities have made no attempt to address serious concerns about access to justice and impunity for human rights violations committed in Jammu and Kashmir.”⁴³ The Armed Forces (Jammu and Kashmir) Special Powers Act 1990 (AFSPA) remains in force, which ensures impunity to security forces for all human rights violation. The Indian government has repeatedly thwarted attempts to hold perpetrators accountable, by using powers under Section 7 of the Act which mandates authorisation from the Government of India to persecute security forces. Till date no sanctions for prosecution of armed forces personnel has been given.⁴⁴ Provisions such as these and the general apathy towards human rights in Kashmir, has meant that even after 30 years since at least 23-100 women were gang-raped by soldiers in Kunan and Poshpora⁴⁵, there has not been any conviction. In fact, as the OHCHR report notes, “authorities continue to thwart attempts of the survivors to get justice.” (105)
23. In addition, women face many barriers in accessing justice and support services. There is only one women’s police station in the entire valley and the male police personnel do not receive any gender-transformative training on how to handle complaints. Most women fear filing reports with authorities and even when women come forward to file complaints regarding domestic violence, seldom do officers take any action.⁴⁶ There are also issues of shortages of forensic labs, fast-track courts, well-trained investigators, improper handling of forensic evidence, and delay in filing of charge-sheet, which further delay access to justice.⁴⁷ Despite repeated commitments, there is still no shelter homes for women facing domestic violence, which acts as a deterrent in filing complaints as survivors would have no place to seek refuge after having initiated legal proceedings.
24. These barriers are further heightened by imposition of repeated lockdowns and communication blockades. For instance, restriction on internet and phone services imposed from August 2019, limited communication between lawyers and their clients and impacted the functioning of the High Court.⁴⁸ In most cases, hearings had to be deferred as both clients and their counsels were unable to attend proceedings on account of restrictions on mobility and communication services. As a result, many women who rely on monthly spousal and child support payments as well as those facing domestic violence and other forms of gender based violence suffered immensely.
25. Adding to the existing woes, in August 2019, the Jammu and Kashmir State Commission for Women was disbanded as part of the Indian government’s decision to abrogate Article 370 of the Indian Constitution. The Commission performed many important functions including taking suo-moto cognizance of violation of women’s rights, investigating into reports of abuse and taking measures to prevent violence against women. However, now with the Commission being abolished, women no longer have a dedicated avenue to report abuse and seek support. No efforts have been made to establish another Commission for Women in its place.

E. Challenges faced by the organization in promoting, protecting, and respecting women’s and girls’ full enjoyment of human rights in humanitarian situations

26. Civil society and human rights groups face many challenges such as surveillance, crackdowns, and heavy red tape in monitoring violations, which affects their ability to advocate with the Indian government to conduct inquiries and hold the perpetrators of human rights violations accountable⁴⁹.
27. On 28 Oct 2020, the National Investigation Agency (NIA) raided the offices of the Association of Persons of Disappeared Persons (APDP) and Jammu & Kashmir Coalition of Civil Society (JKCCS) and several other activist and NGO groups in Srinagar under the pretext of probing a ‘terror funding’ case⁵⁰, a move which has been seen as a form of ‘crackdown’ on humanitarian defenders in the region. APDP, a women led organisation, has been critical in mobilising support and drawing attention towards the crisis of enforced disappearance in Kashmir and how this has disproportionately affected the wives of disappeared men (referred to as ‘half-widows’). Raids and crackdowns on such groups also acts as a deterrent for other women’s rights groups looking to do human rights work in the region.

28. In addition, a major challenge for Kashmiri women's groups, collectives and organisations looking to engage with international networks and mechanisms is the institutional exclusion in the form of bureaucratic hurdles and red tape. The amendments in the Foreign Contribution Regulation Act (FCRA) registration in 2020 has made it nearly impossible for small NGOs to acquire foreign funding⁵¹. This has had a severe impact on the organisations in Kashmir that are already struggling to sustain and carry out the day-to-day operations under extremely hostile environments.
29. With regards to the UNSCR 1325 on women, peace, and security, it is impossible for Kashmiri women to engage with the resolution as the Indian government denies the existence of armed conflict as also the application of humanitarian law⁵², despite all major human rights bodies (including the UN) opining to the contrary India has rejected UN reports on human rights violation in India-administered Kashmir, has kept requests for visits by Special Rapporteurs pending for years, and has blatantly denied that human rights violations are happening in Kashmir⁵³. India is also taken no steps to develop a National Action Plan under UNSCR 1325 and similar resolutions with active civil society involvement particularly women from conflict zones.⁵⁴ This has serious consequences for Kashmiri women activists who face institutional exclusion from these mechanisms and processes.

¹ <https://zanaanwanaan.com/>

² Resolution 47 (1948) / [adopted by the Security Council at its 286th meeting], of 21 April 1948. S/RES/47(1948)

³ Armed Conflict Survey, 2020. Available at <https://www.tandfonline.com/toc/tarm20/current> Last accessed 09/07/21

⁴ See: Office of the United Nations High Commissioner. 2019. *Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019*. OHCHR.

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⁶ See: Access Now (2021). Available at: https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data-Mar-2021_3.pdf

⁷ See: JKCCS, (2020), *Kashmir's Internet Siege - an ongoing assault on digital rights*, Available at <https://jkccs.net/report-kashmir-internet-siege/>

⁸ See for instance: Links between civil conflict and domestic violence in: Colombia- <https://www.econstor.eu/handle/10419/90560>; Peru: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2851158; and in Rwanda- <https://www.sciencedirect.com/science/article/abs/pii/S0304387816300591>.

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¹¹ Bhat, B. (2021) *With No Women's Commission, Domestic Violence Continues Unabated in J&K*. Available at: <https://thewire.in/women/with-no-womens-commission-domestic-violence-continues-unabated-in-jk>

¹² Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Addendum: Mission to India (A/HRC/26/38/Add.1) (¶ 23)

¹³ Naqash. R. (2021) Three army personnel booked for kidnapping of 9-yr-old girl in Kashmir. Available at: <https://thekashmirwalla.com/2021/02/three-army-personnel-booked-for-kidnapping-of-minor-girl-in-north-kashmir/>

¹⁴ Gul. K. (2021) Minor Girl's Rape | Policeman, retired Army man, 2 others arrested: Police. Available at: <https://www.greaterkashmir.com/news/kashmir/minor-girls-rape-policeman-retired-army-man-2-others-arrested-police/>

¹⁵ *Rape in Kashmir* (1993). Asia Watch and Physicians for Human Rights. Available at: <https://www.hrw.org/sites/default/files/reports/INDIA935.PDF>

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¹⁷ Siddiqui. Z. (2019) *Indian men who see new policy as chance to marry Kashmiri women accused of chauvinism*. <https://www.reuters.com/article/us-india-kashmir-women-idUSKCN1UY104>

¹⁸ Mir. S. (2020) Srinagar Encounter: Family of Killed Civilian Question Police Account, Homeowner Alleges Ransacking Available at: <https://thewire.in/rights/srinagar-batmaloo-encounter-civilian-killed-jammu-and-kashmir>

¹⁹ On July 8, 2020, a 60-year-old woman was killed and another was critically injured in cross-border firing in Poonch district of Jammu and Kashmir. (<https://scroll.in/latest/966833/jammu-and-kashmir-60-year-old-woman-killed-in-alleged-cross-border-firing-in-poonch-district>) As per reports on March 1, 2021, a 30-year-old woman was killed in Mendhar area of Poonch as armed forces of both India and Pakistan continued firing and heavy arms shelling along the Line of Control (LoC) in Jammu and Kashmir (<https://economictimes.indiatimes.com/news/defence/heavy-pakistan-firing-along-loc-woman-killed-several-injured-hundreds-shift/articleshow/68212057.cms?from=mdr>)

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- ⁴⁹ See for instance: CIVICUS (2020), *Civil society facing reprisals for engagement in UN human rights mechanisms* Available at: <https://www.civicus.org/index.php/media-resources/news/united-nations/geneva/4667-civil-society-facing-reprisals-for-engagement-in-un-human-rights-mechanisms>
- ⁵⁰ Masood, B. (2020) 'Fund Diversion': *NIA raids activists, journalists in J&K, triggers outrage* Available at: <https://indianexpress.com/article/india/nia-raids-jk-journalists-activists-fund-diversion-6907904/>
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- ⁵² See for instance India's Report on the Implementation of Beijing Declaration and Platform for Action- <https://www.unwomen.org/-/media/headquarters/attachments/sections/csw/64/national-reviews/india.pdf?la=en&vs=1308> (page 61).
- ⁵³ United Nations (2019) <https://www.youtube.com/watch?v=QnAR72nhuLQ>
- ⁵⁴ Khullar, A. (2020) 'A Lukewarm Commitment: India and Gender Equality in Security Affairs' Available at: <https://thediplomat.com/2020/01/a-lukewarm-commitment-india-and-gender-equality-in-security-affairs/>