The end of the British Empire in India in August 1947 resulted in the creation of two separate states of India and Pakistan. The states were created in the midst of violence, hatred, expulsion, exodus and call for revenge. The independence of India in 1947 was marked by the partition of the subcontinent and transfer of populations on the basis of two major religions - Hinduism and Islam. The transfer of population was a desperate attempt to become citizens of societies comprised primarily of members of their own religion, millions of people embarked on one of the greatest migrations in history. The people crossed over boundaries from the states of Punjab, West Bengal and Jammu and Kashmir. The partition and consequent tribal invasion forced Maharaja of Jammu and Kashmir to accede to the Indian Union. This further added fuel to the fire as Pakistan wanted Kashmir to be part of its territory. Subsequently, Pakistan army engaged in open support to the tribesmen who were fighting with the Indian army, which came for the rescue and assistance of people of Jammu and Kashmir after the formal accession of state. In the process, thousands persons were killed, raped, looted and displaced in the state of Jammu and Kashmir also. The 1947-48 raids by Pakistan on the princely state of Jammu and Kashmir had created the situation of holocaust and further led to the emigration of population from the parts of Jammu and Kashmir which Pakistan had captured i.e. Pakistan occupied Kashmir.

India became an independent nation in the midst of one of modern history’s most savage and gruesome struggles. The partition of both Bengal and Punjab caused large-scale uprooting of Muslims, Hindus and Sikhs. In the wake of partition in 1947, the communal disturbances overshadowed everything else in India. The communal frenzy not only killed thousands of people, it also uprooted and displaced millions from their traditional homeland, their ‘desh’. Millions fled across the newly created international borders in an effort to escape communal violence, mass abductions, rape and murder. Many people (about five lakh) were massacred; approximately twelve million people

1 Amtul Hassan, Impact of Partition: Refugees in Pakistan, Manohar, New Delhi, 2006, p. 21.
3 Pia Oberoi, Exile and Belonging: Refugees and State Policy in South Asia, Oxford University Press, New Delhi, 2006, p. 11.
had to leave their homes\(^4\) and moved across the new borders between India and Pakistan.\(^5\) Partition had made their homeland hostile and they started imagining that peace and security were on the other side of the border. Thus partition and consequent displacement forced many to search for a new home away from home.\(^6\) Both Muslims and Hindus had lost homes, possessions and in many cases members of their immediate families. Almost they have to flee from their ancestral lands, unprepared for the hardships ahead. They were fleeing on account of communal disturbances such as burning of villages and homesteads, unprecedented violence, rioting, looting and arson. The government often seemed powerless in dealing with the armed mobs.

A large number of Hindu and Sikh women’s committed suicide to save themselves from brutal attacks by the Muslims. There were appalling atrocities, including the cold-blooded mass murder of men, women and children in number of villages often accompanied by mutilation by the other community.\(^7\) The two way mass migration between India and Pakistan started accompanied by great sufferings and heart rendering misery. Within a few months, fifteen million people crossed over from India into Pakistan and from Pakistan to India to seek shelter. They crossed borders without their belongings. They had left their homes and gone forth on foot, by bullock cart, by railway, by car to seek shelter and safety in the other dominion. Many families had lost parents and children on the way with little hope of recovering them.\(^8\) The partition was traumatic to those people who, having faced physical violence, humiliation and sexual assault, were compelled to leave their homeland.\(^9\)

**Partition**

Partition meant more than simply drawing a line on a map. It meant the restructuring of populations to enable the Muslims of India to have a state of their own which would include not only those who lived in the Muslim majority provinces, but also those minorities in Uttar Pradesh, Bihar, Punjab and other parts of northern India

\(^4\) Amtul Hassan, n. 1, p. 22.
\(^6\) Anasua Basu Raychaudhury, n. 2, p. 5653.
\(^7\) Amtul Hassan, n. 1, p. 25.
\(^8\) Ibid., pp. 26-27.
who wished to migrate. Similarly, the government of India accepted the notion that neither Sikhs nor most Hindus in West Pakistan would want to remain there.\textsuperscript{10}

The legacy of partition still looms over contemporary India and Pakistan. The relations between the neighbours are anchored in the understandings of 1947. Indian and Pakistan’s policies towards ethno-linguistic and regional demands in the peripheral regions, illustrate the contemporary presence of their troublesome partition legacies.\textsuperscript{11} Ethnic partitions and population transfers have three main flaws\textsuperscript{12}: first, rather than dampening violence, partitions and population transfers actually cause violence; second, they generate new conflicts, often by transforming civil conflicts into international ones; and third, partitions create rump states that are undemocratic and culturally narrow, perpetuating inter communal hatred.

The partition, the population transfers and the violence were all caused by the irresolvable security dilemmas between the Muslim and Hindu communities of India, and especially between the Muslim and Sikh communities of Punjab province, both of which were generated by the removal of the imperial power that had previously guaranteed the security of all groups. In short, independence from Britain, not partition, caused these tragedies.\textsuperscript{13} Millions were uprooted and devastated, as they crossed suddenly defined borders and bore the brunt of partition in a way that still defines their existence. The violence that shook north India was so dramatic that people were separated overnight, friends became enemies, properties were lost and people were left with no homes but those that would only exist in memory. Punjabi refugees did not come to Delhi at once or in one go. They migrated mostly in groups. They first went to other places and settled down temporarily in east Punjab or in Jammu before eventually reaching Delhi. Being the capital, Delhi was considered to be a safe option as recovery camps and rehabilitation programmes were in operation there.\textsuperscript{14} The people of undivided India, particularly of Punjab and Bengal provinces suffered a lot in the form


\textsuperscript{13} Chaim D. Kaufmann, n. 12, p. 132.

of loss of lives of family members, sexual violation of young women, loss of property and uprooting and trauma of communal violence that happened before and after the momentous event of partition.

In all the partition writings it is evident that combinations of historical, social and political factors were responsible for simultaneous division of India and creation of Pakistan. Partition here may be seen as a process which remains still alive and becomes more explicit during the times of conflicting, differing or antagonistic positions of the two nations on certain issues. Official versions of partition, history textbooks and scholarly analyses recount only its ‘high politics’: the constitutional and political negotiations between the British government, the Indian National Congress and the Muslim League. On the Indian side, partition is portrayed as an aberration in India’s heroic struggle for independence and her triumphant march to nationhood; partition is projected as the product of an act of betrayal of the national cause by so-called ‘separatist’ Muslims. On the Pakistani side, partition is seen as the necessary step towards the realisation of nationhood and a safe homeland for South Asian Muslims. The lived experience of partition and of the trauma of death, destruction, destitution, displacement and defilement has been shrouded in what some have recently called a tyranny of silence. The history of loss, suffering and uprootment, which is how the people of the subcontinent actually experienced partition, has hardly ever been aired in public in the first forty years following partition. Collective amnesia and denial appear to have been the ways in which this catastrophic experience of violence and displacement was psychologically and culturally negotiated. It is only very recently, in the context of the rise of a particularly hatred-ridden and xenophobic form of Hindu nationalism in India, and escalation of violence against religious minorities and mounting hostility towards Pakistan, that historians and literary authors in India are for the first time trying to devolve into the history and significance of partition, and to analyse the deep scars that it left on society and the long shadow it cast on politics.15

**Historical Backdrop of Events**

The Hindus and Muslims began the journey by constructing a composite self for them, abandoned the path midway and began to see each other as rivals. When the two communities developed differences each began to see itself as an exclusive nation and

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both the Hindus and Muslims emerged as ‘the other’ to each other. The process culminated in the Muslim demand for a separate homeland. This process of ‘othering the self’ led to the eventual partition of India and creation of two separate nation states, India and Pakistan.

The idea of the separate state for the Muslims in India for the first time mooted by a Kashmiri Urdu poet Mohammad Iqbal in 1930 at the Allahabad session of Muslim League. There, he, for the first time in his philosophical version intended at the founding of a Muslim state within a federation consisting of the frontier provinces of the Baluchistan, Sind and Kashmir. But Iqbal did not at all aim at the establishment of a separate sovereign state for the Muslims. He only supported the concept of a loose federation for the whole of India in which the central government could exercise only such authority which could be expressly given to it by the federating units and rejected the idea of the separate sovereign state for the Muslims. He also apprehended that the plan of a separate sovereign state for the Muslims would be disastrous for all the Britishers, the Hindu and the Muslim community. However, it was Chaudhary Rahmat Ali, a Muslim nationalist who had coined the term Pakistan in 1933 and was one of the earliest proponent of the creation of a separate Muslim homeland in South Asia i.e. Pakistan, the land of the pure, which was to consist of the Punjab, the North West Frontier Province, Kashmir, Sind and Baluchistan. In August 1933, a Muslim delegation to the Parliamentary Committee on Indian Constitutional Reforms dismissed Pakistan as chimerical and impracticable. However two major developments transformed the demand into practical politics. The first was the experience of Congress rule in the Muslim minority areas, following the introduction of provincial autonomy in 1937. The second was the impact of the Second World War. The Government of India Act, 1935 introduced a substantial measure of representative government through provincial autonomy. Law and order subjects which had previously been kept under British control in the system known as diarchy were now handed over to elected Indian representatives.

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17 Sajal Nag, n. 16, p. 4755.

In the elections held in 1937, the Muslim League achieved its best results in the Muslim minority provinces where it projected itself as the guardian of the community interests.\(^{19}\)

In the Lahore resolution 1940, the Muslim League stated “The geographically contiguous units are demarcated into regions which should be constituted with such territorial adjustments as may be necessary that the areas in which the Muslims are numerically a majority, as in North Western and Eastern zones of India, should be grouped to constitute independent states in which the unit shall be continuous and sovereign. Such arrangement became necessary because Hindus and Muslims belong to two different religious philosophies, social customs and literatures. They neither inter-marry nor inter-dine together and indeed they belong to two different civilisations which are based mainly on conflicting ideas and conceptions. Their aspects of life are different. It is quite clear that Hindus and Muslims derive their inspirations from different sources of history. They have different epics, their heroes are different and they have different episodes. Very often the hero of one nation is the foe of the other and likewise their victories and defeat overlap. To yoke together two such nations under a single state, one a numerical majority, must lead to growing discontent and final destruction of fabric that may be so built up for the government of such a state”.\(^ {20}\)

By 1940, Jinnah was convinced that nothing short of a separate Muslim state Pakistan could provide security for the Muslim community. Further Hindu-Muslim negotiations proved fruitless; and in the face of increasing Muslim unity and evident determination, on June 3, 1947 Congress, the Muslim League and Viceroy Earl Louis Mountbatten agreed to partition.\(^ {21}\) The British government announced a plan of India’s Independence which had been accepted by both the congress and the Muslim League. According to the plan, the subcontinent would have been partitioned on the very day of independence. The two dominions of India and Pakistan came into existence. The basic principle which guided the partition of the country was that all the provinces and districts where Hindus were in majority have been included in the Indian Union and all those regions where Muslims were in a majority have been put together to form

\(^{19}\) Ian Talbot and Gurharpal Singh (eds.), n. 11, p. 32.

\(^{20}\) C. Joshua Thomas (ed.), n. 16, pp. 31-32.

\(^{21}\) In 1946 elections, the Muslim League won all the Muslim seats in the central assembly. In the Punjab legislature, the Muslim League won 79 of 86 Muslim seats, while inter communal Punjab Unionist Party declined from 99 seats in 1937 to 18. Two of these immediately defected to the Muslim League. (E.W.R. Lumby, *The Transfer of Power in India, 1942-7*, George Allen and Unwin, London, 1954, pp. 69, 145-148.)
It was further agreed that because both Punjab and Bengal contained only narrow Muslim majorities and large Hindu-majority regions, Muslim West Punjab and East Bengal would go to Pakistan and predominantly Hindu East Punjab and West Bengal to India. Both states would gain independence on August 15, 1947 and the British-chaired Boundary Commissions would announce their decisions on August 17.  

Referring to statements in the foreign press that acceptance of partition by India implied acceptance of Jinnah’s two-nation theory, Nehru said:

This is a surprising argument. At no time in India have we accepted the two-nation theory, nor will we accept it. Why did we agree to partition? To avoid conflict, disorders and postponement of achievement of freedom. We agreed to let the matter be settled by the elected representatives in the provincial Assemblies concerned, although it would have been better if the issue had been decided by popular vote. What we accepted was the popular verdict as expressed by the elected representatives and not the two-nation theory. If we had accepted this theory, 40 million Muslims would have become aliens in India.

On the eve of independence and partition, British statesmen and the Indian politicians particularly the Congress leaders have advised the native rulers that they should join either of the two dominions and should in no case remain independent. Lord Mountbatten in his capacity as Viceroy made an important pronouncement that while deciding to accede to either dominion, the Princes should take into consideration the geographical position of their respective states, that is, the right decision for a state will be to accede to the dominion which is adjacent to it. Independence, as an option, was ruled out. The British recommended that these Indian principalities accede either to India or Pakistan based on two essential criteria: first, the rulers of the Muslim-majority states should accede to Pakistan and those with a Hindu-majority population should accede to India; and second, accession to Pakistan by the rulers of Muslim-majority

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23 Chaim D. Kaufmann, n. 12, p. 135.
states should occur only if their states were geographically contiguous to (either East or West) Pakistan.26

Mostly studies cite the three cases of Hyderabad, Junagadh and Kashmir as examples of the complicated nature of the partition process but there were other states also which had objected to the idea of joining either India or Pakistan such as Bhopal, Indore, Jodhpur and Travancore. However, all other fell in line once Sardar Patel took charge of the Ministry of States with V.P. Menon as his Secretary to supervise their integration into the Indian Union.27 All the princely states acceded to either India or Pakistan except Kashmir, Junagarh and Hyderabad.28 The ruler of Kashmir, Maharaja Hari Singh, despite Mountbatten’s explicit injunction, harbored visions of independence. Accordingly, despite entreaties from both Indian and Pakistani representatives, he kept temporising on the issue of accession. British had created a legal vacuum whereby between August 15 and October 22-26, 1947 Jammu and Kashmir became a local and temporary sovereign recognised only by the dominion of Pakistan (until October 22) and the dominion of India (until October 26). But it was not a globally recognised sovereign and was never going to be such in international law. This was further proved by Attlee October 18, 1947 telegram refusing to answer the Jammu and Kashmir Prime Minister.29

Hannah Ardent in her study of ‘Totalitarianism in Europe’ established the link between state formation and flow of refugees. In India’s context, it can be said that nation formation inevitably resulted in displacement. In other words, formation of nation state lends legitimacy to the process of getting rid of the other. Two centuries of divide and rule politics of the colonial state and five decades of communal mobilisation logically culminated in the partition of British India. Apart from a holocaust there was a huge involuntary exchange of population.30 Constructivist scholars of identity would charge the communalisation of Indian politics, and therefore ultimately the violence, to

30 C. Joshua Thomas (ed.), n. 16, p. 32. See also Sajal Nag, n. 16, p. 4755.
manipulation of mass aspirations and fears by self-interested communal elites. Whether the model of mass political mobilisation is accepted or not, however, the fact remains that the removal of British imperial power created real security dilemmas, which lent inherent credibility to political appeals based on community security.

The results of the 1937 elections intensified this security dilemma in three ways. First, electoral success persuaded Congress leaders that they could reach out directly to the Muslim masses, ignoring the Muslim political parties. To survive, the Muslim League had to transform itself from an elite circle into a genuine mass party that could claim to represent most Indian Muslims. It succeeded, based on explicitly communal appeals such as the slogan ‘Islam in Danger’, so the ultimate effect was to increase fear and mistrust between the two communities. Second, Muslims in the seven provinces ruled by Congress soon complained of abuses, including physical insecurity because of government failure to restrict communal violence by Hindus; these reports were widely circulated. Third, Congress’s aggressive political tactics led Muslim leaders to doubt whether British control over defense could last much beyond independence. A Congress controlled government might contrive to reduce the Governor-General to a figurehead as it had in Australia, then change the basis of recruiting of the army, and then be able to do anything at all. Given that British power was the ultimate guarantee of security for all communities in India. The prospect of its withdrawal activated potential inter-communal security dilemmas. Two such dilemmas were critical in determining the final outcome of the process: between Muslims and Hindus at the national level and between Sikhs and Muslims in Punjab. Muslims at that time made up 22 percent of the population of India and Hindus 68 percent, meaning that under pure majoritarian rule the Muslims would be absolutely insecure in the event that the government should be captured by Hindu supremacists such as the Hindu Mahasabha movement. Although the largest Indian nationalist movement, the Congress party, was formally committed to a secular India; in practice it never represented all Indian communities. Members of the Mahasabha movement and other Hindu nationalists, such as B.S. Moonje, were

32 Chaim D. Kaufmann, n. 12, p. 132.
33 Ibid., pp. 134-135.
34 The Hindu-Muslim security dilemma was most severe in the belt of North India, where the percentage of Muslims ranged from 20 to 60 percent. In the South, where Muslim minorities were quite small, intergroup security dilemmas were weak and communal mobilisation and violence remained low before, during and after partition.
welcome in Congress, while members of Muslim parties were excluded as ‘communalist’. \(^{35}\) According to Jawaharlal Nehru, many a congressman “was a communalist under his national cloak.”\(^ {36}\)

Although inter communal rioting had been on the rise in 1945 and 1946, independence and partition were expected to dampen the violence. Some population movements were anticipated, but they were not expected to be especially large, sudden or dangerous. These expectations were met in Bengal, where more than 5,000 people were killed before independence but very few after and where 3.5 million people moved across the new border with little loss of life. Punjab accounted for most of the refugees and nearly all the deaths. From August to October 1947, the province was convulsed by an intense communal civil war involving some of the largest ethnic cleansing campaigns in history. Hundreds of thousands of people were killed in Punjab and the war sparked large numbers of revenge killings elsewhere as well. More than ten million people from the Punjab and adjacent provinces had to flee for their lives.\(^ {37}\)

The social disorganisation attendant upon independence was followed by intense religious communal strife and then by an unplanned, chaotic cross-migration. About five or six million Muslims are reported to have fled to Pakistan from the India Union, while close to seven million Hindus and Sikhs entered India from Pakistan. The cost was high in deaths, rape, arson and property damage. The transfer did not produce a final solution as sizable religious minorities remain in each country. In an era when social disorganisation is a common phenomenon, this migration stands as a special case. “The memory of senseless and brutal bloodshed will possibly remain a permanent source of resentment between the two countries”.\(^ {38}\)

After Independence, the historic rivalry between the Congress and the Muslim League were transformed into a bitter inter-state enduring conflict. This outcome was largely unanticipated by Jinnah and Nehru who had hoped that the two dominions would eventually develop fraternal relations enabling them to overcome the initial hostility of

\(^ {35}\) Chaim D. Kaufmann, n. 12, p. 133. See also H.V. Hodson, The Great Divide: Britain-India-Pakistan, Oxford University Press, U.K., 1985, p. 59.


\(^ {37}\) Chaim D. Kaufmann, n. 12, p. 133. See also H.V. Hodson, n. 35, p. 59.

separation and division. However, the unexpected mass transfers of population and the armed conflict over Jammu and Kashmir created the bases of an enduring conflict.  

During this chaotic mass exodus of people, centuries-old hostilities between Hindus and Sikhs on one side and Muslims on the other erupted into a bloodbath of major proportions. As Khushwant Singh notes, “By the summer of 1947, when the creation of the new state of Pakistan was formally announced, ten million people – Muslims, Hindus and Sikhs - were in flight. By the time the monsoon broke, almost a million of them were dead and all of northern India was in arms, in terror and in hiding.” Nandini Gooptu quoted that the partition of the Indian subcontinent did not only involve the institution of separate administrative and political structures for the two newly independent states, but also a momentous upheaval of population migration, as well as unanticipated bloodshed and brutality among Hindus, Muslims and Sikhs on a scale that it is still considered both unimaginable and inexplicable. 12 to 14 million people were caught up in this process of mass migration; over one million were killed in violent encounters and an estimated 75,000 women were abducted and subjected to sexual violence. Not only those directly affected by this population movement in what became the border regions between India and Pakistan, but millions others in other parts of India were affected too. In 1946 and 1947, the subcontinent was torn by Hindu-Muslim riots in an atmosphere of religious hatred inflamed by the emerging reality of partition.

**Partition and Resultant Displacement**

People had started to move across much before the actual demarcation of the boundary between the two newly born countries. This is understandable as there were number of small pockets where the Muslim population was present in India and they were distributed all over the country. Similar was the case with Hindus and Sikhs in Pakistan. However, hundreds and thousands of people were on the road in Punjab and West Bengal within days of announcement of the official partition. It may be estimated that about five and half million people traveled each way across the new Indian-Pakistan border in Punjab. In addition about four lakh Hindus migrated from Sind and well over a

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39 Ian Talbot and Gurharpal Singh (eds.), n. 11, p. 174.
million moved from East Pakistan to West Bengal. As a matter of fact the partition related displacement and migratory flow had started a year before the partition, i.e. on August 6, 1946 the ‘Direct Action’ day declared by Muslim League. But on partition, the migration had to be managed by the state, as it was no more migration but evacuation. The state estimated that about twenty-five lakh muslims and twenty lakh Hindus have to be evacuated from each other’s country and accordingly a Military Evacuation Organisation (MEO) was formed. MEO was established with its headquarters at Lahore and the Indian MEO originally had its headquarters at Amritsar. The main problem for the receiving state was to secure as early and orderly evacuation and settlement of the displaced persons as possible.

Partition, however, has its own sordid history, not arising as a means of realising national self-determination, but imposed as a way from outside powers to unshoulder colonies or divide up spheres of influence, a strategy of divide and quit. The partitions in Cyprus, India, Palestine and Ireland, rather than separating irreconcilable ethnic groups, fomented further violence and forced mass migration. Even where partition enabled outside powers to leave, as in India, it also led to a disastrous war. The decision for partition was prompted not by a desire for peace and self-determination, but because the colonial power, Britain, wanted to withdraw. But the riots that followed in 1947-48 left more than a million people dead in six months and displaced upwards of fifteen million. Displaced persons had been flown in both directions. The partition, therefore, resulted in the massive exchange of population from India to Pakistan and from Pakistan to India. It is said that about fifteen million people crossed the border from one part to the other.

The movement of people was not peaceful and undisturbed. It was characterised by large scale massacres, violence, loot and abduction of women. The journey was marked by extreme uncertainty which is often reflected when one looks at the number of people who couldn’t be traced and gone astray and misplaced or lost. By the March 1947 rioting, arson and looting had broken out in Punjab, beginning with the central

44 Radha Kumar, n. 12, p. 24.
45 Ibid., p. 26. There were 15 million refugees resulted from the partition of India. (C. Joshua Thomas (ed.), n. 16, p. 28.)
districts of Lahore, Amritsar, Ferozepur, Ludhiana, Sheikhpura, Gurdaspur, Sialkot, Montgomery, Lyallpur, Gujranwala and the Jullundar doab and fanning out into the countryside. The violence was, by most reckonings, organised and systematic. Hindu and Sikh shops and businesses were signaled out for burning and looting in West Punjab, Muslim property and homes in East Punjab. Allegations were made by both sides of the active involvement of political leaders, the Muslim League and Jammat, National Guards, demobilised soldiers of the Indian National Army (INA), the Hindu Mahasabha and the Rashtriya Swayam Sewak Sangh (RSS), with all claiming on to be acting in self defence.\(^46\) The early writings generally accept that it was organised by the law enforcement agencies and bureaucracy. The economic factors are also considered as a powerful motivator. So the agricultural labourers resorted to violence against the land owners, the debtors did the same against land owners and money lenders. These kinds of people saw these opportunities as an easy way to prosper.\(^47\) However, one covert but crucial reason for this mayhem and turmoil was the manner in which partition was announced and implemented. Mountbatten seemed to be in such a hurry that he partitioned the second largest populated country in the world within seventy two days i.e. 3\(^{rd}\) June - 15\(^{th}\) August.\(^48\) The violence erupted due to this hurried situation where people were unaware about their future. The spread of violence soon took the shape which was massive and beyond the control of authorities. The intensity of hatred was such that the communities were on the move to flush off the other community. With violence becoming more structured and organised, there was a total disintegration of moral order marking the cohabitation impossible and leading to large scale uprooting and migration.

When British India was partitioned into India and Pakistan in 1947, the violence between Hindus, Muslims and Sikhs was enacted upon the bodies of the women of all three communities. Official numbers of abducted\(^49\) women during partition are 50,000

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\(^{47}\) Ibid, p. 39.


\(^{49}\) The Abducted Person’s Bill, moved in the Indian Parliament on December 31, 1949 defines an abducted person as ‘a male child under the age of sixteen years or a female of whatever age who is, or immediately before the 1st day of March 1947, was, a Muslim and who, on or after that day and before the 1st day of January 1949, had become separated from his or her family and is found living with or under the control of any other individual or family, and in the latter case includes a child born to any such female after the said date.’ (Jisha Menon, ‘Rehearsing the Partition: Gendered Violence’ in “Aur Kitne Tukde”, *Feminist Review*, No. 84, 2006, p. 30. URL: [http://www.jstor.org/stable/30232738](http://www.jstor.org/stable/30232738).)
Muslim women in India and 33,000 Hindu and Sikh women in Pakistan. The cases of abduction during partition were enormous. The estimates are 29000 to 50000 Muslim women and 15000 to 35000 Hindu and Sikh women who were abducted, raped or forced into marriage. Amidst communal turmoil women were targeted as the chief victims of humiliation at the hands of men of rival communities. Many witnessed loss of homes, murders, lootings and abuses and were victims of rapes. There were those who were abducted, forcibly converted or married. The multiple forms of sexual violence were committed that included inscribing tattoos on their bodies, parading them naked in sacred spaces like temples, mosques, gurudwaras and cutting their breasts off. Sometimes families traded their women in exchange of freedom, at other times women were urged to take their own lives in order to protect community ‘honour’. Many women simply disappeared. The symbolic elevation of women as the embodiment of the sanctified, inner recesses of culture and tradition had ironically positioned real women as targets of violent assertions of family, community and nation. Innumerable women were separated from their families, lived in open refugee camps and gradually made the move to step out to work. Their journey was a tough one, which continues even today as people have not recovered yet from the trauma of partition. The energies of almost two generations have been employed in rebuilding lives shattered by the violent uprooting of partition. In spite of the utter confusion, psychological imbalance, deep pain, emotional strains and losses, women picked up the pieces of their lives to adjust to new places. Some of them became beneficiaries of state help, as following partition, the Indian state assuming it to be the parent protector (mai-baap), undertook the task of rehabilitation under the supervision of various social workers. In September 1947, the Ministry of Relief and Rehabilitation set up a women’s section, with the purpose to provide them with necessary skills for employment. Women were offered training in teaching, nursing, embroidery, knitting, stitching, typing, pickle making and basket weaving etc. at various vocational training and technical production centers. Most of these centers were established between February and August 1948.

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50 Ibid.
52 Anjali Bhardwaj Datta, n. 14, p. 2232.
53 Jisha Menon, n. 49, p. 30.
54 Anjali Bhardwaj Datta, n. 14, p. 2232.
The abducted women were faced with a strange kind of trauma in case they managed to escape. It was the non acceptance from their respective families. This phenomenon was peculiar to Hindus families. These women were considered as impure and misfit in the traditional patriarchal Hindu family. The problem became so intense that Gandhi and Nehru had to make public appeals to their families not to refuse their daughters. The three women involved in rehabilitation of women Anis Kidwai, Kamalaben Patel and Damyanti Sehgal indicate this fact. They found women in fear and not ready to go back. This fear was twofold: one of the non-acceptances by their families and second of another dislocation. Keeping in view this condition, the Ministry of Relief and Rehabilitation is said to have issued a pamphlet which quoted Manu that said ‘women who had sex with someone other than her husband becomes pure after three menstrual cycles and can be taken back’.

There were several Hindu and Sikh women who resisted the orders of self-sacrifice by their male patriarchs, and were even determined to live with their Muslim abductors in Pakistan in spite of offers of rehabilitation by the government of India. The refusal of the authorities to recognise such women as individuals with different problems and priorities was evident from the official policy to ‘forcibly evacuate’ all abducted Sikh and Hindu women from Pakistan irrespective of their wishes. But the ground reality subverted the policy. For all their tall claims of respecting and protecting their women, the Hindu and Sikh men flunked when it came to taking them back after their rescue by the government from the Muslim abductors - since they had become polluted in the eyes of their religion. They were considered even worse if they were found to be pregnant or had children born of their Muslim abductors. Apprehending that, once repatriated to India they would end up in ashrams and their children in orphanages, or they would have to leave their children behind in Pakistan, many women chose to convert to Islam and stay back with their new families. Faced with these problems, the authorities in 1954 decided to stop forcible evacuation against the will of women.

These uprooted people had to first sustain themselves in survival mode in a somewhat alien land. If the relatively well-off people could sometimes reconstruct their lives on the other side of the border in newer pastures with comparatively less struggle, for those belonging to the middle and lower middle classes, it was almost impossible. Many of them even had to spend several years in the refugee camps before they could imagine a better life. Many of them could not even return to their original occupations and, therefore, felt a sense of alienation and irreparable occupational loss even after partial rehabilitation.57

The Impact of the partition was that the British India got divided into two nations of India and Pakistan. The partition of British India was aimed at resolving a Hindu-Muslim antagonism in the post-colonial period. However, the partition in fact laid open the continuing prospect of Indo-Pak conflicts, essentially over the territorial division of the subcontinent and more specifically over the Kashmir. At the heart of the dispute over Jammu and Kashmir lie the two fundamentally different Indian and Pakistani outlooks based on the very foundation of the partition of 1947.58 Firstly, Kashmir issue has emerged out as contesting subject or point as a root cause of conflict between India and Pakistan. Both countries lay claim to the entire region of Jammu and Kashmir. India has maintained that the accession of the princely state of Jammu and Kashmir to the Indian Union is final and irrevocable. Pakistan seeks to displace India as its rightful claimant. It appears quite clear that the central issue of Kashmir remained roughly where it had been since partition. Secondly, millions of people were being killed in the process of partition and caused displacement of people (millions got displaced). It was a bloodbath of unequalled enormity in the history of subcontinent, as Hindus and Muslims crossed borders and lost everything they owned. Violence remains as the most crucial impact of partition. However, the violence was not only of physical nature but also of psychological nature.

Since the partition of India into two countries, the mobility of population across what suddenly became international borders has periodically aroused hot debate. First, there has been controversy regarding the volume and direction of net migration and the extent to which Hindus have continued to move from East Pakistan during the 1960’s. Second, the problem of resettling large numbers of essentially political refugees, called

58 Maroof Raza, n. 26, p. 10.
displaced persons in India and Muhajirs in Pakistan, has placed considerable strain on both India and Pakistan. The government of India took a special census of displaced persons from West Pakistan in October 1948 and of those from East Pakistan in July 1949. While the procedural details of these special censuses are not known, 5.0 and 1.3 million displaced persons from West and East Pakistan respectively were enumerated. The non-synchronous nature of the census and the continued influx from East Pakistan made these figures only approximate. Data from the 1951 Census of India and Pakistan indicated a volume of Indo-Pakistani population transfers much different from the estimates made earlier. The Indian Census enumerated a total of 7.30 million displaced persons, of whom 4.70 and 2.55 million had come from West and East Pakistan respectively and 0.05 million did not specify their place of origin. The 1951 Census of Pakistan reported the number of Muhajirs as 7.23 million, suggesting a net gain of about 70,000 persons by India in the population transfers occurring before the census dates.

Table 2.1: Summary of Data on the Influx of Population into India from Pakistan

<table>
<thead>
<tr>
<th>Areas where From Displaced Persons arrived in India</th>
<th>Population Figure of Displaced Persons as per 1951 Census of India (millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>From West Pakistan</td>
<td>4.699</td>
</tr>
<tr>
<td>From East Pakistan</td>
<td>2.549</td>
</tr>
<tr>
<td>Unspecified</td>
<td>0.047</td>
</tr>
<tr>
<td>Total</td>
<td><strong>7.295</strong></td>
</tr>
</tbody>
</table>

Nearly a decade after these events, reintegration proceeded in both countries, but more successfully in India than in Pakistan. The two governments were confronted with a refugee problem over and above the usual challenges common to heavily populated countries. All the more striking, then, is the vigor with which the Indian government has

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60 The census enumerated 1.17 million displaced persons who moved from East Pakistan into India during 1950. Some, at least, of the difference between this figure and the Rehabilitation Ministry’s estimate of a net influx of 1.87 million during 1950 can be attributed to mortality or return migration during the first two months of 1951 or errors in reporting the time of arrival into India.
61 Pravin M. Visaria, n. 59, p. 324.
62 Ibid., p. 325.
eliminated most of the relief camps, built model towns and made land grants and loans to its new citizens-by-migration. The refugee situation has not been regarded as an international responsibility, nor, for obvious reasons, has it been linked to overseas resettlement, but benefits have flowed indirectly to refugees from the technical assistance programs of the United States and the United Nations programs designed to stimulate Indian development at the village level.63 Many Sikhs and Hindu Punjabis were settled in the Indian parts of Punjab and Delhi. Hindus migrating from East Pakistan (now Bangladesh) were settled across Eastern India and North-Eastern India, many ending up in close-by states like West Bengal, Assam and Tripura.

Muhajirs in Pakistan came from various parts of India. There was a large influx of Punjabi Muslims from East Punjab fleeing the riots. Despite severe physical and economic hardships, East Punjabi refugees to Pakistan did not face problems of cultural and linguistic assimilation after partition. However, there were many Muslim refugees who migrated to Pakistan from other Indian states. These refugees came from different ethnic groups and regions in India, including Uttar Pradesh (then known as United Provinces of Agra and Awadh or UP), Madhya Pradesh (then Central Province or CP), Gujarat and Bihar, what was then the princely state of Hyderabad and so on. Pakistan, in effect, had a Law of Return since its newly written citizenship law granted citizenship to all Indian Muslims who chose to move to Pakistan and even welcomed the influx of ‘muhajirs’ (refugees). Similarly, India accepted Hindus and Sikhs who did not wish to live in Pakistan. Though the two governments did not press their religious minorities to leave, neither government used its military nor police to halt the carnage that led to the exodus. There was a breakdown in political authority as the police, army and political leadership, largely bystanders to a process they could not control, were unable to stop the communal killings or to manage the population flight. What is noteworthy about those flows from an international relations perspective is that they did not result in armed conflict between the two new countries. The killings were not the result of a war between governments, but rather a war among peoples. War subsequently broke out between India and Pakistan, but not as a consequence of the massacres and the migration, but rather over the territory of Kashmir.64

63 Richard Robbins, n. 38, p. 325.
64 Myron Weiner, n. 10, pp. 1738.
On the whole, the partition resulted in huge displacement of people which affected the lives of people in a variety of ways. It was not only the loss of home, land, occupation, economic well being but a total uprootedness. Partition created a post-colonial climate of ethnic and religious nationalism and racism, which was the basis for four wars between the successor states and continues to cost lives and undermine the rights of minorities until today. The incorporation by India of the predominantly Muslim state of Jammu and Kashmir has been challenged by Pakistan since partition. The dispute over Kashmir has given rise to three wars, ongoing hostilities and massive violations of international humanitarian and human rights law by India and Pakistan.

Jammu and Kashmir

Jammu and Kashmir became the meeting ground of the three empires the British, the Russian and the Chinese. The global interests of the British then demanded that they should have a direct grip over Jammu and Kashmir. As Raja of Jammu, Gulab Singh raised an army of his own which included such notable soldiers as Zorawar Singh. He conquered the principalities of Bhimber, Rajouri, Bhadarwah and Kishtwar which extended the limits of his state to Rawalpindi in the West and border of Ladakh in the North-East. Zorawar Singh conquered and added the kingdoms of Baltistan and Ladakh to the territories of Gulab Singh as well. According to ‘Treaty of Lahore’, signed on March 9, 1846, it was agreed to by the Lahore Darbar to cede the territory between the Beas and the Sutlej to the British and pay 15 Lakh pounds as war indemnity. Lal Singh, the then Prime Minister of the Lahore Kingdom, offered to the British the hill territories of the Lahore Kingdom including Jammu and Kashmir in lieu of the indemnity. His idea was to deprive Gulab Singh of his territory and give the British the option either of holding Kashmir which would have been impossible at that time because of the long distance and intervening independent state of Punjab or to accept a reduced indemnity. Gulab Singh agreed to pay the money to the British and they recognised him as an independent sovereign. Accordingly, a stipulation was made in the Treaty of Lahore by which Maharaja Dalip Singh of Lahore agreed to ‘recognise the independent sovereignty of Raja Gulab Singh in such territories and districts in the hills as may be made over to the said Raja Gulab Singh by a separate agreement between him and the

66 Ibid., p. 203.
67 Ibid., p. 207.
Map of Erstwhile Jammu and Kashmir
British government’. Seven days later, on March 16, 1846, the Treaty of Amritsar was signed between Maharaja Gulab Singh and the British, according to which Gulab Singh was recognised as an independent ruler of all the territories already in his possession together with the valley of Kashmir which until then formed a separate province of the Lahore Kingdom. The Treaty of Amritsar put Gulab Singh as Maharaja in possession of all the hilly and mountainous territories with its dependencies situated to the east of the river Indus and West of the river Ravi including Chamba but excluding Lahaul being part of the territories ceded to the British government by the Lahore Kingdom. In consideration for this, Maharaja Gulab Singh was to pay to the British rupees 75 Lakhs (nanakshahi) in cash. The amount to be paid was reduced to rupees 75 Lakhs from one crore because the British decided to retain in their own hands the territory between the Beas and the Ravi which includes the Kangra district of the Punjab because of the strategic value of Nurpur and Kangra forts. The territories of which Gulab Singh was thus recognised as an almost independent ruler also included the area between the Jhelum and the Indus in which Rawalpindi and Islamabad, the capital of Pakistan, are situated. Since this area was too far removed from Jammu, he approached the British to exchange it for certain plain area near Jammu. The Jhelum instead of the Indus became the Western border of this Kingdom. Thus obtained possession of Kashmir valley through the Treaty of Amritsar, made effective by force of arms. After he occupied Kashmir, Col. Nathu Shah who controlled Gilgit on behalf of the Lahore Darbar transferred his allegiance to Gulab Singh, who became the master of Gilgit as well. Thus by 1850, Gulab Singh had become both de facto and de jure master of the whole of Jammu and Kashmir including Jammu, Kashmir valley, Ladakh, Baltistan and Gilgit.  

It is clear from the above account that state of Jammu and Kashmir as at present constituted is the creation of Gulab Singh who welded together such diverse and far-flung areas as Jammu bordering on the Punjab, Ladakh bordering on Tibet and Gilgit bordering on Sinkiang, Afghanistan and USSR across the Pamirs. It is true that he was primarily concerned with his possessions and his interests. But what he achieved had far reaching impact on the interests of Hindustan as a whole.


70 Ibid., p. 211.
Partition of India and Jammu and Kashmir

With the Britishers decision to quit India in 1947, the state of Jammu and Kashmir along with the rest of princely states in India was freed from the control of the British paramountcy.\textsuperscript{71} Under the Indian Independence Act of 1947, the British Parliament laid down that British paramountcy over Indian states had lapsed and transferred power from the crown to two newly formed dominions, India and Pakistan.\textsuperscript{72} The right of accession of these states either to India or Pakistan was delegated solely to the princely rulers.\textsuperscript{73} With the announcement of plan to partition British India on June 3, 1947, British informed the princely states that Britain would not be able to recognise any of them as independent dominions and expected them to make their arrangements with either dominion. The congress members of the interim government informed the Maharaja more than once that he was perfectly free to accede to either dominion, but given that he was a dogra Hindu, while 77 percent of his subjects were Muslims, he would do well to ascertain the wishes of his people before taking a decision.\textsuperscript{74}

The princely states, however, at that time were a peculiar issue in the decolonisation process because of the lapse of the British paramountcy over them.\textsuperscript{75} They were technically free to accede to either of dominion. Lord Mountbatten, the last British Governor General of India, while talking to the Princes and their representatives in New Delhi in July 194, requested the princely states to take decision before August 15, 1947 if possible to accede either with India or Pakistan and argued that the third option to remain independent was just a hypothetical option. The choice was straightforward for practically all princely states except Jammu and Kashmir. Jammu and Kashmir was territorially contiguous to both India and Pakistan, although its contiguity to two Pakistani provinces, Western Punjab and the North Western Frontier Province, was far more pronounced than its territorial link to Indian Eastern Punjab.\textsuperscript{76} The state of Jammu and Kashmir had a distinctive characteristic which was not shared by other

\textsuperscript{75} Sumantra Bose, \textit{Kashmir: Roots of Conflict, Path to Peace}, Vistaar, New Delhi, 2003, p. 30. See also Taraknath Das, n. 24, pp. 264-265.
\textsuperscript{76} Ibid., pp. 30-31.
princely states. Being the largest princely state in terms of area, it was dominated by Muslim population but ruled by a Hindu Maharaja Hari Singh.\footnote{Victoria Schofield, 	extit{Kashmir in Conflict: India and Pakistan and the Unending War}, Viva Books, New Delhi, 2004, p. 28.}

By August 15, 1947 the majority rulers had signed instrument of accession to accede with India. Jammu and Kashmir Maharaja’s indecisiveness resulted in the state not joining either of the two dominions - India or Pakistan by the deadline of August 15, 1947. The Maharaja of Kashmir, however, had lingered on in futile indecision, playing with the idea of establishing a precarious independence. In the third week in June, Lord Mountbatten visited Kashmir and in very difficult conversations pressed the Maharaja to make up his mind, after discovering the wishes of his people through a plebiscite. He also assured him on behalf of the government of India that if the Maharaja decided to accede to Pakistan, India would not regard it as an unfriendly act.\footnote{Lord Birdwood, 	extit{‘Kashmir’}, 	extit{International Affairs (Royal Institute of International Affairs 1944-)}, Vol. 28, No. 3, July, 1952, p. 301. URL: http://www.jstor.org/stable/2607415Accessed: 15/09/2010.}

Maharaja wanted to take time to decide to which dominion he should accede or whether it is not in the best interest of both the dominions and of his state to stand independent - of course with friendly and cordial relations with both.\footnote{Punjab (India), 	extit{Kashmir Before Accession}, Superintendent, Government Press, West Punjab, 1948, p. 1.} However, three days before the transfer of power by the Britishers to the two newly born independent dominions, the government of Jammu and Kashmir announced their intention of negotiating a Standstill agreement\footnote{On August 15, 1947, Foreign Secretary, government of Pakistan addressed to the Prime Minister of Kashmir that the government of Pakistan agree to have a Standstill Agreement with the government of Jammu and Kashmir for the continuance of the existing arrangements pending settlement of details and formal execution of fresh agreements. [Muhammad Yusuf Saraf, 	extit{Kashmiris Fight For Freedom}, Vol. II (1947-78), Ferozoona, Lahore, 2005, pp. 769-770.]} with both the dominions.\footnote{Louis D. Hayes, 	extit{The Impact of the U.S Policy on the Kashmir Conflict}, University of Arizona, Tucson, 1971, p. 16. See also Alice Thorner, ‘The Issues in Kashmir’, 	extit{Far Eastern Survey}, Vol. 17, No. 15, August 11, 1948, p. 175. URL: http://www.jstor.org/stable/3022818Accessed: 15/09/2010.} Therefore on August 12, 1947 Maharaja sent telegrams to both Indian and the Pakistani governments requesting them to enter into a Standstill agreement with Jammu and Kashmir.\footnote{Prem Nath Bazaz, n. 22, p. 317. See also Louis D. Hayes, n. 81, p. 16.} Though Pakistan immediately accepted the offer and signed a standstill agreement, India on the other hand had postponed the same and asked the Maharaja of the state to come either personally or sent any of his authorised ministers to Delhi for the purpose.\footnote{Josef Korbel, n. 72, p. 82. See also Prem Nath Bazaz, n. 22, p. 317.} The Pakistan has tended to interpret this standstill agreement as having the force of a binding agreement.
treaty between sovereign states while India have argued that it was a purely temporary administrative arrangement of no great constitutional significance. The circumstantial evidences reflect that the Maharaja was only playing for time…

The provision for standstill agreement was given in the Indian Independence Act. The object of the standstill agreement was to provide for the continuance of economic and administrative relations between Jammu and Kashmir and Pakistan on the same basis as had existed before the creation of the new dominions and normal amenities of life such as post office, communication etc. could be maintained. It was mentioned that the standstill agreement would guarantee, that till new agreements were made, all existing agreements and administrative arrangements would continue. In case of any dispute in this regard, it would be settled by arbitration. It was as per the standstill agreement that certain services such as posts, telegraphs and railways (earlier administered by India) were henceforth to be administered by Pakistan as these services formed part of the administrative machinery of Pakistan. Under Standstill agreement, Pakistani government undertook the responsibility of supplying the food stuffs and other essential commodities to the state. It also took over the charge of the states postal services and telegram system. Despite the fact that Pakistan signed the standstill agreement but barely after a few weeks time it started violating it by stopping the supplies to the state. This strained the relations between Pakistan and Kashmir and became far from cordial.

Between August 15 and the end of October 1947, Pakistan, in its determination to force the accession of Kashmir, used every available means to pressurise the Maharaja Hari Singh of the state and initiated several forceful, persuasive and coercive measures against the state. Essential supplies which had to reach Kashmir through Pakistan were prevented from reaching there. These measures included cut off supplies to Kashmir of food, petrol, kerosene and other essential commodities; the disruption of the postal facilities, denial of printing of currency notes in the Karachi mint press for the state, stopping of all types of communication like railway, road etc. This situation created not only the shortage of essential commodities in the state but also

84 Alastair Lamb, n. 28, p. 112.
85 Prem Nath Bazaz, n. 22, p. 317.
87 Taraknath Das, n. 24, p. 265.
88 Victoria Schofield, n. 77, p. 43. See also Prem Shankar Jha, n. 74, p. 2; Alastair Lamb, n. 28, pp. 111-114.
89 Sumantra Bose, n. 75, p. 21.
hindered the free transit of travelers between Kashmir and Pakistan.\footnote{Kuldeep Singh Bajwa, *J&K War 1947-48: Political and Military Perspective*, Har Anand, New Delhi, 2003, p. 77. See also M.S. Deora (ed.), n. 86, p. 3.} Economic pressure was thus applied simultaneously with military pressure in the form of border raids to coerce the state into accession to Pakistan.\footnote{M.S. Deora (ed.), n. 86, p. 3.} The newly formed Pakistan was in a position to gain this leverage because of its geographic and territorial connectivity and continuity with Kashmir.

Since the post and telegraph offices in Jammu and Kashmir state came under Sialkot circle, Pakistan flag was hoisted on post offices of the state. The Maharaja’s government protested to Pakistan for what was described as a hasty action. This gave a clear indication that Maharaja Hari Singh had set his face against accession of his state to Pakistan. Pakistan now decided to put concerted pressure on the Maharaja to accede to Pakistan. A three-fold plan was made for the purpose. It included economic blockade, stepping up of pro-Pak propaganda among Muslim population and officials in the state to prepare them for a stir from within and armed raids into the Western districts of the state from without.\footnote{Bal Raj Madhok, n. 63, pp. 601-602.} Side by side, preparations began to be made in tribal areas and districts adjoining Jammu and Kashmir for a direct assault, if necessary, at the appointed time.

Economic blockade was quite easy. Though contiguous to both the dominions, all the main arteries of trade between the state and the outside world passed through Pakistan. Jammu was linked by rail and road with Sialkot and Srinagar was linked with Rawalpindi and Abbottabad by all-weather motorable roads. Most of the import and export trade of the state passed through these channels. As Sumantra Bose notes, there were two main pre-partition routes to Kashmir; one via Lahore, Rawalpindi and Murree into Muzaffarabad and Srinagar; the other through Sialkot, Jammu and the Banihal pass. Neither would be available to India after partition as both Lahore and Sialkot were bound to go to Pakistan.\footnote{Sumantra Bose, n. 75, p. 21.} All the necessities of life like salt, soap, sugar, cloth, food-grains and gasoline and kerosene oil meant for Kashmir state used to be stocked in the markets of Rawalpindi and Sialkot from where they were sent to Jammu and Kashmir in trucks. The Pakistan government stopped the movement of these goods into the state. The rail link with Jammu was cut-off. Even the supplies for which payment had already
been made were not delivered. The state government protested against this breach of the standstill agreement but to no avail. Even the trucks sent from Srinagar to fetch the supplies were confiscated by the Pakistani authorities.94

Along with this economic blockade a virulent Pakistani propaganda offensive was launched. Parties of students of Islamia College Lahore and Aligarh Muslim University began to tour villages in the interior. The Muslim official of the state and the Muslim personnel of the state police and armed forces were completely won over.95 Arms and ammunition began to be smuggled in large quantities from Pakistan into the state. Regular training in the use of firearms began to be given in the mosques at Jammu, Srinagar and elsewhere. To disperse the state troops over large areas, raids were organised all along the western border especially in the Poonch area. The local Muslims were also incited to rise in rebellion in Poonch and Bagh areas.96

The independence of India and Pakistan did generate one new conflict, over control of the former princely state of Jammu and Kashmir. This conflict occurred not because India was partitioned but because Kashmir, whose population was about two-thirds Muslim, was not awarded or acceded to Pakistan.97 Each of the new dominions regarded the possession of Kashmir as a strategic necessity. From the economic point of view Kashmir ranked third among the Indian states in wealth. Its reputedly great reserves of unexploited mineral deposits added to its value. Above all, the contest for Kashmir was embittered by the sharp antagonism between Hindus and Muslims which served as the setting for the birth of the new commonwealths.98 Failure to divide Kashmir intensified Hindu-Muslim security dilemmas in three ways, generating a history of conflict that still continues. First, communal relations in Kashmir had been better than in many other areas and Maharaja Hari Singh initially attempted to keep Kashmir independent. By October 1947, each community had reason to fear for its security. Both groups were aware that India and Pakistan each claimed Kashmir, both had heard about atrocities in Punjab and some of the Maharaja’s troops began attacking

95 Ibid., p. 603.
96 Ibid., p. 604.
98 Alice Thorner, n. 81, p. 173.
the Muslim population. Second, Kashmir borders key economic centers of both countries and is thus strategically valuable. In October the Maharaja invited in pro-Indian Sikh troops and a few weeks later Muslim irregulars invaded from Pakistan. Both regular armies intervened. Battle deaths reached 1,500 before a truce was signed at the start of 1949. India took control of most of the state, but Pakistan invaded again in 1965, and there was more borders fighting in 1971. Third, under Indian rule Kashmiri politics have become increasingly communalised over time, threatening the security of all groups. From the early 1960s onward, increased political participation has led to several cycles of Muslim autonomy demands and Indian government responses that actually reduced local authority. For example, from 1980 to 1982 the Kashmir government backed a proposal to allow 1947 refugees (i.e. Muslims) to return, sparking fears that Hindus and Sikhs now settled on refugees former property would be dispossessed. When the 1983 election again returned the same government, in a vote along communal lines, Indian President Indira Gandhi removed the state government and instituted repressive measures. Since the late 1980s Kashmir has been fighting an ongoing Muslim insurgency, aided by Pakistan. More than 30,000 people have been killed and virtually the whole Hindu population of the valley of Kashmir (about 2, 50,000) has fled their homes. It is uncertain how many Kashmiri Muslims support the insurgents, but nearly all have become profoundly alienated from Indian government rule. Since May 1998 Kashmir has become the focus of mutual Indian and Pakistani nuclear threats.

Announcement of partition of India as per publication of Mountbatten plan hastened metamorphosis in the affairs of the state. The prospect of the state joining Pakistan by the vote of the Muslim majority, the panic caused by the communal riots outside the state and massacre of non-Muslim in Muslim majority areas made state Hindus friendly towards the National Conference. National Conference was against the declarations of the Muslim Conference leaders who advised the Dogra Maharaja to remain independent and wanted the Maharaja should declare his accession to India.

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102 Chaim D. Kaufmann, n. 12, p. 142.
103 Prem Nath Bazaz, n. 22, p. 269.
The Muslim League leaders took for granted that Kashmir would form part of Pakistan on partition of the subcontinent on the basis of religion. Jawahar Lal Nehru was extremely sensitive about Kashmir and bent upon to have it with India. Nehru had five important reasons to be so sensitive and sentimental about Kashmir. Firstly, he was himself descendant of a Kashmiri family; secondly, he wanted to defeat and disprove the ‘Two Nation Theory’\textsuperscript{104} of Mohammad Ali Jinnah and his Muslim League; thirdly, to save Kashmir from Pakistan’s communal virus, bloodshed and the ethno religious cleansing; fourthly, try to avoid at least the perpetual flow of adverse consequences, effects and reaction of partition on the people of India by accession of Kashmir to India and lastly Kashmir has strategic importance because of its location.\textsuperscript{105}

The subcontinent was to be partitioned on the religious basis. The question was where would Kashmir go? Nehru wanted it to remain with India. But having accepted the principle of division on religious basis, how could they (congress leaders) force Kashmir to join India? Would the overwhelming majority of Muslims in the state agree to accession? In any case, it was evident that as long as the National Conference and the Maharaja were at daggers drawn. There was no chance of Kashmir joining with India in any future set up. Congress President of that time, Acharya Kripalani went Srinagar to have compromise between the National Conference and the Kashmir government. He denounced the slogan ‘Quit Kashmir’ saying that the Maharaja was a son of the state and it was absurd to ask him quit.\textsuperscript{106}

**Accession to India**

The Government of India Act, 1935 and the Indian Independence Act, 1947 of the British parliament provided the legal provision under which the princely states could enter into a federal relationship with the successor government in British India and a state could accede to the dominion of India or Pakistan by an Instrument of Accession executed by the ruler of the state in order to make it legally valid.\textsuperscript{107} It was also provided

\textsuperscript{104} Two nation theory refers that British India represents two nations (Hindustan and Pakistan) on the basis of religion i.e. Hinduism and Islam.


\textsuperscript{106} Prem Nath Bazaz, n. 22, p. 268.

\textsuperscript{107} Ali Mohammed Tariq, n. 73, p. 8.
that the Indian states acceding in this manner shall become an integral part of India or Pakistan.  

However, the ruler of Kashmir Maharaja Hari Singh was indecisive on the issue of accession. The dilemma was not a matter of choice that whether to join India or Pakistan. The question that Maharaja and his supporters were entertaining was how to remain independent. He acquired a strange kind of rigidness. As a Hindu, the Maharaja obviously had little future in Muslim Pakistan. On the other hand, joining India would involve modifying his personal autocracy and taking some steps in the direction of responsible government. He was not very keen on joining India, since he did not have a close association with the Congress leadership and was not sure that he will be able to retain his power after acceding with India. As Akbar notes, ‘With freedom just a few days away, Hari Singh struck to silence as a policy. Frightened by Jinnah’s Islam in Pakistan and Nehru’s democracy in India, he opted for procrastination.’ He was also wary of the National Conference leadership who had been consistently struggling against his rule. He was, most probably, toying with the idea of independence but again was not sure that in the face of the popular struggle in Kashmir this option would be viable.

The National Conference had a clear cut position on the issue of accession. It wanted that the issue of accession should not be taken by the ruler but it should be left to the people of the state. That is why it had raised the slogan of ‘freedom before Accession’. Internally, the party was debating about the choice of joining with India or remaining independent, though there was no such option given at that time. The National Conference leadership was very clear on the question of joining Pakistan. The idea of Pakistan as a homeland for Muslims did not appeal to the leadership of National Conference, due to the reason that it wanted the protection of distinct identity of Kashmiriyyaat and in the all-Muslim Pakistan there was no guarantee that this identity would be protected. However, the greater reason as to why the National Conference rejected the idea of Pakistan was that it was committed to the policy of land reforms and

110 Alice Thorner, n. 81, p. 173.
111 M.J. Akbar, n. 109, p. 97.
it was not very sure that in the feudal set up of Pakistan, land reforms could be possible. In the situation, the National Conference leadership had the inclination to join India. Not only there was ideological parity between the National Conference and the Indian National Congress, but also there was a close association of the Kashmiri leaders and the leaders of the Congress. Nehru and Gandhi both had been keenly watching the anti-feudal movement in Kashmir and had been encouraging the leadership, particularly Sheikh Abdullah.

Jinnah was keen on Jammu and Kashmir joining Pakistan, due to reason that this was a predominantly Muslim state. However, due to the regional polarisation between the Muslims of Jammu and Kashmir, there was no possibility of evolving a consensus in favour of Pakistan. The fact that Jinnah treated Muslim Conference as the party representing the Muslims of the state alienated Kashmiris from Jinnah’s demand for Pakistan. As the time for accession started coming closer, the political polarisation in the state was also sharpened. The Muslims of Jammu were keen on joining Pakistan and therefore, there was unrest in the Muslims dominated areas of Jammu. However, the formal decision of accession lay with the Maharaja who was keen on perpetuating his own political power.

The Maharaja, supported by loyal Hindu leaders pressed that the identity of Jammu and Kashmir is that of a Hindu state and it should not merge with secular India. The All Jammu and Kashmir Rajya Hindu Sabha in its resolution adopted in May 1947 extended its full support to the Maharaja on his stand of not acceding to India. All Jammu and Kashmir Muslim Conference wanted the Maharaja to declare Kashmir independent and thus was somehow in favour of his established stand. The Indian Muslim League clearly and categorically put forward its stand for the princely states to join either Hindustan Constituent Assembly or Pakistan Constituent Assembly or remain independent. This added to the strength and courage of Maharaja to stand amidst the whole pressure from the top brass of Indian National Congress to accede to India. However, the pro India voices in Jammu were suppressed and condemned as anti Hindu activities. The pro India Jammu daily ‘Ranbhir’ edited by Mulkh Raj Saraf was banned for the reason that it was seen to be favouring India.

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The fate of Kashmir in 1947 was symbolically significant for both Pakistan and India. As a Muslim-majority princely state, it was expected that it would join Pakistan after the lapse of British paramountcy. But its non-inclusion not only created disturbance for the people of Kashmir, but also threatened the ideological basis of Pakistan’s existence. According to the logic of the two-nation theory the vale should have gone to Pakistan, since a majority of its population was Muslim. But these Muslims were, in the main, followers of Sheikh Abdullah, a secular politician who abhorred the idea of a theocratic state. Sheikh Abdullah in his speech on February 20, 1948 said, “In 1944 Jinnah persuaded us to join hands with him and support his two nation theory, but he failed. However, he succeeded in other parts of India and Pakistan was established. While Kashmir remained out of Pakistan, with its overwhelming Muslim majority, it continued to expose the fallacy of this theory and challenge the soundness of the very basis on which Pakistan was formed.” In another speech of May 2, 1950, he said, “There is nothing in common between Pakistan’s ideology and our political faith. Pakistan’s existence depends upon a hymn of hate, but the Jammu and Kashmir National Conference sole representative organisation of the people of the state, has all along maintained and wants to see the friendship and tolerance subsist among the various communities. This fundamental difference has kept the Muslim League and the National Conference from coming nearer to each other while the community of outlook in regard to this objective has knit the National Conference and the Indian National Congress together”.

The Maharaja took time to decide the question of accession and the future of Jammu and Kashmir but not the government of Pakistan. From September 14, 1947 an invasion of Kashmir from Pakistan began and by 26th of October 1947 the situation was critical. The Maharaja requested India for military assistance to save the state from loot, murder, arson and rapine in which the Pakistani invaders excelled and to prevent the forcible annexation of the state to Pakistan. Lord Mountbatten had emphatically advised his government that without the formal accession of Kashmir, it would be neither right nor wise to take military action. Accordingly, V.P. Menon was flown into

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114 Amtul Hassan, n. 1, p. 114.
117 Ibid., p. 7.
Srinagar on October 25 and informed the Maharaja of the view of the government of India. The Maharaja at once signed the Instrument of Accession and also handed over a letter for Lord Mountbatten informing him that it was his intention to set up an interim government at once and to ask Sheik Abdullah to carry the responsibilities in the emergency with Mehar Chand Mahajan, his Prime Minister. It was out of sheer patriotism and solicitude for the safety of his people that the Maharaja agreed to submit to this pre-condition of the Indian Prime Minister. Pakistan thus played a major role in resolving the dilemma of Hari Singh and bringing about accession of Jammu and Kashmir to India.

With the backing of the most popular organisation in the country, the Maharaja signed the deed of Accession on October 26, 1947 and the state of Jammu and Kashmir became the part of Indian Union. Thus the accession of the state of Jammu and Kashmir to India was full, final, complete and irrevocable according to the authority of Sheik Abdullah himself, who was then the President of the National Conference. He said, “We have made our choice and linked our destiny with India and nothing can separate us now”. The ratification of accession by the Constituent Assembly of the state has made doubly clear what was already a legally and constitutionally valid. Therefore, from the legal viewpoint, Kashmir became a part of the dominion of India from the very moment its appeal for accession was accepted by India.

It can be said that the Pakistani invasion had perhaps ‘indirectly’ coerced Hari Singh to accede the Indian Union, fearing that his entire Kingdom would otherwise be lost forever and to save Srinagar from loot and rape as meted out to Baramulla. K.H. Khurshid in ‘Memoirs of Jinnah’ writes that tribal invasion was a criminal folly which sealed the fate of Kashmir, meaning that it left no alternative to the Maharaja except to accede to India. Whatever the explanation, the state of Jammu and Kashmir did formally accede to India and this includes its entire territory even the areas occupied

119 Bal Raj Madhok, n. 65, p. 617.
120 Ali Mohammed Tariq, n. 73, p. 8.
121 Ibid., pp. 8-9.
122 Ibid., p. 11.
125 Quoted in Ibid., p. 51.
by Pakistan since 1947.\textsuperscript{126} However, the accession was challenged by Pakistan on many fronts.

**Pakistan Challenge to Jammu and Kashmir Accession**

Jammu and Kashmir became an integral part of the Indian Union when Raja Hari Singh signed the Instrument of Accession unconditionally on October 26, 1947. Pakistan’s refusal to accept the state’s accession to India led to an armed aggression in 1947 resulting in the forcible occupation of a part of the state, which still remains under Pakistan’s illegal occupation. The United Nations called for a ceasefire and the withdrawal of all Pakistani regulars or irregulars from the territory of the erstwhile princely state of Jammu and Kashmir. This withdrawal was to be certified by United Nations Commission for India and Pakistan (UNCIP) for undertaking a reduction of the Indian force to a level sufficient to maintain law and public order. However, Pakistan continues to occupy illegally, a part of the state (PoK) and the Northern Areas and has also ceded some territory of Jammu and Kashmir to China.\textsuperscript{127}

Possession of Kashmir, a Muslim-majority state adjacent to the two nascent states, consequently assumed significance far greater than a mere territorial claim.\textsuperscript{128} For Pakistani nationalists, like Mohammed Ali Jinnah, the absorption of Kashmir into Pakistan was equally critical for diametrically opposite reasons. For Jinnah, Pakistan would be ‘incomplete’ without Kashmir. In essence, Pakistan’s claim to Kashmir was and remains irredentist.\textsuperscript{129} Jinnah and his followers argued that a Pakistan without Kashmir would at best appear a breakaway fragment of India and not a co-equal successor state. Some others contended that the willing accession to India by a Muslim-majority state would call into question the very rationale for the creation of Pakistan as an avowedly Islamic state for the Muslims of South Asia.\textsuperscript{130} Again Pakistan contention is that India has remained Kashmir only by giving it a “special status” and not on the strength of India’s secular democratic credentials.\textsuperscript{131} It was Liaquat Ali who stated that

\textsuperscript{126} Maroof Raza, n. 26, p. 28.
\textsuperscript{128} Sumit Ganguly, n. 26, p. 169.
\textsuperscript{129} Ibid.
\textsuperscript{130} Maroof Raza, n. 26, p. 15.
\textsuperscript{131} Maroof Raza, n. 26, p. 35.
the accession of Kashmir to India was the result of a conspiracy and fraud. On October 30, 1947, the government of Pakistan issued their repudiation of the Maharaja’s accession to India, achieved, as they alleged, through fraud and violence and as such cannot be recognised.

The security of Pakistan is bound up with that of Kashmir and ties of religion, cultural affinity and economic interdependence bind the two together still closer. The accession of Kashmir to India is a much greater threat to the security of Pakistan. We do not recognise this accession. The accession of Kashmir to India is a fraud, perpetrated on the people of Kashmir by its cowardly ruler with the aggressive help of the Indian government.

The overwhelming majority of Kashmir’s population is Muslim. The state is contiguous with Pakistan’s territories. All the three big highways and all the rivers of the state go into Pakistan. For these reasons the state should accede to Pakistan. Pakistan propaganda, in Britain and the United States has consistently followed the line that, as India was partitioned on the ground of the religious issue raised by the pan-Islamists of India, Kashmir in which more than 90 percent of the population is Muslim, should logically be part of the Muslim state of Pakistan. In the Security Council, February 7 to 10, 1950, Sir Zaffarullah Khan presented Pakistan’s case regarding Kashmir and held that Kashmir’s accession to India was not valid because the majority of the population was Muslim and the country adjoins Pakistan. Furthermore, he declared:

The possession of Kashmir can do nothing to the economy of India nor to the strategic security of India. On the other hand, it is vital for Pakistan… If Kashmir should accede to India, Pakistan might as well, from both the economic and strategic point of view, become a feudatory of India or cease to exist as an independent sovereign state.

Pakistan has made a mockery of the lawful accession of Jammu and Kashmir state to India by Maharaja Hari Singh and asserted her claim to have a say in the future

133 Lord Birdwood, n. 118, p. 64.
134 V.P. Menon, n. 68, p. 404.
135 M.S. Deora (ed.), n. 86, p. 118.
136 Ibid., p. 93.
137 Prem Nath Bazaz, n. 22, p. 319.
138 Taraknath Das, n. 24, p. 279.
139 Quoted in Ibid., p. 281.
of that state. While Pakistan had obtained control over nearly half of the state by force and had got the way cleared for getting the rest of it, or at least the Kashmir valley, through other means by getting India committed to plebiscite under the supervision of UNO diplomatically, she had scored a resounding victory over India.\footnote{Bal Raj Madhok, n. 65, p. 905.} It becomes evident that the real motive behind Pakistan’s action in Jammu and Kashmir is to use every possible means to prevent the state of Jammu and Kashmir from becoming a part of India. Accession or no accession, Pakistan wants to annex Kashmir for ‘strategic reasons’\footnote{Taraknath Das, n. 24, p. 281.} Therefore, Jammu and Kashmir is the unfinished agenda of partition for Pakistan on the basis of two nation theory, which it wants to occupy or capture and it can be said that the liberation of PoK is India’s unfinished agenda since the entire Jammu and Kashmir is an integral part of India.

**India’s Claim Examined**

The congress and the Hindu leaders have advanced diverse reasons from time to time to justify the occupation of the Jammu and Kashmir by the Indian military. The first argument advanced by the leaders of the government of India is that the state was attacked by the tribemen and when the people of the state as well as the ruler approached India for help she could not withhold it. Both the Maharaja and the popular political party, the National Conference under the leadership of Sheikh Abdullah, voluntarily agreed to sign the Instrument of Accession, which made Kashmir a part of the Indian Union like other provinces.\footnote{Prem Nath Bazaz, n. 22, p. 336.} The government of India, under the then existing treaties between Kashmir and the British government of India, was obliged - as the legal heir of the British government - to defend Kashmir against any invasion. India in order to meet its treaty obligations and in conformity with the Indian Independence Act, accepted the request for military aid and accession of Kashmir. Actually from the legal viewpoint, Kashmir became a part of the dominion of India from the very moment its appeal for accession was accepted.\footnote{Taraknath Das, n. 24, p. 268.} India’s argument for the legitimacy of its claim to all of Kashmir, including the portion administered by Pakistan, is based on the Instrument of Accession. Similar instruments determined the distribution of all princely states in the 1947 partition; questioning the accession of Kashmir would imply...
unraveling the constitutional and legal basis for the creation of India and Pakistan.\footnote{144} The UNCI\footnote{144}P recognised the sovereignty of the Indian government over the whole of Jammu and Kashmir and the right of India to defend the state from external aggression. Also, it did not recognise the right of Pakistan to have any say in the affairs of the state.\footnote{145} Therefore the government of India was morally, legally as well as constitutionally justified in sending its armies to the state to defend it against the enemy and to throw out the invaders.\footnote{146}

For the two countries, the conflict over Jammu and Kashmir is less a contest over strategic ground or resources as over competing visions of nationalism and state-building. Indian decision-makers tended to see Jammu and Kashmir through the prism of secular nationalism as the basis of nation building. For India, Kashmir is symbolic of secular nationalism and state-building and of the possibility of a Muslim-majority area choosing to live and prosper within a Hindu-majority country. If Kashmir were allowed to secede because of its Muslim-majority population, Indian leaders doubted that the idea and practice of secularism could survive, indeed, that India could survive. For Pakistan, Kashmir is symbolic of the impossibility of secular nationalism in the region and thus of need for a Muslim homeland in the northwestern corner of the subcontinent.\footnote{147} Pakistan tended to see Kashmir accession as integral to Islamic identity. If a Muslim-majority area contiguous to Pakistan remained in India, the original justification for a Muslim state would be difficult to sustain.\footnote{148}

Pakistan has been stating that Jammu and Kashmir is the unfinished agenda of partition of the Indian sub-continent. This argument is based on the pretext that the sub-continent was divided along communal lines (two nation theory) into two independent nations. Pakistan was carved out of what constituted the Muslim majority areas of India. Jammu and Kashmir being a Muslim majority state should have formed part of Pakistan. On the face of it Pakistan justifies occupation of part of Jammu and Kashmir and regards the remaining state of Jammu and Kashmir as disputed territory. However, this

\footnote{145} S.N. Prasad and Dharam Pal (eds.), n. 94, p. 371.
\footnote{146} Prem Nath Bazaz, n. 22, p. 336.
\footnote{148} Ibid., p. 405.
principle was applicable only to the areas and provinces directly ruled by the British. In the North West Frontier province, a referendum had decided the fate in spite of its population being overwhelmingly Muslim. Pakistan asserts that India cannot argue self-determination and the will of the majority in other instances and ride roughshod over the same principle in Kashmir. Hence, in contrast to India, which considers the part of Kashmir under its control to be part of the Indian Union, Pakistan does not exercise formal sovereignty over the portion of Kashmir it controls. Rather, the territory is theoretically self-governed through its own interim constitution pending a plebiscite to determine the status of the historical state of Jammu and Kashmir. Above all, both Islamabad and New Delhi see Kashmir as legitimising the competing political frameworks that led to the partition of India. Islamabad believes that Muslim majority Kashmir will choose to be part of Pakistan and it will justify, once again, the ideological basis for the 1947 partition that was predicated on the assumption that Muslims and Hindus were separate nations. India, for that same reason, is unwilling to let go of Kashmir. A Muslim majority state like Kashmir as an integral part of our nation is proof and symbol of Indian secularism. It is a clear and permanent evidence of our rejection of Jinnah’s two-nation theory. To Pakistan, Kashmir as a part of India is a challenge to their existence and separate identity as an Islamic state in the subcontinent. If a Muslim majority state can continue happily in India then, what is the raison d’etre for Pakistan? Therefore we feel it is not just a question of some part of land but two ideologies which have a stake in Kashmir. It is obvious that no Indian government will allow Kashmir to secede from India and no Pakistani government will keep quiet and accept the reality that Jammu and Kashmir’s accession to India is final and irrevocable. Pakistan in order to fulfill its objective instigated and supported tribal invasion in Jammu and Kashmir.

Tribal Invasion

In October 1947, Muslim tribesmen from the frontiers of Kashmir, and some from the North West Frontier province of Pakistan invaded Jammu and Kashmir. These invaders were equipped with arms and ammunition from Pakistan by her officials as

150 Human Right Watch, n. 144, p. 18.
well as nationals and by some of local Muslim population of Kashmir, fired with pan Islamic zeal.\footnote{Balraj Puri, n. 113, p. 11.} The tribal hordes armed and supported by the Pakistan’s government and led by officers of the Pakistan army that entered the state from Hazara district in the NWFP along the Abbotabad-Muzaffarabad-Domel-Srinagar road on October 21, formed the spearhead of the final and the biggest blow of Pakistan to the state. Its objective was Kashmir valley and the capital city of Srinagar. But their master plan to occupy Srinagar and Jammu simultaneously and present the world with a fiat-accompli before any outside help could come to the state was foiled by the timely arrival of airborne Indian troops in Srinagar and by the popular resistance put up by the people of Jammu.\footnote{Bal Raj Madhok, n. 65, p. 612.} The story of the advance of the tribal is the bloody of rape, abduction of women and children and massacre of civil population, majority of whom were non-Muslims, who tried to save their lives.\footnote{Balraj Puri, n. 113, p. 11.}

**Events that had led to Tribal Invasion**

There were many such princely states in India in which rulers and majority of masses belonged to different communities. However, in case of Jammu and Kashmir the difference between the majority of population and the ruling elites was enormous and the condition of the masses was dismal.\footnote{Sumatra Bose, n. 75, p. 15.} In 1946, the National Conference launched the ‘Quit Kashmir movement’ against the background of inhuman repression which Maharaja launched against the people with the blessings of the British government.\footnote{Ali Mohammed Tariq, n. 73, p. 7.} The state has been notorious for its autocratically wayward methods of administration and its religious intolerance. There was a special tax on the slaughter of goats and sheep, which are sacrificed by Muslims once a year as part of religious ritual. Muslim places of worship and pilgrimage within the state were not respected by the rulers. The Arms Act that was in force in the state exempted only Hindu Rajputs from obtaining licence for guns and swords. Schools and colleges were located so as to be easily accessible to the Hindu population. Muslim peasants were serfs. Taxation was arbitrary and was collected by extortionist methods; and forced labour was common.\footnote{Punjab (India), n. 79, p. 11.} Muslims were generally not permitted to become officers in the state military, which was led by Sikhs.
and Hindus martial castes such as Dogra and Rajputs and were virtually unrepresented in the state’s civil administration. Apart from the mass illiteracy due to paucity of even primary education for Muslims, the Maharaja’s government regarded a free press and public opinion as subversive and regularly tried to prevent newspapers and journals published in Lahore by emigre Kashmiris from reaching the kingdom.\textsuperscript{158} There was a tax on every hearth and every window. Every cow, buffalo and sheep was taxed and even every wife. The Zaildari tax was introduced to pay for the cost of taxation and Dogra troops were billeted on the Poonchis (Muslims) to enforce collection.\textsuperscript{159} These taxes were not imposed on Hindus or Sikhs.\textsuperscript{160} The agrarian system in the state was basically feudal in character and cultivators suffered greatly due to heavy taxation and levy in kind.\textsuperscript{161}

In the area of Poonch district, there emerged an uprising. The inhabitants of Poonch launched a No-Tax Campaign\textsuperscript{162} against the oppressive rule of the Dogra ruler. This campaign developed into a major revolt. The press note of the Maharaja’s Government issued from Srinagar on September 12, 1947 gave first account of it, which specify that “Early in August in Bagh tehsil and northern part of Sudhnoti tehsil of Poonch jagir, evilly disposed persons launched a violent agitation against the administration of the jagir and in favour of civil disobedience and No Tax Campaign”.\textsuperscript{163} This rebellion took place in aftermath of the partition definitely with a pro-Pakistani character. The revolt was initiated by the soldiers of Imperial Britain’s Indian army who had served the British forces during the Second World War.\textsuperscript{164} As 15\textsuperscript{th} August and the partition drew near, there were many meetings and demonstrations in Poonch in favour of Jammu and Kashmir joining Pakistan. Martial law was introduced and fired on. Dogras burnt whole villages where only a single family (Abdul Qayyum started the revolt with a few friends) was involved in the revolt.\textsuperscript{165} The civil disobedience campaign was punished with the utmost severity.

\textsuperscript{158} Sumatra Bose, n. 75, pp. 17-18.

\textsuperscript{159} Punjab (India), n. 79, p. 15. See also Alastair Lamb, n. 28, p. 121.

\textsuperscript{160} Alastair Lamb, n. 28, p. 121.


\textsuperscript{162} The people of many villages and landlords dotted over the region refused to pay these new and unaccustomed taxes to the Maharaja’s agents. (Alastair Lamb, n. 28, p. 121.)

\textsuperscript{163} Punjab (India), n. 79, pp. 12-13. See also Muhammad Yusuf Saraf, n. 80, pp. 848, 852.

\textsuperscript{164} Sumantra Bose, n. 75, p. 32.

\textsuperscript{165} Punjab (India), n. 79, p. 15.
The Wazir (Chief Minister) did all that was possible to persuade the agitators to see reason and to restrain from breaking law to no purpose. On August 24, 1947 large and highly excited mobs collected in the West of Bagh tehsil and on the 25th August disregarding all efforts to persuade them to disperse, marched on to Bagh town in the vicinity of which they reached the number of about 5000, which swelled considerably during the next two days. These mobs were armed with firearms of various patterns - axes, spears and other weapons. The mobs demanded an entry into Bagh town which was mainly a non-Muslim town. Their entry was refused. On August 27, a mob supported by long range fire of their gangs from over the border attacked Bagh town from all sides. The deterrent fire of troops, designed to keep the mob at a distance rather than inflict casualties, prevented the attack from closing and the mob fell back foiled. The attackers then invaded the town.\textsuperscript{166}

Therefore, inside Kashmir, trouble started in the jagir of Poonch toward the end of August. A widespread popular demand for redress of grievances against the Poonch administration was denied constitutional channels and erupted into rioting. In reply, Kashmir state troops under their British commanding officer began harsh punitive operations against the Poonch villagers. Since the soldiers were mostly Hindu Dogras and the villagers Muslims, the conflict soon assumed a communal character. The bulk of the Poonchi men were ex-servicemen or soldiers of the Pakistan Army. They promptly evacuated their wives and children to the homes of relatives and friends across the Pakistan border, returned with arms, and in some places pushed back the state troops.\textsuperscript{167} However, Sheikh Abdullah said, “The present troubles in Poonch, a feudatory of Kashmir, were because of the unwise policy adopted by the state. The people of Poonch, who suffered under their local ruler and again under the Kashmir durbar, had started a people’s movement for the redress of their grievances. It was not communal.”\textsuperscript{168}

In Poonch and Mirpur, populated by thousands of demobilised soldiers of the Second World War, the Maharaja’s armies in order to assert the dogra rule plundered whole areas inhabited by Muslims and set fire to their homes. More platoons of the dogra regiment were drafted to crush the Muslims into submission.\textsuperscript{169} The enraged

\textsuperscript{166} Ibid., pp. 12-14.
\textsuperscript{167} Alice Thorner, n. 81, p. 176.
\textsuperscript{168} Punjab (India), n. 79, pp. 16-17.
\textsuperscript{169} Prem Nath Bazaz, n. 22, p. 322.
people all over the valley and the other parts predominantly inhabited by Muslims rose in rebellion against the despotic and despised foreign ruler. The rebellion of Poonch became successful in gaining the control over the entire Poonch. From Poonch, the disturbances spread to Muzaffarabad. As an immediate outcome of the revolt of Poonch, the tribal chiefs of Muzaffarabad, Poonch, Mirpur, the western districts of Jammu province turned to Pakistan. Some fighters for the liberation provisionally announced the formation of a parallel government on October 3, 1947 in the town which subsequently became known as the interim Azad Jammu and Kashmir government in Rawalpindi, Pakistan. This government forthwith started to function both in the civil and military spheres. Some Azad armies were raised as if in the twinkling of an eye. Thousands of the demobilisee soldiers living in Poonch and Mirpur joined revolutionary armies.

The attack on Poonch and massacres of Muslims in Jammu further aroused and inflamed all the more Pathan feelings and made the raid on Kashmir inevitable unless the government of Pakistan, by the use of troops, was prepared to create a situation in the North-West Frontier Province which might have incalculable results on the peace of the border. The Hindu Maharaja’s Dogra troops were embarked on what would now be described as ‘ethnic cleansing’ and provoked a spontaneous uprising against his tyranny. This and the subsequent accession inflamed the Pathan tribesmen and brought them to the defence of their co-religionists. The Azad Kashmir government declared on October 23rd a holy war for the liberation of homeland and ordered the Azad forces to proceed towards Srinagar. The Maharaja’s armies stationed in Muzaffarabad and Domel were easily vanquished. Almost all the Muslims in the dogra regiments joined the revolution. Many of them committed heinous and disgraceful crimes. They looted people, sacked towns, burnt houses, killed innocent non-Muslims and raped women. Some nationalist muslims were also done to death.

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171 The ‘Azad Kashmir Government’ had been taking shape and set up their headquarters at Muzaffarabad. They were led by Muhammad Ibrahim of Poonch, as Chief Minister, with Chaudhri Ghulam Abbas as Head of the State. (Lord Birdwood, n. 78, p. 304.)
172 Sumantra Bose, n. 75, p. 32.
174 Prem Shankar Jha, n. 74, pp. 3-4.
175 Ibid., p. 4. See also Prem Nath Bazaz, n. 22, p. 324.
176 Prem Nath Bazaz, n. 22, p. 324.
177 Ibid., p. 325.
Prem Shankar Jha observes that the available evidence points that there was no spontaneous revolt in Jammu and Kashmir against the Maharaja, at least till the end of September and that what happened in the Poonch region of the State at the end of August and in early September, was assiduously instigated by Pakistan. Secondly that while there were undoubtedly atrocities committed by bands of Sikhs and by some of the state troops against Muslims in the border belt of Jammu province in the first weeks of October, these were caused by an overspill into the state of the communal carnage occurring all along its borders in East and West Punjab, and overreaction and loss of control by the state forces in the face of atrocities committed by Muslims on Hindus both within Jammu and Kashmir state and in the adjoining areas of West Punjab, where only slightly less than half the population was Hindu and Sikh. While this was certainly no justification, Pakistan’s charge that state troops were cleansing the state of its 77 percent Muslim population in order to enable the Maharaja to accede to India is wholly unsustainable. Had this been his intention, he would have first cleansed his 8,000 strong state force of its almost 3,000 Muslims, and not waited for them to kill their officers before deserting to the enemy on October 23-25. Thirdly that the raids into Kashmir by the Pathan tribesmen were not spontaneous retaliations aimed at saving their Muslim brethren from Dogra genocide, but were carefully planned and instigated at least from the end of August or early September, i.e. a whole month before any of the alleged atrocities by the Kashmir state troops against Muslims in the border region took place, at a time when Kashmir was completely peaceful. Tribal raiders entered Kashmir, hoping to coerce it to join Pakistan.

During the first week of October 1947, a tribal rebellion broke out in the region of Poonch, on the northwestern reaches of Kashmir. The invaders were Pathan tribesmen directed and led by Pakistani officers, who entered Kashmir on the night of 21/22 October, 1947. From early 1948, however, the regular Pakistani army also entered the fray. Pakistan became a party to the invasion in Jammu and Kashmir in 1947 by permitting the frontier tribesmen to pass through its territory. Major Khurshid Anwar (an ex-Indian Army officer), Pakistan’s deputy commander of the unofficial Muslim
League’s guards, led an expedition from Pakistan to seize the Kashmir valley and Srinagar, the capital.\textsuperscript{184} Pakistani troops, disguised as local tribesmen, quickly joined the rebels. On the morning of October 22, the invading column composed of Pathan tribals and regular Pakistani army personnel captured the town of Muzaffarbad. The majority of the Muslim troops in the Jammu and Kashmir State Forces stationed in Muzaffarbad joined the raiders and massacred their Dogra (Hindu) counterparts.\textsuperscript{185} Therefore, in addition to tribesmen, the attacking forces consisted of some deserters from the state troops, locals of Poonch and Jammu and Pakistan nationals (including regular army soldiers on leave).\textsuperscript{186} After engaging in mayhem and rapine in Muzaffarbad, they headed toward Srinagar, the capital of Kashmir. The people of the state both Muslims and non-Muslims remained peaceful and loyal and looked up to him for protection.\textsuperscript{187} Caught in a panic, Hari Singh initially appealed to the neighboring princely state of Patiala for assistance. The Maharaja of Patiala sent him an infantry battalion from the Patiala state forces, but this unit proved inadequate to the task at hand.\textsuperscript{188}

Maharaja Hari Singh ascribed the disturbances to the influence of outsiders, “freebooters from Pakistan” as he called them.\textsuperscript{189} In desperation and to save the people of the state from the ravages of ‘the freebooters’, the Maharaja sought the military aid of the Indian Army and accepted the conditions of Jawaharlal Nehru. The army arrived with no other aim than to restore law and order so rudely disturbed and to clear Jammu and Kashmir of invaders.\textsuperscript{190} In desperation, Hari Singh appealed to the government of India for assistance. Prime Minister Jawaharlal Nehru agreed to provide assistance only if two conditions were met. First, he obtained the support of Sheikh Mohammed Abdullah, the leader of the largest secular and popular organisation within the state, the Jammu and Kashmir National Conference. Furthermore; he insisted that the Maharaja provisionally sign the Instrument of Accession.\textsuperscript{191} The Maharaja sent a formal request to India to allow Jammu and Kashmir to accede the dominion of India. India under the

\textsuperscript{185} Lionel Protip Sen, \textit{Slender Was the Thread}, Orient Longman, New Delhi, 1988, pp. 36-37. See also Sumit Ganguly, n. 26, p. 170.
\textsuperscript{186} Alice Thorner, n. 81, p. 177. See also Alastair Lamb, n. 28, pp. 136-37.
\textsuperscript{187} Punjab (India), n. 79, p. 5.
\textsuperscript{188} Lionel Protip Sen, n. 185, p. 39. See also Sumit Ganguly, n. 26, p. 170.
\textsuperscript{189} Prem Nath Bazaz, n. 22, p. 327.
\textsuperscript{190} Punjab (India), n. 79, p. 5.
\textsuperscript{191} Sumit Ganguly, n. 26, p. 170.
obligation of treaty and in confirmation with the Indian Independence Act, accepted the request for military aid and accession of Jammu and Kashmir to India.\textsuperscript{192}

With the signing of Instrument of Accession in the morning of 27\textsuperscript{th} October, the Indian Army was rushed to clear the state of invaders.\textsuperscript{193} The India’s 161\textsuperscript{st} Infantry Brigade was airlifted into Srinagar and the brigade was largely successful in hobbling the advance of the invaders. In fact, in early November 1947, it successfully counterattacked and broke through the tribal defenses. Despite this early success, the Indian Army suffered a setback in December. This enabled the forces of the Azad Kashmir (literally “free Kashmir”, as the Pakistani-assisted tribal army styled itself) to push the Indian troops from the border areas. In the spring of 1948, the Indian side mounted another offensive to regain some of the ground.\textsuperscript{194}

Prime Minister of India, Jawahar Lal Nehru on numerous occasions stated that “the task of Indian troops is to clear the raiders from and restore peace to Kashmir, as this is necessary to the holding of a plebiscite or a referendum by the people of Kashmir to decide finally as to which dominion they will accede”.\textsuperscript{195} The task of the Indian troops was to free large areas in Jammu province which had been overrun by the tribesmen. The tribesmen had surrounded the towns of Mirpur, Kotli, Poonch, Jhanger, Nowshera and Bhimbhar. Within the towns small state garrison were holding out. Nowshera, Jhanger and Kotli were relieved but the Mirpur garrison could not be helped and finally part of the garrison managed to fight its way out with some of the civilian refugees.\textsuperscript{196}

Further Sheikh Abdullah as the Head of the Emergency Administration on November 16, 1947 said, “What happened in Kashmir adds altogether a new pattern of perfidy. Those tribal pathans equipped with mechanised weapons of war scooped down on us, not merely as armed bandits but as a centrally directed force, with the avowed object of subjugating our land to the vassalage of Pakistan at the point of the gun…. They are criminals before history who exalted these invaders as the liberators of the people of Kashmir. They violated and abducted women, they massacred children and

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\textsuperscript{192} Sumatra Bose, n. 75, p. 25.
\textsuperscript{193} Balraj Puri, n. 112, p. 13.
\textsuperscript{194} Sumit Ganguly, n. 26, p. 170.
\textsuperscript{195} M.S. Deora (ed.), n. 86, p. 8.
\textsuperscript{196} Ibid., p. 7.
they looted everything and everyone. They even dishonoured the holy Quran and converted the mosques into brothels.\textsuperscript{197}

As the conflict escalated, the Indian leadership quickly realised that the war could not be brought to a close unless Pakistani support for the Azad Kashmir forces could be stopped. Accordingly, the government of India sought United Nations mediation of the conflict on January 1, 1948. It took a full year for the mediation process to bring the hostilities to an end.\textsuperscript{198} In the years immediately following accession, the international community recognised that Accession gave India the legal right to be in Kashmir and required Pakistan to vacate it. This position was reflected in the United Nations Security Council’s resolution of April 13, 1948 and three resolution of the United Nations Commission on India and Pakistan (August 13, 1948; January 5, 1949 and April 28, 1949) which were designed to implement it and make it operational.\textsuperscript{199}

Ultimately, the invaders were cleared from the Poonch and Rajouri areas, but Pakistan continued to hold on the part of Jammu and Kashmir i.e. PoK. The war did prove costly for India in territorial terms. One-third of Kashmir or approximately 5000 square miles went to Pakistan.\textsuperscript{200} Therefore, the princely state of Jammu and Kashmir got divided into two parts, one occupied by Pakistan and the other retained with India as the ruler of the state acceded to the Indian Union. The area that is occupied by Pakistan is known by the name of Pakistan Occupied Kashmir (PoK) or Pakistan administered Kashmir (PaK) as called by India. Pakistan calls it Azad Kashmir. Whereas the part that India retained is the same as Jammu and Kashmir. However, Occupied Kashmir is the term usually in use in Pakistan to describe the Indian portion of the Jammu and Kashmir state.\textsuperscript{201} Thus the 1947 Indo-Pak war created Indian Jammu and Kashmir (IJ&K) and Pakistan administered Kashmir (Pak/PoK).

In August 1947, an anti-Muslim movement within the state was initiated with all the appearance of a systematic persecution. It started on 26\textsuperscript{th} August at Bagh in

\textsuperscript{197} Ali Mohammed Tariq, n. 73, p. 13.
\textsuperscript{198} Sumit Ganguly, n. 26, p. 171.
\textsuperscript{199} Prem Shankar Jha, n. 74, p. 4.
\textsuperscript{200} Alistair Lamb, n. 100, p. 67. See also Sumit Ganguly, n. 26, p. 171.
\textsuperscript{201} Lord Birdwood, n. 118, p. 83.
Poonch. In Poonch and Mirpur, populated by a thousand demobilised soldiers of Second World War, in order to assert Dogra Rule, the Maharaja’s armies want only plundered the area inhabited by Muslims and set fire to their homes. The Times wrote on October 10, 1947: “237,000 Muslims were intentionally exterminated (unless they escaped to Pakistan) by Dogra forces, headed by the Maharaja in person. The declaration of partition and the uncertainty about the future created a highly disturbed atmosphere in northern and eastern India. Communal riots broke out on a colossal scale and men, women and children began to be slaughtered as sheep and goats. Panic and helplessness were writ large on all faces. Panic stricken people crossed over from another direction, Kashmir, during the tribal raiders' aggression in October 1947, thousands of Hindus and Sikhs poured in India. The total number of shelter seekers from Pakistan occupied Kashmir was around 1.35 lakhs. The place they knew as their homeland was now enemy land and foreign country. The September 1947 communal massacre in Jammu and Poonch pushed over 80,000 Muslim refugees to West Pakistan. The Central Ministry of Refugees estimated that the refugee influx to west Punjab was 52.78 lakh plus 2.5 lakh from Kashmir (Jammu refugees). Thousands of Sikhs and Hindus were slaughtered in Muzaffarabad, Poonch, Mirpur and the adjoining areas which were occupied by the Azad Kashmir armies. As a result, there was influx of several thousand Hindu and Sikh displaced persons and refugees from the western districts who poured across the border into Jammu, the only part of Kashmir with a sizeable Hindu population. Small gangs of armed men from Pakistan began to make sorties across the Kashmir frontier, setting fire to villages and putting people to death. Hindus and Rajputs in Jammu retaliated by driving out Muslims from the border areas and destroying villages on the Pakistan side.

Raiders indulged in an orgy of rape, arson and looting. Women were abducted and a large number of them were held in a concentration camp at Alibeg in terrible

203 Ibid. See also G.W. Choudhary, n. 202, p. 173.
204 Ibid., p. 58. See also G.W. Choudhary, n. 202, pp. 93-94.
206 C. Joshua Thomas (ed.), n. 16, p. 34. See also Sajal Nag, n. 16, p. 4756.
209 Prem Nath Bazaz, n. 22, p. 327.
210 Alice Thorner, n. 81, p. 176.
conditions. Of thousand Kashmir women of all religions, only a couple of hundreds had survived. They killed whoever came in their way. They killed children, old man and women and they committed rape on every young woman, Hindu, Sikh and Muslim alike. They burnt the property of the Hindus, Sikhs and Muslims without any discrimination. The war continued for fourteen months or so from the end of October 1947 to the end of 1948. It was for India to decide at the end of 1948 or the beginning of 1949, whether this war should carry on to the bitter end and thereby recover the lost territory or whether a halt should be called to active military operations and try some other and more peaceful method. Finally on January 1, 1948 India took up the issue of Pakistan aggression in Jammu and Kashmir in the United Nations, following which the United Nations mandated ceasefire was announced on January 1, 1949. The ceasefire line left one-third of the state under the control of Pakistan and the rest of it was associated with India.

**Analysis of Pakistan Role in Invasion**

Jammu and Kashmir hands were filled with Pakistani raids in the Poonch area which had became a major threat to the security of the state. The stoppage of all supplies including gasoline by Pakistan had created a very serious situation in regard to internal mobility of the limited defense forces which were dispersed over a long frontier. The state government tried to persuade Pakistan through diplomatic channels to honor its commitments under the standstill agreement. The Governor General of Pakistan was requested that the dominion of Pakistan may be advised to deal fairly with Jammu and Kashmir state and adopt a course of conduct which may be consistent with the good name and prestige of the Commonwealth of which it claims to be a member. The Governor General of Pakistan in his reply sent to the Maharaja of Kashmir on October 20 took no notice of the allegations made by Kashmir government and instead made counter charges of repression by dogra troops.

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211 M.S. Deora (ed.), n. 86, p. 6.
212 Ibid., p. 47.
214 Bal Raj Madhok, n. 65, p. 608.
215 Ibid., p. 609.
216 Ibid., p. 610.
During the course of the defense of Kashmir by joint action of Indian and Kashmiri forces, it became evident that Pakistan was the real invader and the raiders were mere subsidiary forces.\textsuperscript{217} There is abundant circumstantial evidence to show that Pakistan has aided and abetted the tribal invasion of Jammu and Kashmir. Both official and unofficial organisations were implicated, though the Pakistan government had officially disowned the invaders operating from bases in its territory. Pakistan provided moral and material aid to raiders.\textsuperscript{218} They supplied them with implements of war, with lorries, with petrol and with officers. They were continuing to do so. Indeed their high officials openly declare so… it is obvious that no large body of men could cross Pakistan territory in armed groups without the goodwill, connivance and active help of the authorities there. Therefore, the raids on Kashmir were carefully planned and well organised by the Pakistan authorities with the deliberate object of seizing the state by force and then declaring accession to Pakistan.\textsuperscript{219} The invasion of Kashmir was meant to coerce and compel the people of Kashmir to act in a particular way, namely, to accede to Pakistan. Sheikh Abdullah says, “Every Kashmiri resents this compulsion on his will”. We naturally opt to go to that dominion where our own demand for freedom receives recognition.\textsuperscript{220}

Prime Minister of India personally handed over letter to the Prime Minister of Pakistan on December 22, 1947 which reflected that raiders have free transit through Pakistan territory and they were operating against Kashmir from bases in Pakistan. Their modern military equipment could only have been obtained from Pakistan sources; mortars, artillery and Mark V-mines were not normally the kind of armament which tribesmen possess. Motor transport, petrol, food and other supplies were secured from Pakistan by the tribesmen/raiders; indeed, there had been reliable reports that the raiders get their rations from military messes in Pakistan. According to informative sources, large numbers of these raiders were receiving military training in Pakistan, which could only be under officers of the Pakistan army.\textsuperscript{221}

Complaint of India against Pakistan aggression against India through the invasion of Kashmir at the United Nations gave specific details of how arms and

\begin{footnotesize}
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\item Taraknath Das, n. 24, p. 268.
\item M.S. Deora (ed.), n. 86, pp. 8-9.
\item Ibid., p. 113.
\item Ibid., p. 29.
\item Ibid., p. 119.
\end{enumerate}
\end{footnotesize}
ammunition had been supplied to the invading forces by Pakistan and set forth the following conclusions: a) that the invaders are allowed transit across Pakistan, b) that they are allowed to use Pakistan territory as a base of operation, c) that they include Pakistan nationals, d) that they draw much of their military equipment, transportation and supplies (including petrol) from Pakistan, and e) that Pakistan officers are training, guiding and otherwise actively helping them. Pakistan countercharged and argued that the object of the various acts of aggression by India against Pakistan is the destruction of the state of Pakistan.\(^{222}\)

Pakistan termed the invaders as forces of an ‘Azad Kashmir’ government over whom she had no control.\(^{223}\) Pakistan evaded the issue and brought countercharges of Hindu atrocities against the Muslim of Kashmir, which later proved to be utterly unfounded.\(^{224}\) Also Pakistan blamed India of obtaining accession of Jammu and Kashmir by fraud and violence and threatening to destroy Pakistan by direct military action.\(^{225}\) According to the Pakistan authorities, the Indian forces were dangerously nearing the Pakistan border, and if this march of the Indian army was not checked, it would become a serious menace to the security of Pakistan. Therefore, the Pakistan government, to keep its hold in certain parts of Kashmir and to check the possible march of Indian forces into Pakistan, sent a large Pakistan army into Kashmir.\(^{226}\) Despite the initial official Pakistani denials of its involvement in the invasion, it is now well known that a serving Pakistani major General, Akbar Khan, had led tribesmen force under the pseudonym of ‘General Tariq’\(^{227}\) as if to create an excuse of the personnel of regular Pakistan army taking part in the invasion.\(^{228}\)

The Pakistan Foreign Minister, during a meeting with the United Nations Commission for India and Pakistan on July 8, 1948 admitted that three Pak Brigades of regular troops had been fighting in Kashmir since May 1948.\(^{229}\) The 7 Inf Division of the Pakistan Army joined battle surreptitiously in March-April 1948 and 9 Frontier

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\(^{222}\) Taraknath Das, n. 24, p. 269.
\(^{223}\) S.N. Prasad and Dharam Pal (eds.), n. 94, p. 369.
\(^{224}\) Taraknath Das, n. 24, p. 269.
\(^{225}\) S.N. Prasad and Dharam Pal (eds.), n. 94, p. 369.
\(^{226}\) Taraknath Das, n. 24, p. 272.
\(^{227}\) Maroof Raza, n. 26, p. 29. See also M.L. Chibber, n. 108, p. 60.
\(^{228}\) Bal Raj Madhok, n. 65, p. 610.
\(^{229}\) S.N. Prasad and Dharam Pal (eds.), n. 94, p. 370.
Division in June 1948. Therefore, the United Nation’s Commission was informed by Pakistan that her armies also had been forced to join the fighting and defend their country by entering deep into the borders of the Kashmir state. This was in contradiction to the earlier repeated statements of Pakistan in the United Nation’s Security Council that she had no hand in the Kashmir war. During the summer of 1948, the United Nations Commission for India and Pakistan, after investigation, became convinced that not only had Pakistan conspired with the raiders whom it supplied arms and ammunition and officers, but “Pakistan’s army General staff exercised overall command of regular and irregular Azad forces”. This was confirmed by the admission of Pakistan government officials. Thus, the Kashmir dispute was virtually Pakistan's war against India. A large number of soldiers and officers of the Pakistan army ‘on leave’ were deputed to organise and assist thousands of tribals that had been assembled there in the name of Jihad or holy war. The invasion was to be led by Major General Akbar Khan of the Pakistan army who was given the name General Tariq.

**Line of Control, a by-product of Kashmir conflict**

The line of control was originally known as ‘Ceasefire-line’. The cease-fire resulted in de facto partition of Jammu and Kashmir. It was the second partition within sixteen months of the first partition of India which had divided Punjab and Bengal on the basis of the religion of the people. The cease-fire line was drawn on January 1, 1949 and became the defacto Indo-Pak boundary line in Kashmir. The cease-fire line had since become more or less an international frontier. It was just the line of actual control of the armies of India and Pakistan on the first of January 1949. The ceasefire line was finally accepted by both sides on July 27, 1949. Under the Shimla Accord, the cease-fire line was converted and is now accepted as the Line of Actual Control (LAC) with some troop adjustments on both sides. It has remained, since the cease-fire of December 17, 1971, as a de-facto Indo-Pak boundary line in the Kashmir region.

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230 Ibid., p. 377.
231 Prem Nath Bazaz, n. 22, p. 434.
232 M.Y. Saraf states that the Pakistan forces were not in action in Azad Kashmir before April 1948. Of course, individuals from the Pakistan Army were participating in the war much before as volunteers; they were either on leave or had deserted their units. (Muhammad Yusuf Saraf, n. 80, p. 1018.)
234 Bal Raj Madhok, n. 65, p. 903.
235 Lord Birdwood, n. 118, p. 65.
236 Maroof Raza, n. 26, pp. 54-55.
Three out of the six districts of the state had gone into the hands of Pakistan. All Hindus including Sikhs in these parts have either been killed or driven out. The remaining three districts, Jammu, Ladakh and Kashmir valley, lie on the Indian side of the cease-fire line. Thus by proposing the cease-fire and allowing the Pakistani forces to remain in occupation of the Pakistan held areas of the state, the Indian government virtually accepted a partition of the state. The cease-fire agreement did not mention the right of the state government to administer the areas held by Pakistan or the so-called Azad Kashmir government. Those areas were left to be administered by the local authorities who practically meant the Azad Kashmir government or any other authority sponsored and supported by the Pakistan government.237

The line of control represents the influence of India in Jammu and Kashmir and Pakistan in Azad Kashmir. This situation over the last sixty years has affected the people inhabiting the area around line of control adversely. The people of Pakistan administered Kashmir somewhere relate to Pakistan as their nation and feel free from the clutches of India. Whereas the people in Indian administered Kashmir show a mixed trend of relating to Pakistan as a nation as well as an urge to become independent. There are of course another group of people who are doing well with the idea of seeing themselves with India. This convoluted and intricate perception and interpretation of different and sometimes antagonistic nation implies the crux of psyche behind Kashmir problem.238 For all purpose, the Line of Control is the de-facto border dividing the Indian and Pakistani administered Jammu and Kashmir. On this border ‘armies of the two neighbours stand face to face defending their parts of Jammu and Kashmir.’239 The Line of Control represents the unsettled status of the state of Jammu and Kashmir. This line running through 750 kilometers divides the Indian administered Kashmir from the Pakistan administered Kashmir. It was under the United Nations supervision that India and Pakistan agreed to a ceasefire.

The Displaced Persons in Jammu and Kashmir

There are four types of displaced persons in Jammu and Kashmir:- firstly, those migrated from Pakistan occupied part of Jammu and Kashmir state in 1947. Secondly,
those migrated from Pakistan areas adjoining to Jammu and Kashmir in 1947 that is West Pakistan refugees. Thirdly, those evacuated from some villages of Chhamb area in 1965 war and displaced from Chhamb after this area was handed over to Pakistan under Simla Agreement of 1971. These also include those who are displaced due to Indo-Pak cross border shelling. Lastly, those migrated out of Kashmir due to insurgency in 1989 i.e. Kashmiri pandits.

**PoK Displaced Persons:**

The persons who got displaced from the areas which were occupied by Pakistan in 1947 were called ‘displaced persons’. By displaced, the government meant all those who had to leave PoK due to communal violence and tribal invasion and came in present Jammu and Kashmir in 1947 and 1948. These displaced persons belong to Mirpur, Poonch and Muzaffarabad districts of Jammu and Kashmir. All these displaced persons are Hindus and Sikhs and non-Kashmiris as such were not allowed to settle in the Valley even though Muzaffarabad district was part of Kashmir province before 1947. The estimated population of these displaced persons presently settled in Jammu province is about ten lakh and almost four lakhs have settled in rest of the country. The commonly known PoK (PoJK) displaced persons were provided only with interim relief. The claims that were due to them for their settlement in India have not yet been given after sixty five years of partition and they have constantly been pleading their case to all the governments that were formed at state and central level since then and to all the political parties. The reason for this is that India considers PoK as part of Jammu and Kashmir that acceded to India and as such it is a part of Indian state. Displacement due to 1947 civil war has affected all sections of the society whether economically prosperous or weak.

**West Pakistan Displaced Persons:**

These are the refugees who migrated from the territory that became Pakistan after the partition of the British India. They crossed over the border towards and started to live in Indian part of Jammu and Kashmir. Their population is about 2.5 to 3 lakh.

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240 The Director General has stated that 592 families of Muzaffarabad district remained in Srinagar for three years and were sent to Jammu for rehabilitation because land was not available in Kashmir province for their rehabilitation. *(Report of the Inquiry Committee appointed to examine the Working of Land Reforms, Price Control etc. i.e. Wazir Committee, Government of Jammu and Kashmir, Ranbir Government Press, Jammu, 1953, pp. 153, 159. For details see Appendix I.)*
West Pakistan refugees are Indian citizens under the Constitution of India, but even sixty five years after they settled in Jammu and Kashmir, they are not ‘Permanent Residents’\(^\text{241}\) of Jammu and Kashmir and are therefore denied, among other rights, the right to vote in the state assembly election. Therefore, entire Permanent Resident benefits of Jammu and Kashmir have been denied to them.

\textbf{1965, 71 War Displaced Persons:}

These are the persons who got displaced due to India-Pakistan war in 1965 and 1971 when area of Chhamb was given to Pakistan under the Simla Agreement. About 2,50,000 persons were uprooted from their hearths and homes in Chhamb-Jaurian and Poonch-Rajouri sectors during 1965 armed infiltration from Pakistan across the cease-fire line into Jammu and Kashmir. Besides, 70,000 persons were displaced from border areas of Jammu district.\(^\text{242}\) They were settled along the border line from Akhnoor to Kathua district. They were not provided full quota of land as per the prescribed scale of the State Revenue Authority to the land that they had left behind in Chhamb.

\textbf{Displacement due to Indo-Pak Cross-Border Shelling}

The person living in villages on both sides of the line of control in Jammu and Kashmir gets occasionally displaced, due to shelling across the line of control by both India and Pakistan. In 1965, 1971 and 1999 India-Pakistan wars, the exchange of fire between the Indian and Pakistani armed forces created panic amongst the villagers in the

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\item \textsuperscript{241}‘Permanent Residents’ is defined in Section 6 of the Jammu and Kashmir constitution that came into full effect from January 26, 1957. The State constitution’s Section 6 goes as follows: ‘(1) Every person who is, or is deemed to be, a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the state, if on the fourteenth day of May, 1954:- (a) he was a State Subject of Class I or the Class II; or (b) having lawfully acquired immovable property in the state, he has been ordinarily resident in the state for not less than ten years prior to the date. (2) Any person who, before the fourteenth day of May, 1954, was a State Subject of Class I or of Class II and who having migrated after the first day of March, 1947, to the territory now included in Pakistan returns to the state under a permit for resettlement in the state or for permanent return issued by or under the authority of any law made by the state legislature shall on such return be a permanent resident of the state. (3) In this section, the expression “State Subject of Class I or Class II” shall have the same meaning as in the State Notification No. I-L84 dated the twentieth April 1927, read with State Notification No. 13 L dated the twenty-seventh June, 1932.’ And provision (b) under Section 9 of the state constitution allows the Jammu and Kashmir legislature to make laws conferring special rights and privileges to the Permanent Residents while denying the same to other residents of the state. Although the Jammu and Kashmir legislature does have the power to designate these refugees as ‘Permanent Residents’ under Section 9(a) of the state constitution, but that alteration has not been done by the Jammu and Kashmir legislature. (R.P. Sethi, \textit{Commentary on the Constitution of Jammu and Kashmir in the Historical and Geographical Backdrop}, Ashok Law House, New Delhi, 2005, pp. 162-188, 198.)
\end{itemize}
\end{footnotesize}
border areas leading to their exodus to safer areas. Many people left their homes in Akhnoor-Chhamb sector, Samba sector, Poonch, Kallal, Rajouri, Dras and Kargil to avoid Pakistani shelling. Since the end of the 1990s, clashes between Indian and Pakistani forces and attacks by separatist militant groups have led to several waves of displacement from villages along the Line of Control. The ceasefire has substantially improved the security situation and many have been able to return to their homes. However, reports from the Akhnoor and Poonch districts of Jammu reveal that thousands are still displaced. Among the returnees, many had felt pressured by the authorities to leave the relief camps as water, electricity and different relief measures had been cut without the consent of the camp population and schools had been retransferred to their home villages. Despite the severe cut in services, many people remain in the camps because they no longer have access to their fields due to the fencing along the Line of Control or the fact that their fields have still not been de-mined as promised and they therefore have no way to earn a livelihood in their home villages. Both returnees and camp residents depend on relief from the government which they say is largely inadequate, and adhoc.243

Kashmiri Pandits

With the eruption of armed insurgency and terrorism and rise of militarised form of Islamic fundamentalism in Kashmir since late 1989, about three lakh Kashmiri pandits living in the valley of the Kashmir were forced to migrate out of there. Their displacement has resulted in loss of their land, property, homes and human right violations, breakup of families, social and cultural community ties. As per official statistics, 56, 246 displaced families from Kashmir are registered as migrants.244 The government of India considers Kashmiri pandits as “migrants” (implying that they left voluntarily) and not as ‘internally displaced people’ (which would imply that they were forced to flee). The violence in Kashmir has caused the displacement of 200,000 to 250,000 Kashmiris, most of who live in camps located primarily near Jammu and New Delhi. Following select killings of community members and widespread anarchy almost

the entire Hindu community (pandits) of Kashmir valley has fled during 1989-90 when numerous secessionist groups took control of the region.245

**Displacement from Pakistan occupied Kashmir**

The displacement from PoK took place in 1947 as a result of the tribal invasion and subsequent communal carnage. The people ran away from their homes to save their life and reached towards the Jammu province. The question aroused how they be named when efforts were made to resettle them. The state government named them displaced persons rather than refugees. So, if seen in the context of United Nations Conventions where PoK 1947 displaced persons stands. The 1947 partition occurred before the date prescribed in the 1951 United Nations Convention so this definition if seen in the context of 1947 PoK displaced persons could be made applicable and they are recognised as refugees if we delimit the territoriality of Europe when India signs the Convention.

The internal refugees or displaced internally are people still inside their country but who have been uprooted from their homes or habitual economic activities by the generalised violence or prevailing conflict in their country. They may fear persecution and may be helpless without much assistance, but they are outside the purview of international refugee law.246 This definition if made applicable in the context of PoK displaced person, then they appropriately fall in the category of refugee as they has been forced to move out of respective territory to save their lives from the generalised violence and aggression of tribals with the support of Pakistani Army which get transformed into war situation and violations of human rights.

The millions who have been displaced internally as a result of natural disaster or adverse social, political and economic conditions suffer from serious human rights violations or socio-economic deprivations as much as their external counterparts but they are treated differently from the dejure refugees.247 According to international law, however, a person merits the label only if he or she has crossed internationally recognised borders to escape a well founded fear of persecution. The distinction matters,

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See also http://www.asylumlaw.org/docs/india/unhcr_bpas98_india.pdf
247 Ibid., p. 7.
because those who have crossed an international boundary benefit from the 1951 international Convention Relating to the Status of Refugees and its 1967 Protocol as well as from the ministrations of the United Nations High Commissioner for Refugees (UNHCR). Those displaced within a country often are at least as vulnerable, but they receive less attention and can call upon no special international agency, even though the General Assembly has called upon UNHCR to minister all those in ‘refugee like situations’. Although the lot of refugees is hardly attractive, they may actually be better off than IDPs, whose existence customarily causes the issue of sovereignty to raise its ugly head. As a result, people in need are situated not only in refugee camps in neighboring countries (with UNHCR orchestrating help and protection), but increasingly within civil war zones themselves (where victims fall largely between organisational and legal stools).

The refugee definition includes an important criterion that excludes many of the world’s displaced persons. In order to fall within the realm of the protection of the international refugee regime, such persons must have crossed the border of their country of nationality or habitual residence and be in another country. If we see the PoK 1947 displaced persons in this context, neither they have crossed the international boundary, nor do they reside within the sphere of their habitual residence. The two situation arises, firstly if PoK is accepted as part of Jammu and Kashmir as claimed by the Indian government, they fall in the category of internally displaced persons. Secondly, if status quo is taken in consideration as final position, PoK comes under the Pakistan territory; so in this perspective, the 1947 displaced persons fall in the category of refugees. As per the international politics, no state is ready to lose its territory to another country or give control of its territory. Presently, they are at best the persons in “refugee like situations”. However, the government calls them displaced persons. Thus taking the position of PoK into consideration and international norms, the PoK displaced persons deserve to be granted either as IDPs or refugees status.