

The Indian State of Jammu and Kashmir

Policy Brief: 2011 - 2012



I. Background

Early History of Kashmirⁱ

- Kashmir, once known for its idyllic beauty, has historically been inhabited by Hindus and Buddhists, and had a majority Hindu population until the 14th century when Islamic invaders entered the region. Ancient Kashmir was renowned as a center for Hindu and Buddhist learning and was ruled by Hindu kings until 1339.
- Hindus indigenous to the Kashmir Valley are known as Kashmiri Pandits. They are the original inhabitants of Kashmir and have a unique ethno-religious culture that dates back more than 5,000 years.
- Following waves of Islamic invasions, numerous foreign origin Muslim rulers occupied Kashmir until 1819. Under Muslim rule, Hindus faced periods of persecution resulting in several mass migrations of Hindus from Kashmir.
- Sikhs gained control over the region in 1819 and ruled Kashmir until 1846, followed by the Hindu Dogra (an ethnic group native to the Jammu region in the state) reign from 1846 to 1947.

Partition of the Indian Subcontinent

- At the time of the partition of the Indian subcontinent in 1947, the former Princely State of Kashmir was ruled by the Hindu Dogra Maharaja Hari Singh. The Maharaja joined the Indian Union after Pakistan orchestrated an invasion of Kashmir using Pashtun tribesmen and regular military personnel.ⁱⁱ
- Following the Pakistani invasion, the Maharaja of Kashmir signed the Instrument of Accession, the standard legal mechanism used by the Princely states of British India, and formalized Kashmir's legal accession to India. The accession was also approved by the largest and most popular Kashmiri political party, the All Jammu and Kashmir National Conference, led by the charismatic Muslim leader, Sheikh Mohammed Abdullah.ⁱⁱⁱ
- Indian military forces were only deployed to Kashmir upon the signing of the Instrument of Accession and at the request of the Maharaja and approval of Sheikh Abdullah, in order to stop the advancing Pakistani military and tribal forces. The conflict led to an all out war between the two countries, and India then sought the intervention of the United Nations, which created the United Nations Commission for India and Pakistan (UNCIP) to examine the situation.^{iv}
- In April 1948, the UN Security Council passed Resolution 47, requiring (1) demilitarization of the region, and (2) a plebiscite to decide the future of the former Princely State.^v
- The Resolution, however, made clear that Pakistan must first withdraw its military personnel and tribesmen from the State and prevent any further intrusion into the State of such fighters, as a necessary precondition to holding a plebiscite.^{vi}
- A UNCIP report found that Pakistan not only violated its obligations under Resolution 47, but actually increased its troop presence in what is now Pakistan Occupied Kashmir (PoK), making the question of a plebiscite moot.^{vii}
- The terms of a plebiscite under Resolution 47 further required that all subjects of the State, regardless of religion, shall be free and safe to express their views and vote on the question of accession, and minorities in all parts of the State should be accorded adequate protection.^{viii} These conditions were violated, however, when Hindus were forced to flee from PoK in 1947 and subsequently driven out of the Kashmir Valley in 1989 by Islamist militants, permanently changing the demographics of the State and rendering any plebiscite inequitable to minorities in Kashmir.

Territorial Division of Kashmir

- The former Princely State of Jammu and Kashmir has a total area of 85,807 square miles, but Pakistan continues to occupy approximately 28,160 square miles in contravention of Resolution

47, while China illegally occupies 16,500 square miles. This territorial division now makes a plebiscite impractical.^{ix}

- Pakistan occupied Kashmir (PoK) is predominantly Sunni Muslim with a significant Shia Muslim minority. There are virtually no Hindus left in PoK and many ancient temples have been destroyed. In PoK, the Pakistani government has failed to provide basic rights and democratic representation to the Kashmiri people. Moreover, local Kashmiris are discriminated against, while Pakistanis from other parts of the country are given preferential treatment.^x
- Chinese control in Kashmir includes 2,000 sq. miles in the Shaksgam Valley, which was ceded to them by Pakistan in a 1963 boundary settlement. The remaining 14,500 sq. miles, known as Aksai Chin was seized by China during the 1962 Indo-China war. Chinese occupied Kashmir contains a Buddhist majority population.^{xi}
- The remaining two-thirds of the state was incorporated into India under Article 370 of the Indian constitution and consists of three regions, Jammu, the Kashmir Valley, and Ladakh. Although the state has a Muslim majority population (66.97%), there are substantial minorities, including Hindus (29.63%), Sikhs (2.03%), and Buddhists and Christians (1.36%).^{xii}
- Article 370 is a special clause that made “Jammu and Kashmir a country within a country, with its own flag, emblem, constitution and Sadr-i-Riyasat (Prime Minister).” Moreover, it limits the Indian Parliament’s legislative power over the State to defense, foreign affairs, and communications. In order for the Indian Parliament to apply other laws to Jammu and Kashmir, it requires the State’s concurrence. Article 370 further restricts the ability of people moving from other parts of India to the state, and was implemented to accommodate the interests of Kashmiri Muslims.^{xiii} This exclusivist policy is inconsistent with the tenets of India’s secular democracy and only applies to Kashmir. For instance, there are no equivalent provisions in other Indian states, where Hindus have the ability to prevent non-residents from moving to their states. Moreover, the forced exodus of Hindus from Kashmir has already irreversibly changed the religious demography in Kashmir, and those displaced Pandits that have difficulty obtaining voter identification cards with their place of origin would be unable to return to Kashmir under Article 370.
- Subsequently, local elections were held in Indian Kashmir in 1951 where Sheikh Abdullah’s National Conference won a resounding victory. And in 1956, the Jammu and Kashmir Constituent Assembly voted to approve the merger of Kashmir with India.^{xiv}

II. Pakistan’s Support for Terrorism in Kashmir

- Pakistan’s military and Inter-Services Intelligence Agency (ISI) planned and orchestrated an Islamist insurgency in India’s state of Jammu and Kashmir starting in 1989. According to former Pakistani Ambassador to the U.S., Husain Haqqani, the objectives of Pakistan’s support for the insurgency were two-fold: (1) destabilize India through asymmetric warfare by fomenting violence in Jammu and Kashmir through militant groups, and (2) spread global jihad.^{xv}
- Supporting jihad in Kashmir became an instrument of official Pakistani state policy and the ISI organized and centrally controlled the insurgency, while dictating the operations and targets of the militants groups. A separate Kashmir cell was created within the ISI responsible for recruiting, training, and arming militants.^{xvi}
- Kashmiri terrorists also have ties with Al-Qaeda and militant groups operating in the Pakistan-Afghanistan border areas, which continue to be the center of Islamist terror networks, fundamentalism, drug trafficking, illicit trade in small arms, and international terrorism.^{xvii}
- Pakistan’s ISI carried out a concerted effort to propagandize the Kashmir issue in the international fora through groups like the Kashmir American Council (KAC). KAC’s leader Ghulam Nabi Fai was arrested by the FBI and convicted for illegally lobbying on behalf of the ISI. Similar organizations promoting Pakistani propaganda were set up in London and Brussels.^{xviii}
- Extensive data and statistics demonstrate that 43,460 people have been killed in the Kashmir insurgency since 1989. Of these, 21,323 were terrorists or “militants,” 13,226 were civilians killed by “militants,” 3,642 were civilians killed by security forces, and 5,369 policemen killed by “militants.”^{xix}

- The continued presence of security personnel in the state and the use of the Armed Forces Special Forces Act, along with a sustained campaign to curtail the movement of terrorists into the state has led to a drastic reduction in terrorism related fatalities in recent years. In 2011, for example, terrorist related violence was significantly less than in previous years, with a total of 183 people killed.^{xx}

III. Status of Human Rights

Religious Violence

- One of the specific strategies of Pakistan's ISI sponsored insurgency was to complete the "communal cleansing" of Kashmir by attacking non-Muslim indigenous Kashmiris in order to change the demographics and create a minority free Kashmir. This systematic campaign to cleanse Hindus from Kashmir started in 1989 and involved documented massacres of innocent civilians, rapes, threats, assassinations, and intimidation. Public announcements were placed in newspapers, sermons made from mosques, and posters hung on houses ordering all Kashmiri Hindus to leave the Valley, threatening violence if they did not.^{xxi}
- Between 1989 and 1991, nearly 400,000 Pandits (over 95% of the Hindu population from the Kashmir Valley) were forced to leave their ancestral homes, fleeing to other parts of India.
- Approximately 1,490 Hindus were killed in Kashmir between 1989 and 2003, although Kashmiri Pandit groups estimate that the numbers are much higher. Moreover, there were several subsequent attacks and massacres of Hindus throughout the state.^{xxii}
- It is estimated that since 1989, nearly 105 educational institutions run by Kashmiri Hindus were burned down or demolished; 14,430 businesses and shops destroyed; and more than 20,000 Kashmiri Hindu homes destroyed, looted, or occupied.^{xxiii}
- Over 170 temples have been destroyed or damaged,^{xxiv} and more than 100 Hindu religious sites have been illegally occupied by local Muslims.^{xxv}

Institutional Discrimination

- Kashmiri Hindus lack the right to independently administer their own religious sites and institutions in the Kashmir Valley. Amidst growing concern over the illegal occupation and encroachment of Hindu religious sites, the Kashmir State Government plans to enact a law to provide for the protection and management of Hindu temples in the Kashmir Valley.^{xxvi}
- Despite significant populations in the Jammu and Ladakh regions of the State, Hindus and Buddhists remain politically marginalized and severely underrepresented in government positions. Muslim politicians and political parties, particularly from the Kashmir Valley, have continuously dominated the state government, ignoring the economic and political interests of Jammu and Ladakh, and Hindus and Buddhists, respectively.^{xxvii}
- The displaced Kashmiri Hindu Pandit community lacks a single representative in the 87 member Jammu and Kashmir State Assembly.^{xxviii}
- Thousands of Kashmiri Pandits living in refugee camps have been systematically disenfranchised and prevented from exercising their right to vote. For example, the displaced Hindu Pandits face a more cumbersome process in obtaining voter IDs, and many were left off election voter lists.^{xxix}

Internal Displacement and Right of Return

- Under international law, Kashmiri Pandits are Internally Displaced Persons (IDPs), or persons forced to flee their homes as a result of armed conflict, violence, or human rights violations, who have not crossed an international boundary. The Indian government, however, officially categorizes them as migrants.^{xxx}

- After their initial displacement between 1989 and 1991, 160 of the remaining 700 Hindu families in the Valley were also forced to leave after increased violence and attacks occurred between 2003 and 2004.^{xxxii}
- Less than 4,000 Kashmiri Pandits remain in the Valley today, living with daily threats of violence and terrorism. For instance, on May 4, 2012, Islamic militants attacked a police post guarding one of the few remaining Pandit villages in Shopian district of South Kashmir.^{xxxiii}
- More than 20 years after the violence began, displaced Pandits are unable to safely return to their homeland, and many continue to live in temporary refugee camps in the cities of Jammu and Delhi. The camps are overcrowded and lack adequate facilities and basic necessities, while many Pandits experience serious health issues, including high incidence of disease, psychological problems, and high death rates.^{xxxiv}
- Although the central Indian government and the state government in Kashmir have discussed proposals to rehabilitate the displaced Pandits to the Valley, these plans have not yet been implemented. Furthermore, while Hindus are keen to return, Pandit leaders are skeptical of the government's rehabilitation plans and its ability to provide protection to Hindus upon return.^{xxxv}
- Islamic militant groups have rejected the Pandits' right to return and have issued threats against Hindus if they return. For example, one extremist group publicly stated: "We impose a ban on the return of Kashmiri Pandit migrants to the Valley."^{xxxvi}
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IV. U.S. Foreign Policy Objectives in South Asia

Terrorism and Regional Security

- International security analysts and intelligence reports confirm the role of Pakistan's military and ISI spy agency in training, funding, and providing refuge to terrorists operating in the Indian state of Jammu and Kashmir.^{xxxvii} Pakistan's support for terrorism in Kashmir is a destabilizing force in South Asia and threatens U.S. security interests in the region.
- Terrorist organizations active in Kashmir, including Lashkar-e-Toiba and Jaish-e-Mohammed, have documented ties with al-Qaeda and other extremist groups attacking American soldiers in Afghanistan. Such groups have been designated as Foreign Terrorist Organizations (FTO's) by the U.S. Department of State and jeopardize America's ability to stabilize Afghanistan.^{xxxviii}

Trade and Investment

- The U.S. has strong economic interests in India as a trading partner and a market for direct investment. According to the Office of the United States Trade Representative, U.S. foreign direct investment in India was \$18.6 billion in 2009, and U.S. goods and services trade with India totaled \$60 billion for the same year. Moreover, India invested \$4.4 billion in the U.S. in 2009.^{xxxix}
- Pakistan's continued support for Islamist terrorism and militancy in Indian Kashmir poses a threat to American investment and trade interests in India.

Religious Freedom and Democracy

- Promoting religious freedom and human rights for the displaced Kashmiri Hindu Pandit population is consistent with America's commitment to human rights.
- Pakistani sponsored terrorism in Kashmir undermines India's position as a stable democracy and key U.S. strategic partner in the region.

V. Policy Recommendations

- The U.S. government must exert diplomatic and economic pressure on Pakistan's government to end its use of terrorism as an instrument of state policy. It should further urge Pakistan to prosecute any militants responsible for killing civilians in India's state of Jammu and Kashmir.
- The provision of any future U.S. military aid to Pakistan should be made conditional on Pakistan ending all support for Islamist militant groups responsible for acts of terrorism in Kashmir. Furthermore, the Pakistani government must be held accountable for diverting U.S. funds to terrorist groups who seek to destabilize India.
- U.S. Congressional Representatives should support House Resolution 387 (H. Res. 387), which recognizes the religious freedom and human rights violations of Kashmiri Pandits since 1989, and demands that the terrorist infrastructure in the region be dismantled. H. Res 387 encourages peace and stability in South Asia and sends a strong message that terrorism will not be tolerated, regardless of whether the victims are Hindus in Kashmir, American soldiers in Afghanistan, or Western civilians around the world.

ⁱ Kak, Subhash, "The Poplar and the Chinar: Kashmir in a Historical Outline," International Journal of Indian Studies, Vol 3, (1993), p. 43-51, reproduced at Kashmir News Net, <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=1427>, (July 2003), <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=1427>

ⁱⁱⁱ *Ibid.*

^{iv} Haqqani, "Pakistan's Endgame in Kashmir," (July 2003); Subbiah, Sumathi, "Security Council Mediation and the Kashmir Dispute: Reflections on its Failures and Possibilities for Renewal," (Winter 2004), Boston College International and Comparative Law Review.

^v Subbiah, "Security Council Mediation and the Kashmir Dispute: Reflections on its Failures and Possibilities for Renewal," (Winter 2004).

^{vi} *Ibid.*

^{vii} *Ibid.*

^{viii} United Nations Security Council Resolutions - 1948, <http://www.un.org/documents/sc/res/1948/scres48.htm>.

^{ix} Kamath, M.V., "Will division of Kashmir solve the lingering dispute?" (May 25, 2000), Free Press Journal; Prime Minister Secretariat of "Azad Government of the State of Jammu and Kashmir," <http://www.pmajk.gov.pk/history.asp>; Beersmans, Paul, "Jammu and Kashmir: A Smouldering Conflict and a Forgotten Mission of the United Nations," (January 2002), Belgian Association for Solidarity with Jammu and Kashmir, <http://www.basjak.org/doc/jkNutshell.pdf>

^x Beersman, Paul, "The Kashmir-Issue: European Perspectives." Belgian Association for Solidarity with Jammu and Kashmir, <http://www.basjak.org/doc/jkind081warikoo.pdf>

^{xi} Beersmans, "Jammu and Kashmir: A Smouldering Conflict and a Forgotten Mission of the United Nations," (January 2002).

^{xii} Statistics Collected from the 2001 Census India District Profiles, Reproduced at http://en.wikipedia.org/wiki/Jammu_and_Kashmir.

^{xiii} Fotedar, Sunil, Atal, Subodh, and Koul, Lalit, "Living under the shadow of Article 370," (January 2002), Kashmir Herald, Volume 1, No. 8, <http://kashmirherald.com/featuredarticle/article370.html>; "Article 370: Law and politics," (September 16, 2000), Frontline, <http://www.hinduonnet.com/fline/fl1719/-17190890.htm>

^{xiv} Ganguly, Rajat, "India, Pakistan, and the Kashmir Dispute," Asian Studies Institute and Centre for Strategic Studies, <http://www.victoria.ac.nz/slc/asi/publications/01-other-india-pakistan-kashmir-dispute.pdf>

^{xv} Haqqani, Husain, "Pakistan: Between Mosque and Military," (2005), p. 235, Carnegie Endowment for International Peace

^{xvi} *Ibid.*

^{xvii} Rohde, David, "Concern rises in Pakistan of a War without End," (November 1, 2004), The New York Times, <http://www.nytimes.com/2004/11/01/international/asia/01pakistan.html>; Haqqani, "Pakistan: Between Mosque and Military," (2005), <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=16651>.

^{xviii} PTI, "Ghulam Nabi Fai, US-based Kashmiri separatist leader, pleads guilty to charges of spying for ISI," (December 7, 2011), The Times of India, http://articles.timesofindia.indiatimes.com/2011-12-07/us/30485657_1_kashmir-centers-fund-high-profile-conferences-isi-agent.

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