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CHAPTER IV

JAMMU AND KASHMIR ISSUE

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Brief History of Jammu & Kashmir:

It was in the year 1346, Jammu and Kashmir came into existence as a separate State. Until the 14th Century, Kashmir was ruled by a series of Buddhist and Hindu dynasties. Later a Muslim dynasty was established which continued to rule, Kashmir during the period (1339 to 1587). Akbar invaded Kashmir and made it a part of the Moghal Empire. <sup>In 1752 Kashmir Passed</sup> into the powerful grasp of Ahmad Shah Abdali of Afaganistan. Kashmir became subject to the Pathan rule for nearly seventy years. This period has been described as a very cruel and the worst of all the regimes of Kashmir. In 1819, Kashmir was conquered by Maharaja Ranjit Singh, the great Sikh ruler. Kashmir remained under the Sikh rule and was administrated by their Governors till 1846. Compared to the other regimes the Sikh rule in Kashmir was better<sup>1</sup>.

In the latter half of the 18th Century, Jammu and Kashmir was ruled by a 'Dogra Chief' of Rajput descent. With the death of Ranjit Sing, the Sikh power had declined. The defeat of

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1. Refer Walter W. Lawrence, The Valley of Kashmir, London, 1895, p.197.

Sikh army at the hands of British at battle of Subraon  
led the fall of Lahore. The 'Treaty of Lahore' of 8th March,  
1846 stipulated that Gulabsing, the former minister of Ranjit  
Sing was to act as an independent Sovereign for such territories  
as British would give over to him in a separate agreement.  
This agreement was known as the 'Treaty of Amritsar'. This  
treaty placed Gulab Sing, as Maharaja in possession of  
" the hilly or mountaineous country between Indus and Ravi  
including Chambal and excluding Lahul, being part of the  
territories ceded to the British Government by the Lahore  
State"<sup>2</sup>.

After the death of Maharaja, Gulab Sing in 1857 he  
was succeeded by his son Ranbir Sing. He was a great admirer  
of British institutions, but his pace for modernization remained  
painfully slow. Pratap Sing succeeded his father, Ranbir  
Sing, in 1885. During Pratap Sing's reign the British showed  
greater interest in Jammu and Kashmir, and in fact, made an  
attempt to take over direct control of the state in view of  
its proximity to Russia. In 1889 British instituted Gilgit  
Agency under direct rule of British political Agent. Gilgit  
area was virtually beyond the control of the court of Kashmir.

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2. Panikar K.M., Foundation of Kashmir State, London,  
1953, pp.111-112.

The State of Jammu and Kashmir was the largest Principality of British India. Pratap Sing died in 1925 and was succeeded by his nephew, Maharaja Hari Sing; who wielded authority till 1948. It is clear that 'Dogra rule' was authoritarian and of little democratic content. However, the fact should be noted that the last period of 'Dogra rule' saw some important developments in the State. The waves of modern thought and ideas began to have their impact on the State. The isolation of Jammu and Kashmir ended and the State was integrated with rest of India in several ways. In the national stream this period also saw the rise of determination to resist the intrusion of outsiders into the State.

The people of Jammu and Kashmir have been always peace-loving, hard-working and tolerant. Religious bigotry has always been foreign to their very nature. According to the 1941 census, the total population of the State was 4,021,616. The religion-wise distribution was as follows:<sup>3</sup>

Muslims	Hindus	Sikh	Buddhist	Others
3,101,247	809,165	65,603	40,969	4,605

Further, according to the Imperial Gazetteer, "about 34 per cent of <sup>the</sup> population speak Kashmiri, and 15 per cent

3. Rao, H.S., Legal Aspects of the Kashmir Problem, Asia, 1967, p.9.

Dogri, while Punjabi is the tongue of nearly 30 per cent. A great variety of languages are used in various parts of the State<sup>4</sup>.

The State of Jammu and Kashmir is by no means unira-  
cial or unilingual. In fact, it presents the picture of a multi-  
racial society, speaking different languages, having different  
relations, and conforming to different traditions and customs.

From the above table it can be inferred that the religion-  
wise distribution indicates its multi-lingual character. As  
Balraj Madhok says, " Jammu and Kashmir State as at present  
constituted... is simply a political entity. It is a conglo-  
meration of at least six distinct people inhabiting well  
defined parts of the State and each having distinct language,  
culture, customs, manners, and history"<sup>5</sup>.

The State of Jammu and Kashmir is situated in the  
strategic position in the extreme North of the Indian quadri-  
lateral. The State had important international boundaries.  
To the North-East it is bordered by Tibet, to the North by  
Chinese Sinkiang and to the North-West by Soviet Province of  
Turkestan and by Afganistan. To the West its frontiers match

4. Refer Gupta Sisir, Kashmir- A Study in Indo-Pak Relations,  
Asia, 1966, p.24.

5. Modhak Balraj, Kashmir: Divided:, Lucknow, 1950, p.16.

with those of Pakistan and to the South with those of Pakistan and India.

Geographically, the State can be divided into four broad natural regions. In the North are the areas of Gilgit, Chitral, and Baluchistan with a Predominantly Muslim population. In the centre is valley of Kashmir, with mixed Hindu-Muslim population. To the South lies Jammu where the majority of the population is Hindus belonging to the 'dogra Community' and the province of Ladhak, which lies between the valley of Kashmir and Tibet, has Buddhist population<sup>6</sup>.

The State of Jammu and Kashmir was the largest principality during the British India period. Equally relevant was the area of Gilgit\* as much as frontier agency as the 'Khybar pass'. All Senior British officers who know this

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6. Refer Rao, H.S., Legal Aspects of Kashmir Problems, Asia, 1967, p.9.

See Gupta Sisir, Kashmir- A Study in Indo-Pak Relations, p.108.

\* Gilgit: When the 3rd June Plan was announced, the political department retroceded the area to the Maharaja and Gilgit Scouts were also handed over to him. In view of the lapse of Paramountcy the retrocession was probably inevitable but fact remains that no sooner was Gilgit handed over to the Maharaja than it came under the mercy of Pakistan. In Gilgit, the British Commander of the Scouts fully co-operated with some local elements in declaring Gilgit's accession to Pakistan.

area well, had warned the Government of India in a note that Kashmir could not hold large part of Gilgit agency. As soon as 3rd June, 1947 Mountbatten Plan was announced, attention was immediately turned to the military aspect of Kashmir. Lord Mountbatten visited Kashmir in June 1947. This visit has been interpreted in various ways.

There are those with the conviction that Mountbatten from the beginning connived with Government of India to force the Maharaja and with him the State of Jammu and Kashmir into accession"<sup>7</sup>.

There are on the other hand those who feel that " The object of the visit was to ask him to give accession of the state to Pakistan"<sup>8</sup>.

According to Allen Campbell Johnson, Congress leaders had been anxious that the Maharaja should not declare independence. In course of Mountbatten's visit, he stressed " the dangerous situation in which Kashmir would find itself if it lacked the support of one of the two Dominions by the date of the Transfer of Power"<sup>9</sup>.

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7. Josef Korbel, Danger in Kashmir, Princeton University, 1954, p.57.

8. M.C. Mahajan, Accession of Kashmir to India, Inside Story, Sholapur, 1950, p.4.

9. Campbell-Johnson, Mission with Mountbatten, London, 1951, pp.120-121.

V.P.Menon says, the Governor-General Mountbatten was particularly concerned about Kashmir when the future of the State was being discussed. He during his visit, had argued with Maharaja that independence was " not a feasible proposition"<sup>10</sup>.

He also assured the ruler that in case he acceded to either of dominions before 15th August, there could be no trouble as the dominion to which he would accede would " take the State, firmly under its protection as part of its territory"<sup>11</sup>.

The Maharaja, whatever might have been the Governor-General's advice, evaded the question by refusing to meet him on the last day of his visit on account of his 'illness'. The Mountbatten failed in his mission.

Maharaja of Kashmir: On The Kashmir Issue:

Independent India had its own problems, and India, no sooner it achieved independence, it was faced with the 'Kashmir issue'. The Government of India was put into difficult situation because the Maharaja of Kashmir was in

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10. Menon V.P., The Story of the Integration of the Indian, States, Bombay, 1956, p.394.

11. Ibid., p.394.



a peculiar situation. He was subjected to various pressures and problems. Hence it is worthwhile here to examine the Maharaja's stand on 'Kashmir issue' which has had a lasting effect on 'Indo-Pak Relations'.

So far as the question of accession of the State to either dominion was concerned, The Maharaja's preference was for independence, and failing that, a merger with India. It is stated that, the Maharaja was a bit suspicious of his position as "Prince" of the Jammu and Kashmir. He feared that with Nehru at the helm of affairs in the Government of India, he would be reduced to a mere figure-head of the State. The Maharaja hence was not interested in merging Kashmir in United India. On the other hand the unification of India was in the making and he could realise the position of the Heads of native States after the independence. At the same time accession to India would have provoked adverse reaction in Gilgit and certain areas contiguous to Pakistan. Maharaja needed time to decide the right course of action. Hence, he stood for an independent 'Jammu and Kashmir' and was not interested in joining either India or Pakistan.

In this direction the Maharaja himself asserted as early as July 1946:

"... our policy is that so far as our domestic affairs are concerned we must work out our own destiny without

direction from any quarter which is not an integral part of the State"<sup>12</sup>.

This reference was obviously to the Congress and National Conference. Both Nehru and Congress had stood solidly behind Shaikh Abdullah and his National Conference. Welcoming the trends in Kashmir, Nehru said, " As a matter of fact, two movements progressively developed on national line and in Kashmir I am glad to say a number of <sup>(over)</sup> wise threw their weight on the side of the popular movement and support the 'National Demand' which asked for responsible government, in their agitation against Maharaja's desire to continue as independent native State"<sup>13</sup>. Welcoming the trends in Kashmir, Nehru once pointed out:

" We shall stand by the people of Kashmir and their leaders in this heavy trial they are going through. The State authorities, I would say, their actions are bringing grave discredit to their name and no government can live with the disgrace attached to it"<sup>14</sup>.

V.P.Menon also pointed out: " there was an obvious line of action which the Maharaja might have taken. He could

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12. Gupta Sisir, Kashmir- A Study in Indo-Pak Relations, Asia, 1966, p.94.

13. Ibid., p.54.

14. Ibid., p.64.

have called a conference of representatives of people of Jammu and Kashmir and discussed the question with them. But Maharaja " was in a micawberish frame of mind, hoping for the best while continuing to do nothing"<sup>15</sup>.

On the other hand, the Maharaja felt that once he acceded to Pakistan, his loyal supporters, the Hindus and Sikhs, would leave the State. Pakistan did, however, offer him a Sikkim like status in Pakistan<sup>16</sup>. Jinnah conceded that 'His Highness' was under no obligation to consult the wishes of the people. It is because of this aspect Margaret Bourke White states, "It is surprising that, Mohammad Ali Jinnah should have shuddered at the very idea of people's joint government of Hindus, Sikhs and Muslims. Jinnah had no more love for people's party than had Maharaja Hari Sing..."<sup>17</sup>.

If Maharaja Hari Sing acceded to Pakistan 'Non Muslim' of Jammu and Ladhak as well as considerable section of Muslims led by the National Conference would definitely have resented such action.

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15. Menon V.P., The Store of the Integration of the Indian, States, Bombay, 1956, p.395.

16. Nayar Kuldip, Distant Neighbour, Vikas, 1971, p.39.

17. Margret Bourke White, Half-Way to Freedom, Sehster, 1950, p.203.

Lord Birdwood wrote, " an open accession to Pakistan might well have resulted in the massacre and expulsion from states of its Hindus and Sikhs... an accession to India also would have meant the dissolution of the Dogra dynasty in the State"<sup>18</sup>.

The Maharaja was, therefore, well advised in offering to enter into interim agreement with two dominions, leaving permanent political settlement with either of them to future date. Pakistan readily signed a stand-still Agreement\* 18-A.

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18. Lord Birdwood: Two Nations and Kashmir, Robert Hale, 1956, p.41.

18-A. Krishna Menon V.K., Speeches in Security Council, 1957, Government Publication, 1958, pp.8-9.

\* The Stand-still Agreement, as provided in the Independence Act 1947, would guarantee that until new agreement were made all existing agreement and administrative arrangement continue. Any dispute in regard to this would be settled by arbitration, and nothing in this (wou) agreement includes the exercise of any paramountcy function. Pakistan signed stand-still agreement with regard to communication, supplies, railways, post and telegram and "nothing else".

India wanted time to examine its implications.

Though it was known by July 1947, that Maharaja was toying with the idea of independence for his State, <sup>and</sup> perhaps it would have eventually opted for Pakistan, if Jinnah and his colleagues had held their minds in patience. The 'Stand-Still Agreement' had given them a foothold in the State. Besides Ram Kak, the premier of the State, was "closer to Pakistan than to India in an identity of broad policy"<sup>19</sup>.

V.P.Menon wrote, "I asked him (Ram Kak) what the attitude of the Maharaja was in regard to accession to India or Pakistan, but he gave me very evasive replies. I could not understand the man or fathom his game"<sup>20</sup>.

Mehar Chand Mahajan, who became the premier of the State in October, 1947, said "Ram Kak had been all along hobnobbing with Pak politicians promising them Kashmir on a platter"<sup>21</sup>.

Even after the execution of 'Stand-Still Agreement' the relations between Kashmir and Pakistan were far from cordial.

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19. Lord Birdhood, Op.cit.p.46.

20. Menon V.P., The Story of the Integration of the Indian States, Bombay, p.394.

21. Mahajan M.C., Accession of Kashmir to India-Inside Story, Sholapur, 1950, p.2.

But Jinnah was impatient and dreaded any delay in Kashmir's accession to his country. He knew about the impossibility of Winning the State, through popular vote. Besides, there was no love lost between Jinnah and Shaikh Abdullah, the Leader of National Conference Party<sup>21-A</sup>. Maharaja released Shaikh Abdullah and his colleagues on September 29th, 1947, whom the Maharaja had arrested because of his launching of "Quit Kashmir" movement on 20th May, 1947. Despite the unfriendly attitude of rulers of Pakistan towards him, Shaikh Abdullah refrained taking any hasty view on accession of Kashmir.

Soon after his release, speaking in Srinagar on October 3rd, 1947, he said "... My personal conviction will not stand in the way of taking an independent decision in favour of one or other dominion"<sup>22</sup>.

Far from welcoming Shaikh Abdullah's stateman like utterance Pakistan deliberately misunderstood him. Shaikh Abdullah, had made it clear on more than one occassion that he would not make any hasty decision on the merger of Kashmir to either dominion. He also made it clear that his relations

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21-A. Refer Indian Annual Register, 1944, Vol. I, p. 238.

22. Kulkarni V.B., Political Biography of Gandhi, Patel, Nehru, Bombay, 1969, p. 672.

with leaders of Indian National Congress or with Pakistan's leadership should not be misunderstood by any, nor should they be misinterpreted. But it was a fact that this happened so, which created a suspicious atmosphere. Especially the leadership in Pakistan felt that there was some conspiracy between Indian leaders and the National Conference.

Jinnah and his colleagues were now convinced that they would not be able to annex Kashmir either through good offices of the Maharaja or with the aid of State's people by plebiscite. Therefore, Pakistan decided to resort to force. Some of the National Conference leaders always believed that the State would join the Indian union of its free will, if it was allowed to be expressed.

In a note to Nehru on his visit to Kashmir, Gandhi wrote in August 1947, "Bakshi Gulam Mohammed, the prominent leader of National Conference was most sanguine that the result of free vote of the people would be in favour of Kashmir joining the Indian Union"<sup>23</sup>.

Early in October, 1947, Meherchand Mahajan became premier of Jammu and Kashmir. On 15th October, he complained

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23. Pyarelal Mahatma Gandhi, The Last Phase, Vol. II, Ahmedabad, 1958, p. 358.

to British Prime Minister in his letter that the Government of Pakistan had broken the 'Stand-Still Agreement' and took an aggressive attitude towards his state. The Government of Jammu and Kashmir also complained that in " an effort to coerce the state into acceding, the Pakistan authorities had cut off the supply of goods, petrol, and other essential commodities"<sup>24</sup>. It had pushed Kashmir in difficulties. They hindered the free transit of travellers between Kashmir and Pakistan.

Further the cable to British Prime Minister states " as a result of obvious connivance of Pakistan Government, the whole of the border from Gurdaspur side up to Gilgit is threatened with invasion which has actually begun in Poonch"<sup>25</sup>.

Besides engineering an armed revolt in Poonch, Pakistan gave active support to the tribesmen from the frontier to invade the State in full force. Kuldip Nayar writes in this context, " a conspiracy for the establishment of new Muslim State by Muslim League in Jammu and Kashmir was hatched as early as 1945"<sup>26</sup>.

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24. Menon V.F., The Story of the Integration of Indian States, Bombay, 1956, pp.395-396.

25. Ibid., p.396.

26. Nayar Kuldip, Distant Neighbour, Vikas, 1975, pp.41-42.



India's information from its Intelligence sources in September 1947 was, " Muslim League units in Punjab and the North-West Frontier Province are making preparations to enter Kashmir in a considerable number... to take some big action as soon as Kashmir is more or less isolated because of the coming Winter"<sup>27</sup>.

In winter, Kashmir is always faced with transit problems and it was exactly at this juncture, Pakistan planned to attack Kashmir, and India, if it tries to help, would be put in difficult situation.

Lord Birdwood, for example, wrote, " Finally the Chief Minister of Frontier Province, who has family connection with Kashmir, gave it his blessing and unqualified assistance without which the operation might not have been possible"<sup>28</sup>.

On October 20th, 1947, Writes I.Andronov, a Soviet Journalist, "Kashmir was invaded from the North-West by several thousands armed nomad tribesmen... Their leader was Russel, K.Haright who called himself a Brigadier in 'Azad Kashmir' forces. In his Kashmir adventure he was actively

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27. Ibid.,p.41.

28. Lord Birdhood, Two Nations and Kashmir, Robert Hale, 1956, p.222.

assisted by resident agents of British intelligence service and top flight British representatives"<sup>29</sup>.

This infers that it was Pakistan who took to force, and started invading Kashmir to force a decision on the Maharaja.

It is in this context of invasion and coercion that Kashmir thought of acceding to India and requesting Indian assistance to stop the raids before they could occupy Srinagar. The Primary interest of Kashmir State now, was to save as much as of Kashmir territories as possible from death and destruction. Meherchand Mahajan, the Premier of Jammu and Kashmir State, pointed:" Private Secretary of Jinnah had come to Kashmir earlier and had been there for several months creating an atmosphere of communal frenzy against India. Communal-minded persons and Muslim divines were worked up and were asked to request the Maharaja to give accession of the State to Pakistan"<sup>30</sup>.

Distinguished foreign authors who have subsequently written in this context, have also expressed their views on this subject to illustrate how the Government of India's

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29. New Times, Soviet Weekly, October 13th, 1965, p.16.

30. Mahajan M.C., The Accession of Kashmir to India-Inside Story, Shalapur, 1950, p.2.

views were largely upheld by independent observers. " There was not only a strong support for the invasion, but also recruitment was going on inside Pakistan itself. There could be no question that encouragement and aid to infiltrators were given by Pakistan"<sup>31</sup>.

Michael Brecher frankly observes, " The principal characteristics of tribal invasion were the surprise tactics of tribesmen, the absence of the most rudimentary defence by the Kashmir State army, and the pillage, loot, rapine by tribesmen inflicted on Hindus and Muslim alike"<sup>32</sup>.

For Maharaja there were only two ways: (i) either to accede to India and enable the Indian Army to stop the invaders, or (ii) surrender to Pakistan.

In choosing the second course, there was no real guarantee that lives would yet not be lost. It would also mean an abject surrender to violence and corecion. An accession to Pakistan would have meant the political end of nationalist Kashmiris who believed in secularism and democratic set up.

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31. Refer Gupta Sisir, Kashmir: A Study in Indo-Pak Relations, Asia, 1966, p.117.

32. Michael Brecher, Struggle for Kashmir, Toronto, 1953, p.27.

The Government of India's obligations arose from a number of factors to participate in the Kashmir crisis.

- i) In Kashmir a large number of popular leaders believed in secularism. This was in a sense the model for which Indian leaders were working.
- ii) India also believed that the future of the state should be decided by Kashmiri people, irrespective of composition of the population.
- iii) India had vital strategic and other interests in Kashmir as Kashmir had in India. Therefore, it was not possible for India to be a silent spectator of an aggression which was aimed at grabbing Kashmir.<sup>32-A.</sup>

These were the factors which forced India to interfere in the Kashmir issue both in general interest and India's national interest. It is also worthwhile to quote V.P.Menon who suggested: " Personally, when I recommend to Government of India the acceptance of the accession of Maharaja of Kashmir, I have in mind one consideration alone, that invasion of Kashmir by the raiders was a great threat to the integrity of India, Ever since the time of Mahmud Gazni..."<sup>33</sup>.

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32-A. Refer Rao H.C., A Legal Aspect of the Kashmir Problem, Asia, 1967, pp.332-33.

33. Menon V.P., The Story of the Integration of the Indian States, Bombay, 1956, p.413.

Recovering from the recent partition, the emotions of the Muslim population in India had also to be safeguarded. Both these aspects also made India to have her say in the 'Kashmir issue'.

The Maharaja's appeal for India's help came on October, 24th, when he received the information from the Supreme Commander regarding the armed advances being made by the invaders.

Records of Defence Committee's meeting on 25th October, 1947 show that, Mountbatten, who was in the chair, favoured Kashmir's temporary accession to India on the condition that people's wishes would be ascertained after the restoration of law and order. Nehru and Patel found nothing to prevent India from sending assistance even in the absence of accession. They argued that India was duty-bound to render assistance to Kashmir, because it (India) was the successor to the British in India in the same manner as British succeeded the Mughals, and exercised suzerainty over the entire sub-continent excluding those parts which had acceded to Pakistan. This point was discussed and stated in United Nations, as a legal opinion, when M.C.Chagala appeared before the Security Council in defence of India in 1964.

V.P.Menon, the Secretary to the States Ministry, was also asked to assess the situation. The raiders had advanced

towards Srinagar, and had only a distance of 35 miles to capture Srinagar. At Srinagar, V.P. Menon saw the 'Stillness as of a grave yard all round, Over-every thing hung an atmosphere of impending calamity'<sup>34</sup>.

All the forces used by Pakistan pushed the Maharaja to decide to join India. The Maharaja's action in signing the 'Instrument of Accession' on 26th October, 1947, was therefore, neither premature nor premeditated. India neither used force for pressure on the Maharaja's mind<sup>So</sup> as to push a decision upon him.

It was the Maharaja who naturally after a good deal of assessing various aspects of the situation was forced by Pakistan itself to join India. Perhaps the Maharaja must have assessed the future of Kashmir if he, had joined Pakistan. Hence it can be said that Maharaja had certainly decided to join India taking it for granted that the future of Kashmir would be safe with India rather than Pakistan.

This does not mean that he stood always "for" India. He knew that he would be a mere figure-head under the Government of India, because of which he was reluctant to merge Kashmir in India. But the same Maharaja was forced to take decision when Pakistan invaded Kashmir.

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34. Ibid., p.397-398.

In his letter on 26th October addressed to Governor General Mountbatten, he described the magnitude of peril faced by his state. Maharaja said, " with the conditions obtaining at present in my state and great emergency of the situation as it exists, I have no option but to ask for help from Indian dominion. Naturally, they can not help and sispose whatever asked for by me without my state acceding to the dominion of India. I have accordingly decided to do so and attach the 'Instrument of Accession' for acceptance by your Government. The other alternative is to leave my state and my people to freebooters"<sup>35</sup>.

Maharaja's letter also stated that it was his intention to set up an interim Government and ask Shaikh Abdullah to carry the responsibilities as a Prime Minister.

This letter also stated, " if my state has to be saved, immediate assistance must be made available at Srinagaa, which in turn points to the danger of Pakistan capturing 'Jammu and Kashmir". All this he did with a clarity of mind and not under duress. When he approached India for help, he submitted the same along with the 'Instrument of Accession', which points to his clear intentions.

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35. Rao H.S., A.Legal Aspect of Kashmir Problem,Asia,1967.  
p.210.

Replying to the Maharaja on 27th October, 1947, Governor General, Mountbatten wrote:

" In the special circumstances mentioned by your Highness, my Government has decided to accept the accession of Kashmir State to the Dominion of India. Consistently with their subject policy that, in case of any state where the issue of accession has been a subject of dispute, the question of accession should be decided in accordance, with the wishes of the people of the State, it is my Government's wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invaders, the question of the state accession should be settled by a reference to the people"<sup>36</sup>.

Even this stand taken by Mountbatten, forcing plebiscite on Kashmir issue, points to the stroke of British diplomacy in Indian affairs. " In fact, all key decisions on Kashmir issue were taken (forced) under Mountbatten's leadership"<sup>37</sup>.

With the ratification of the 'Instrument of Accession' on 27th October, the transaction defining Kashmir's political

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36. Ibid., p.211.

37. Hadson H.V., The Great Divide, London, 1969, pp.444-448.



relations with India became final.

The Agreement was made, not under an Indian Law, but under a statute passed by British Parliament, the Indian Independence Act 1947. The relevant portion of the Act reads thus:

" An Indian state shall be deemed to have acceded to the Dominion if the Governor General has signified his acceptance of an 'Instrument of Accession' executed by ruler thereof"<sup>38</sup>.

Lord Mountbatten, Governor General of India and representative of British Crown, said in the statement to the Chamber of 'Princes' on 25th July, 1947 " The states are theoretically free to link their future with whichever dominion they may care. But when I say they are at liberty to link up with either of dominions may I point out that there are certain geographical compulsions which cannot be evaded"<sup>39</sup>.

There were the Acts of British Parliament which created the Dominion of India and Pakistan. None of the provisions of these Acts can be questioned, by India, Pakistan or the United Kingdom, which were the parties to this agreement. It was

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38. Chagala's speeches in the Security Council on 5th and 10th Feb. 1964, Government of India Publication, p.7.

39. Refer Rao, H.S., Legal Aspects of Kashmir Problem, Asia, 1967, p.191.

entirely for the ruler of Jammu and Kashmir to decide to accept either of the dominions.

Morally, if not in law, the accession could have been challenged if it had been made under duress. It was the fact that India had absolutely no plan about Kashmir till it actually joined her on 27th October, 1947.

The charge that 'Kashmir's Plan' of asking for Indian troops was pre-arranged can be easily disproved. " The joint statement containing a true time table of events, issued by the three British commanders -in-chief of the Army, Air Force, and Navy would falsify this charge"<sup>40</sup>.

V.P.Menon stated in the most categorical terms that " at first light on the morning of 27th October with Kashmir Instrument of Accession was signed, the movement by air of Indian forces to Kashmir began"<sup>41</sup>.

In contrast, invasion of Kashmir by tribesmen at the instigation of Pakistan had been carefully planned. Jinnah stationed himself at Abbotabad " expecting to ride in triumph into Kashmir". He peremptorily ordered the Commander-in-Chief

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40. Refer Rao, op.cit.p.338.

41. Menon V.P., The Story of the Integration of the Indian States, Bombay, p.302.

of Pakistan Army, Sir Douglas D. Gracey, to march his troops into Kashmir. General Douglas, D. Gracy wisely ignored Jinnah's rash orders and promptly got in touch with Field Marshal Sir Claude Auchinleck, Supreme Commander of the Armed Forces in the Indian Sub-continent. He explained to Jinnah that in the event of Pakistan troops entering into Kashmir, which was now legally a part of India, such an act would be illegal. He impressed Jinnah to cancel his orders on the ground that such an illegal act would mean the withdrawal of British Officers from Pakistan Army. Jinnah then sent a message through Sir Claude Auchinleck to Mountbatten and Nehru inviting them to Lahore for a conference to discuss Kashmir dispute.

Under these circumstances India might have taken strong Military action against Pakistan to drive the invaders out of the country. But India preferred to avoid a war and took steps which aimed at solving the 'Kashmir issue' peacefully.

The basis of dispute was the entirely divergent views of the situation in the two countries. To India, a State had acceded to it (and even without accession, to which it had an obligation) was being invaded by raiders from another country, with its complicity and support, and the first task was of clearing the soil of the invaders, the next being a reference to the people of this issue of accession. Pakistan a state which it hoped was about to accede to her and where

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popular outbursts were taking place (albeit supported from outside) had now acceded to India and the future had become a fait accompli, unless some way could be devised of keeping the issue open. Withdrawal of support from raiders might not mean anything more than further step towards the accomplishment of Kashmir's integration with India. To this basic difference were added numerous arguments and counter arguments in the years to follow.

Indo-Pakistan relations, after partition had been expected to improve but the 'Kashmir issue' continued to be the bone of contention between the two countries.