

## Statelessness and Displaced Kashmiri Pandits

*Asia*

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**Abstract:** This paper seeks to develop an understanding of the present conditions of Kashmiri Pandits throughout Kashmir and India and articulate potential paths to alleviate those conditions. The Pandits are often viewed as another part of the issue of Kashmiri Independence, which is very contentious in modern Kashmiri, Indian, and Pakistani politics. This conflict is often viewed as an extension of the British Partition of India. This paper traces the history of Pandits throughout the partition and in the decades following. I argue that the Pandits experience a form of statelessness in India both because their acceptance of Indian citizenship is tenuous and because their status in India is close to that of second class citizens. I suggest that any attempts to resolve this issue must be centered around both resolving the conflict

over Kashmiri Independence and formalizing the legal status of Pandits within India. Specifically, Current government stances and policies treat Pandit displacement as a short term, voluntary relocation. The Indian government must recognize their displacement as one that is both involuntary and indefinite.

## Introduction

The goal of this paper is to discuss the Pandit people who were displaced from the Kashmir Valley in the late twentieth century and who experience some form of statelessness. The majority of these people fled the valley in response to a well-founded fear that they would be violently persecuted for their Hindu faith (Evans, 2002). As this paper will show, the number of people displaced, who is responsible for their fear, and the legitimacy of their fears are up for considerable debate amongst academic scholars and politicians. The current experience of Kashmiri Pandits is, in large part, a product of the regional political climate during the 1990s, the time of their evacuation from Kashmir. This paper will present this political climate and the experience of contemporary Kashmiri Pandits as a development of the conflicting nation-building process that began during the British Partition of India: a process that

left the Pandit people experiencing de facto statelessness. Any efforts to improve their conditions or resolve the inextricably linked conflict between India and Pakistan must be conceived with a focus towards Pandit and Kashmiri Muslim agency as well as an awareness of secular Kashmiri identity, known as Kashmiriyat.

Specifically, the structure of the paper will be as follows: it will present the historical development of the displaced Pandit's present conditions; the nature of their current status; the extent to which they could be considered stateless; existing attempts to resolve their condition; and a series of potential solutions, each based on one of two approaches: improving the status of the Pandits within present conditions or working to resolve the legal, political, and military conflict that creates current conditions.

**Kashmiri History (1947-Present)**

For the purposes of this discussion, the origins of the Kashmiri Pandit's present conditions can be traced back to the British Partition of India in 1947. Using this time as a base, this section of the paper will present the development of Pandit statelessness as an extension of a long running conflict that has pit the religious and secular interests of Pakistan against those of India, a conflict rooted in the tensions of the Partition.

In 1846, Maharaja Gulab Singh sold Kashmir to the British. With time, this religiously diverse territory in the north of Britain's holdings was incorporated into the rest of the colony. The Kashmiri government was dominated by the Hindu Dogras, who, in addition to Pandits and Sikhs, made up a minority in the territory, which was largely composed of Muslims. During this time, the average Kashmiri Pandit (KP) was subject to extreme poverty. However, as a group, KP's held

considerable power within the state. Many KP's became well educated and gained cultural renown (Evans, 2002). In 1947, Britain surrendered its claim to what some refer to as Colonial India. This claim included the land now controlled by India, Pakistan, and Bangladesh. Britain created a Partition Committee, which was succeeded by the Partition Council, with the goal of dividing Britain's holdings into two sovereign states. These states, India and Pakistan, were to be homelands for Hindus and Muslims, respectively. The council was composed of an equal number of Muslim and non-Muslim officers, many of whom were bureaucrats. Their task was enormous: peacefully and fairly divide every aspect and holding of one of the largest territories in the world between two tensely balanced religious groups (Sengupta, 2014).

What began as an administrative task full of optimism and, in some cases, respect, quickly became an extremely contentious,

violent, and disruptive process (ibid). The goal of creating two discreet, religiously homogeneous nations was in direct conflict with the reality that Britain controlled a religiously heterogeneous territory. In almost every province, there was a meaningful minority of either Muslims or Hindus. The consequence of this partition was to displace as many as twelve million people and kill between 250 thousand and two million people (Rahman & Van Schendel, 2003).

This conflict was perhaps at its climax in the majority Muslim province of Kashmir. At the time, the territory's ruler, known as a Maharaja, was Hari Singh. Maharaja Singh, a Hindu, was pressured to decide between joining the majority Muslim nation of Pakistan, directly to the North, or to join the majority Hindu nation of India, directly to the South. When he delayed, Muslim insurgents began to openly rebel against his rule. These insurgents were later

revealed to be supported by the Pakistani army (Indurthy & Haque, 2010).

The events that transpired after this insurrection are up for considerable debate in both the political and academic sphere. With assurance from India that support against the insurrection would follow, Maharaja Singh signed the Instrument of Accession, which incorporated Kashmir into India with special reservations (ibid). These reservations and the accession itself were incorporated into the Indian Constitution, most notably in the form of Article 370 of the Indian Constitution, which allowed Kashmir certain privileges and prevented Indian laws from immediately taking effect there (Nayak, 2016). The details and timeline of this period are highly controversial and will be discussed later. Most notably, there is an ongoing dispute concerning whether the Indian authorities assured the Maharaja that Kashmir would eventually host a referendum on its

territorial status (Lamb, 2010). Eventually, this conflict developed into a war between India and Pakistan that resulted in a stalemate in 1948. In 1965, after another open conflict, a ceasefire was agreed upon that established the formal division of the territory (Evans, 2002).

The British partition of India and the violent aftermath laid the groundwork for the time during which as many as 95% of the KP's were threatened into leaving the valley in a very short period of time in the early 1990s (Trisal, 2007). Academically and politically there is agreement that this exodus occurred shortly after a wave of violence that almost exclusively targeted prominent KP officials and was a product of fear of violent persecution against Hindus by the Muslim majority. What is up for debate is whether this fear was a response to genuine malice on the part of the Muslim community and a Kashmir independence organization, the Jammu Kashmir Liberation

Front (JKLF), or if it was a culture of fear perpetuated by Indian government to create a pretext for increased militarization and incorporation of Kashmir into the Indian state (Sarkaria, 2009).

This supposed culture of fear is inextricably linked with political movements to achieve an independent state of Kashmir or to accede to Pakistan. Elements of this movement can be seen as early as 1953 when National Conference Leader Sheikh Abdullah advocated for referendum and independence (Behera, 2016) but the movement would not gain true prominence until the emergence of JKLF in the 1980s. In the early 1980s, the group took violent action against the Indian government and agitated against the continued Indian rule of Kashmir. In 1984, the JKLF kidnapped and murdered an Indian diplomat in the United Kingdom. UK publications at the time characterized the group as an extremist group but did not fail to highlight the role

that Indian-Pakistani politics played. *The Financial Times* in London detailed a series of escalating inflammatory diplomatics on behalf of both states: building in disputed territory, postponed state visits, and canceled visas. This part of the article culminated by saying “Rajiv Gandhi, the son of the Indian Prime Minister, caused concern yesterday by forecasting a Pakistan invasion of Kashmir "within a year” (Elliot, 1984). Although his prediction did not come to fruition, it is indicative of the climate of fear that existed at the time.

Tensions in Kashmir came to a head in 1987-1990, starting with the state assembly election of 1987. Kashmiris anticipated electoral success under a broad coalition of groups: the Muslim United Front. Pro New Delhi politicians won the day, contributing to a widely accepted and JKLF backed perception that the 1987 election was blatantly rigged against Kashmiri groups (Behera, 2016; Coll, 1989).

Frustrations grew in the following years. In 1989, the daughter of the Indian Home Minister Mufti Mohammad Sayeed was kidnapped and released in exchange for five prisoners. Emboldened by their success separatists and Pakistani sympathizers broadened their campaign (Landay, 1989). A series of prominent officials, many of them KP's, were murdered and a boycott was called in which only two percent of the Kashmiri electorate voted in the 1989 election (Coll, 1989).

Amid the growing chorus for a Muslim state of Kashmiri, a confluence of events convinced KP's that they were not safe and needed to leave as quickly as possible. On April 16, 1990, the more extreme alternative to the JKLF, Hizbul Mujahideen, issued an ultimatum reading, “All Pandits from Jammu and Kashmir should leave from here in two days.” The ultimatum was widely circulated and published in the *Alsafa Times* and *Srinagar*

*Times* (Bhat, 2012). A senior official from the Indian administration, Wajahat Habibullah, claims that he asked then governor of Kashmir, Malhotra Jagmohan, to issue a statement assuring the KP's of their continued safety and the support of the Indian government. Jagmohan "chose instead, however, to announce the establishment of three refugee camps and add that salaries of displaced civil servants would continue to be paid" (Evans, 2002). It could reasonably be assumed that the effect of such an announcement would be to validate the fears of an already panicked KP population. Jagmohan's response to the crisis was, at best, a failure of his administration. At worst, it is evidence of what some claim to be a conspiracy by the Indian government to homogenize the valley (ibid). This failure coincided with the aforementioned mass exodus of 95% of the KP population.

The intervening three decades have seen Kashmir become increasingly militarized and drawn further into the Indian state (Datta, 2017). As of 2019, 500,000 Indian troops are deployed in the territory and 70,000 people have died in the conflict. In May of 2019, the Hindu nationalist Bharatiya Janata Party won general elections in India. Empowered by his party's success, Prime Minister Narendra Modi triumphantly announced the Jammu Kashmir Reorganization Act in August. The Reorganization Act uses complicated legal maneuvers to remove Kashmir's special status under Article 370 and to incorporate it fully into the Indian state. This fulfills a long term goal of nationalist Indians in that it finishes 'the unfinished business of partition' (Roy, 2019).

### **Kashmiri Pandits Today**

One dispute that has been mostly political in nature is the number of KP's who fled from and were killed in the valley

at the end of the 1980s and the number that still remain. Alexander Evans suggests that the number of Pandits killed in the valley prior to the exodus is, at most, between 228 and 490 and that that around 160,000 KP's lived in the valley in 1990. His reasoning is that the number of deaths is sourced from the Indian government and official sources, which were in control at the time and would have little reason to underplay the number of deaths.

In contrast, some KP and Hindu organizations that argue the number of Pandits killed in the valley could be as high as 1,100. Evans notes that these organizations have a significant incentive to overplay the numbers. Similarly, these same organizations claim that there were as many as 700,000 KP's in the valley in 1990. Evans argues against this, saying that it is unreasonable to think that the 78,000 KP's that the 1941 census claims lived in Kashmir could have become 700,000 in just forty-

nine years. Using a combination of census numbers and other official and unofficial sources, Evans suggests the above number of 160-170,000 KP's in 1990. Currently, there are estimated to be no more than 4,000 KP's in the valley. Today the valley's residents are almost exclusively Muslim (Evans, 2002). Most of the displaced Hindus, namely KP's, have settled in the city directly to the South, Jammu, or one of two provinces directly south of the Jammu-Kashmir union territory, Punjab and Himachal Pradesh (Bhat, 2012).

Within Kashmir, the relationship between the Indian government and its residents could, at best, be described as tense. Legally divided into spheres of occupation and situated at the center of one of the most heavily armed borders in the world, Kashmir is heavily militarized. In a 2002 *New Yorker* article titled, "Between The Mountains," Scottish writer Isabel Hilton describes a situation in which any

misstep could lead to military action, even against its own soldiers. In contrast to international perception of an idyllic Kashmir, residents live in constant fear of the Indian military that is, officially, there to protect them against terrorists (Hilton, 2002).

The vast majority of KP's live within India, specifically within Jammu and the surrounding provinces (Bhat, 2012). Legally, they are residents of India who are temporarily, internally displaced. This official stance by the Indian government in New Delhi reflects a general sentiment that KP's cannot remain where they currently reside. As of this year, the KP's will have spent thirty years in what their government considered a temporary residency status (Rajput, 2015). Many families still live in substandard temporary lodgings, such as the migrant townships, set up to provide emergency housing for Pandit refugees or makeshift settlements on the outskirts of

Jammu. KP's have found economically viable solutions only by migrating farther into India and further severing their connection to their home, particularly in and around Delhi (Datta, 2016; Rajput, 2019).

A concept that is important to the experience of displaced KP's and Kashmiris everywhere is the notion of *kashmiriyat*. Kashmiriyat is a word that has come to represent the identity of indigenous Kashmiri culture. In theory, kashmiriyat embodies the province of Kashmir at its best: a land that thrives on secularism, a land of "diversity and social cohesion." Like any social identity, kashmiriyat is a constructed term, and its authenticity is up for debate (Shah, 2012). That said, there is compelling evidence that this is an identity that has meaning to Kashmiris. When polled in 2002 about potential solutions to the current situation, 81% of people in the union territory of Jammu-Kashmir felt that kashmiriyat was a way of life that needed to

be preserved. Furthermore, 92% of people opposed the division of their territory along religious lines (Market and Opinion Research International, 2002).

Outside of the province itself, nostalgia towards Kashmir and the struggles of displacement have threatened the continued existence of Kashmiri culture while at the same time reinforcing its salience. In 2016, Aditi Razdan, a Kashmiri writer, published an article in *Kashmir Times* detailing her experience with kashmiriyat. In it, she quoted a relative who once said: “‘Saine shure chineh vane Kashir basiyan’: Our children don't look Kashmiri anymore.” The off-handed remark embodies a general perception that Kashmiris are losing their language, their style of dress, even their appearance, and by extension, their identity (Razdan, 2016).

Despite threats to the culture, there are remarkable examples of its persistence. Media outlets are quick to sensationalize any

examples of Hindu-Muslim interaction in Kashmir, but they still have relevance. In 2016, the passing of an 84-year-old Pandit in Kashmir was widely reported. The incident was reported because the man had no Pandit family or community left in the valley. Instead, his Muslim neighbors performed his last rites and mourned his passing (Indian Media news, 2016). Taffazzul Hussain is a Kashmiri Muslim; in an interview in 2007, he revealed that he has stayed in touch with his Pandit neighbors and has continued to take care of their home since 1990 (Sarkaria, 2009). This anecdote, from an Indian publication, furthers a narrative of a 'kind Kashmir:' one that is full of tolerant people ready to accept the Indian way of life. Absent an empirical review that studies the attitudes of people in Kashmir and previously displaced from Kashmir, these anecdotes are our only means of understanding the situation.

### **Kashmiris As Stateless People**

The United Nations' "1954 Convention relating to the Status of Stateless Persons" establishes the legal definition of a stateless person as someone who is "not recognized as a national by any state under the operation of its law" (United Nations, 2019). Under this definition, KP's in India would not be classified as stateless people. Although their living conditions and legal reality are often different than that of Indians who are not from Kashmir, they are eligible for Indian citizenship (Sarkaria, 2009). Operating under this definition, these KP's are not a de jure stateless group, meaning that they are not, in theory, stateless.

De facto stateless people are those who, in practice, experience some form of statelessness or deprivation of nationality. *The Oxford Handbook of Citizenship* defines de facto stateless people as "individuals who were (at least at some point) formally documented by a state but continue to be

systematically excluded from state protection and assistance (Shachar, Bauböck, Bloemraad, & Vink, 2017). Using this definition, one could choose to look at the experience of statelessness as a spectrum of rights and lived experiences as opposed to a discrete binary: stateless or not. Under this conception, there are two ways to argue KP statelessness: arguing that their legal status is granted by a state they do not accept or is granted in a territory other than the one they have a claim to, or arguing that their legal status within India is that of second class citizens.

### **Attempts to Resolve Kashmiri Pandit Statelessness**

As a historically privileged group, KP's have often held considerable political sway. Even in their displacement, in a place of considerable vulnerability, this is still partially the case. Many political organizations advocate for Pandit rights or return. These include the organizations

previously mentioned, which publish disputed statistics about the KP diaspora. Notably, Panun Kashmir is a predominantly political organization “built explicitly on the newly found exile of many KPs” (Evans, 2002). Problematically, these organizations are largely the voice of the KP political and economic elite, yet they advocate on behalf of vulnerable KP’s. This is a general trend within Kashmiri politics: KP’s voices are used as a pretext for political agitation on behalf of the Indian state, often arguing against separatism. In reality, there is no consensus on the attitudes and political desires of the KP diaspora (Sarkaria, 2009).

This lack of consensus is, in its own right, a problem for the Pandit community. Spread out across multiple provinces, it lacks the ability to voice an opinion on its future and that of Kashmir. Significant academic discussion has attempted to resolve this uncertainty in the form of studies, surveys, and interviews (Datta,

2017; Shah, 2012). Conversely, the Muslim community in India occupied Kashmir has been surveyed, 85% of Kashmiri Muslims seek the return of Kashmiri Pandits to the valley (Sarkaria, 2009).

Material aid for KP’s has largely come from one of two sources: the Jammu-Kashmir union government, or the Indian federal government in New Delhi. Mahima Thussu reported that the Indian government has provided aid packages, but they fail to “differentiate categories of beneficiaries, nor have relief and rehabilitation been dealt with separately, despite the fact that not all those who need relief will need rehabilitation and vice versa, and there has been no impact assessment of the packages provided” (Thussu, 2014). The response has failed, in part because of the official stance of a ‘temporary disturbance,’ which prevents durable solutions. The union government has attempted to reassure KP’s that the area is safe again and has incentivized return. In

2009, the *South China Morning Post* reported on a union government offer of 6,000 jobs and 750,000 rupees per KP family to return to the valley. Very few families accepted this offer for the same reason that still makes return nearly insurmountable; fear and a damaged relationship with their homeland (Dhillon, 2009).

### **Potential Solutions for Stateless Kashmiri Pandits**

This paper has emphasized the Kashmiri Pandits as a group that experiences a variety of statelessness on account of second class citizenship in the Indian state, an inability to reside in their home territory, and a potentially undesired nationality. Attempts to address these problems can either focus on improving the conditions of KP's within the current conflict between Pakistan, India, and the interests of the Kashmiri people or they can work towards resolving the conflict itself. These two aims

are not necessarily mutually exclusive. As with any group, the culture of Pandits is integrally tied to their home, Kashmir. With the passage of time, their culture is increasingly threatened and marginalized within India (Singh, 2014).

Efforts at improving the condition of Kashmiris within the current structure should focus on formalizing their status and recognizing the involuntary and indefinite nature of their displacement. Currently, the Indian government views their displacement as both temporary and voluntary and adopts policies to fit this stance (Rajput, 2015; Thussu, 2014). As it stands, KP's in Kashmir are isolated and intimidated. KP's in the rest of India are separated from the land of their culture and the people they share it with. Furthermore, some of them still live in temporary housing without a means of sustainable income (Rajput, 2016). KP's would be benefited by official

recognition and steps to solidify their long term positions.

Conversely, there is an argument that any attempt to solidify the positions of the KP's would create formidable obstacles to return (Thussu, 2014). Protecting KP's under the current regime would close the door for a return to Kashmir and return would, in turn, do the same for economic footing in India. Either of these options is preferable to the status quo, which, in its uncertainty and vulnerability, jeopardizes KP identity and existence as a group (Datta, 2017).

Unfortunately, the window could be closing for either option. The passage of the Jammu-Kashmir Reorganization Act removes many of the protections that have kept Kashmir somewhat distinct from its neighboring provinces to the South. Critically, Kashmir has now lost control over property rights in the province. Full integration into India poses a threat to

Kashmiri identity and even the ecology of its land (Roy, 2019).

On the other hand, any solution that seeks to resolve the conflict that dominates Kashmir: the standoff between India, Pakistan, and Kashmir itself, must prevent armed conflict, ensure the safety of those living in Kashmir, and maintain kashmiriyat. Some have suggested that is untenable and the only path forward is to formalize the status quo (Indurthy & Haque, 2010). Barring this grim outlook, there is a potential framework for a path forward. Kashmiriyat is a politically contentious term, and many argue that it is an inauthentic word that is a construction of a political-media complex pushing a nationalistic narrative of a secular India (Tak, 2013). Although this viewpoint is compelling, it doesn't refute the phenomenon itself. Pandits, Dogras, Sikhs, and Muslims have lived together in Kashmir for centuries. It was never a paradise, but its

diversity was the positive foundation of its culture, not the source of its strife (Evans, 2002).

Neither India, Pakistan, or Kashmir seems truly interested in a referendum on Kashmir's status. India views this as outdated and unnecessary, Pakistan doesn't believe that this can be done in a militarized Kashmir, and Kashmiri activists reject that, under UNSC resolutions, the plebiscite couldn't allow for independence (Indurthy & Haque, 2010). Furthermore, over the years of conflict and arbitration, the majority of Kashmiris have articulated disinterest in Pakistani accession, as evidenced in polling. Culturally, two out of three union territories are Hindu majorities and in Kashmir, the Muslim majority practices a variety of Islam that incorporates Sufism and Hinduism, culturally removing them from Pakistan (ibid). A third nation, China, controls the northeast portion of Kashmir, further confounding this discussion (Shah, 2012).

Mediation of this dispute is another level of discussion that lies beyond the scope of this paper.

With the passage of the Reorganization Act so recent, the full implications have yet to be analyzed. The result could be a slight demilitarization of Kashmir as the Indian government views the matter as more or less settled. The opposite could also be true as the act has the potential to inflame tensions with Pakistan and provoke tensions beyond the flare-up this summer (Roy, 2019). In either case, Mallika Kaur Sarkaria, a lawyer and human rights researcher at the University of California Berkeley Law School, proposes steps forward that have potential. She argues that Pandit return is essential to both the KP's and the Kashmiri Muslims. The Indian government must direct its KP aid towards programs that incentivize Kashmiri return while recognizing the complexity of things like safety concerns and lost property. She

suggests that this program can only work with the consent of the KP's and that the first step would be to create a detailed survey on their opinions of return and what it would entail (Sarkaria, 2009). Although the Jammu-Kashmir Reorganization Act threatens or even dooms Kashmiri Independence, it also represents a unique opportunity to restore the kashmiriyat, albeit in a new system. If India and Prime Minister

Narendra Modi will work with Pakistan and Kashmiri leaders to allow Kashmiri Pandits to rejoin their Muslim neighbors, then amidst the radical restructuring of Kashmir, Kashmiris can serve as a carrier group for the notion of kashmiriyat, which can serve as the foundation of a new identity for the new generations and new groups that move into the territory.

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