

Border and People-

An Interface

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Centre for
Dialogue and
Reconciliation

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**Centre for Dialogue and Reconciliation
2012**

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An Introductory Note for Four Studies

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The Concept

In the words of Donnan and Wilson (1999: 1), 'Borderlands are sites and symbols of power.' Such power is clearly reflected through the 'guard towers' and 'barbed wires' which are the common sights at the borders. The power underlying these symbols is that of the state. These and many other symbols that distinguish the borderlands from the mainlands are the 'extreme examples of markers of sovereignty which inscribe the territorial limits of the state'. The borders, in other words, are linked with the sovereignty and the territorial control of the state. As the central notions of the modern states are linked with the concepts of 'territorialisation' and 'exclusive sovereignty', delineating, demarcating, defining and defending national borders have become the most significant processes of these states. As Van Schendel (2005: 3) notes,

The state's pursuit of territoriality – its strategy to exert complete authority and control over social life in its territory – produces borders and makes them into crucial markers of the success and limitations of that strategy. The ubiquity of international borders in today's world is a testimony to the importance of state territoriality...

In the similar vein Johnson and Graybill (2010: 2) argue,

National borders represent the territorial embodiment of a bundle of ideas that modern states have propagated and enforced. They tell us that all of humanity is divided up among discrete nation-states; that these nations have sovereign powers over particular territory to the exclusion of other nations; and that, collectively, nations exercise this sovereignty over all the earth.... The mere fact of living within a nation's borders implies that one is the product of that nation's past, and that one's own fate is inextricably linked to that of one's fellow countrymen above all others.

The power of the state symbolised through borders, however, is not simply the coercive power represented by the limits enforced by the armed forces stationed at the borders but also the ideological power as represented by the contexts of identity. Borders also symbolise the 'national identity' of people by clearly making a distinction between 'us' who are part of

this identity and 'them' who live across the border. Those who live across the border are not only excluded from the national identity but also serve as the reference point for defining the limits of our identity. With national identity assuming the most crucial political space in the modern world, this distinction is of great consequence. It helps reinforce the cultural constructs underlying the nation-state (Anderson, 1996: 2). To quote Berg and Houtum (2003: 16), 'Security border and security space can also be seen as socio-spatial consciousness, which means that they are collective forms of consciousness and ideologies which have been constituted in the course of the history of a specific territorial unit.'

Though there has been sufficient transformation in its conceptualisation, 'border' continues to remain an important category both for defining the limits of the state as well as providing an identity to people. In the West, the change in the context of border has followed the changes in the international political and economic scenario. As Martinez (1994) notes, the transformation that took place in the world after the Second World War brought in profound changes in the way borders and borderlands were perceived in western Europe and North America. With territorial disputes no more the order of the day, the isolated and economically backward border zones in these parts of the world became economically vibrant. To quote Martinez,

As frontline zones of contact, borderlands encountered opportunities previously unavailable to them. There functions underwent substantial redefinition, from frequently ignored wastelands to dynamic centers of trade, commerce, and even industrialization. Many closed borders became open, allowing capital, people, and products to move from country to country in search of new opportunities. Borderlands that were enmeshed in this process developed economic activity sufficient to spur the growth of existing population centers and the emergence of new ones. Borderlanders affected by such trends, especially borderlanders from developed nations, found a new place in the world, playing roles long denied them by an international system previously driven

by global tensions and the ideology of rigid national sovereignty. (Martinez, 1994: 3)

It is in the context of the changing realities of the world that one can say that in many places the function of the border has changed. Globalisation has further contributed to the intensification of changes. With the movement of capital and people throughout the world, culture and economy are being internationalised and the world is operating like a global village. However, these changes notwithstanding, border as a concept has not vanished. As Reece M. Jones (2008: 32) notes,

The increased volume of research into the bounding processes in the first decade of the twenty-first century suggest that rather than entering a borderless world, boundaries are becoming more important than ever in a wide range of contemporary context.

Emphasising the importance of borders in the modern world, Berg and Houtum (2003: 15) note that despite the fact that international borders have become porous and do not perform the traditional function of restricting the movement of goods, ideas and people, yet 'the notion of traditional (Cold War) security border still carries several practices which inhibit the possibility for a peaceful integration process and co-operation between political units'. The reasons for the continuity of the traditional security border are found in the very nature of nation-state which 'derives its justification from the idea of total sovereignty over its territory and from its successful survival and maintenance.' (Berg and Houtum, 2003: 18). To quote them further, 'The Hobbesian reasoning, how we need the sovereign to protect us has now, however, been challenged in various ways. Yet, in spite of the challenge, these state-centric practices ... are very much alive and well' (Berg and Houtum, 2003: 15).

Martinez (1994, 6–10) gives a four-fold model of borderland with each model differentiated on the basis of 'different degree of cross-border interaction and prevailing tendencies in a borderland'. These four models include the alienated borderlands, coexistent borderlands, interdependent borderlands and integrated borderlands. The alienated borderlands are impacted by the tensions, violence and instability and reflect almost no interaction between people on both the sides of border. As different from the alienated borderlands, the coexistent borderlands provide some basis of formal and limited interaction between the two sides. As against these two models, the model of interdependent borderlands represents a very dynamic cross-border interaction. A stable international environment as well as a favourable economic scenario makes way for the interaction between the two sides. The fourth model of integrated borderlands represents a close interaction both between the states as well as the people of the two bordering countries. However, despite this distinction, borders remain the borders, at the edge of the states and presenting a case of 'differing' and 'special circumstances'.

By nature all borderlands, regardless of their location or level of interaction, function in an environment ... that springs from boundary-related phenomenon. As the peripheries of nations, borderlands are subject to frontier forces and international influences that mould the unique way of life of borderlanders, prompting them to confront myriad challenges stemming from the paradoxical nature of the setting in which they live. Borders simultaneously divide and unite, repel and attract, separate and integrate. These opposing forces have the effect of pulling borderlanders in different directions, causing stress in both the private and public domains... (Martinez, 1994: 25)

'Alienated Borderlands' of Jammu And Kashmir

The borderlands in Jammu and Kashmir (J&K) represent a case study of 'alienated borderlands'. Elaborating this model, Martinez (1994: 6) notes that such borders operate in 'extremely unfavourable conditions' defined by various conditions including warfare, political disputes, intense nationalism, ideological animosity, etc. Such conditions lead to 'militarization and establishment of rigid controls...' Neither there is any possibility of routine cross-border interactions nor of normal lives of people.

To say the least, such a tension-filled climate seriously interferes with the efforts of local populations to lead normal lives. International trade and substantial people-to-people contacts are very difficult if not impossible to maintain. The ever-present possibility of large-scale violence keeps these areas sparsely populated and underdeveloped. (Martinez, 1994: 6)

Caught in the hostility between India and Pakistan, the people in border areas of J&K are constantly caught up in the situation of instability. As residents of borderlands, they face the kind of challenges which people in the mainland do not necessarily face. Though ever since 1947, the whole state of J&K has been caught up in the situation of conflict and has faced violence generated by numerous wars between India and Pakistan and armed militancy, the situation in border areas has always been more precarious. People living on the International Border and the Line of Control have been the victims of almost continuous war-like situations. Due to the ongoing hostility between India and Pakistan, borders have generally remained volatile here. While multiple wars (1947–48, 1965, 1971, 1999) created havoc in the border areas, even peacetime did not provide relief to the people here. The borders have continued to remain hostile even during the so-called peacetimes – actually the times between and after wars. As the history of the borders in the state shows, guns have actually never fallen silent. There has been intermittent firing and shelling, generating a situation of unpredictability and uncertainty. The situation during last two and a half decades has been more precarious. With the onset of

militancy, the border became more active. The infiltration bids by the armed militants have been accompanied by the firing and shelling adversely affecting the normal conditions of life. In 2003, a formal ceasefire was declared and the border people felt some relief. But this ceasefire has often been violated and the uncertainty of the borders has not ended. There have been numerous ceasefire violations in last few years – 28 cases of ceasefire violations in 2009, 44 cases in 2010, and 51 cases in 2011 (*Kashmir Times*, 8 December 2012). More than 50 cases of ceasefire violations were registered in 2012 (*Times of India*, 9 December 2012).

The 'border' context of conflict, however, has remained out of the gaze of political analysts and researchers. The conflict situation of the state has been the focus of numerous studies but most of these studies are centred upon the 'Kashmir-context' of conflict and have not analysed the areas and issues beyond Kashmir. There is no doubt that the issues related to Kashmir form the core context of conflict whether seen from the internal or external dimension, yet it is pertinent to emphasise the complex and multilayered nature of conflict. 'Beyond Kashmir' there are many layers and dimensions of conflict which remain invisible due to the national and international spotlight on Kashmir. 'Border' is one such dimension which has not been given due attention by the political analysts.

On its own, border represents an intricate and complex subject demanding nuanced analysis. To begin with, border is not a simple, straightforward and uncomplicated phenomenon in this state. Border is also not necessarily fixed and settled – in many ways it remains uncertain, problematic and contested. The difficulty about analysing the border in J&K starts from the fact that apart from the relatively settled border touching a few districts of the Jammu division of the state, known as International Border (IB), there is a large part of unsettled border now known as Line of Control (LOC). Drawn in 1948, initially as Ceasefire Line, this line 'instead of being only a line of cession of hostilities ... [has] led to four wars and more than two near-war situations between the two countries of

India and Pakistan' (Samaddar, 2004: 79). And rather than being recognised as the settled border, it remains 'merely a line of control functioning as a border, but lacking its sanctity' (Samaddar, 2004: 86).

Continuous volatility of both the kinds of borders has resulted in the militarisation of borderlands with its own kind of implications for the people residing there. There is such an overwhelming presence of security forces that many towns in the border areas like Akhnoor, Sundarbani, Nowshera, Rajouri and Poonch almost seem like military towns. Apart from the excessive visibility of army with its paraphernalia, there are other implications of presence of army in these areas. Huge land area under the control of the army is generally out of bounds for the local residents; there are various kinds of restrictions including restriction of movement.

The very process of 'bordering' has been violent in the state and has resulted in huge material, economic and human loss to people. Whether it was the formation of the IB or the border via the Ceasefire Line/LOC, it resulted in the disruption in the normal lives of people. While new boundaries were created due to the partition of the country (as well as of the partition of the state) people became prey to the communalised violence on both the sides of these boundaries. Many lost lives and many more were uprooted and lost their homes. With the exception of the valley of Kashmir and its adjoining areas in the Doda belt which were spared the trauma of being 'bordered', all other areas of the state went through the anguishing 'partition' spectacle enacted in many other parts of the Indian subcontinent. It was the same story of communal frenzy, looting, killing, abduction and dislocation. However, for the rest of the subcontinent, the 'partition' was soon to acquire the status of history as the people despite their anguish came to settle in India or Pakistan. However, for J&K, the trauma continued. Partition was not a settled history, but a living problem that continued with unsettled and contested borders. The ambiguous position of the Ceasefire Line/LOC gets reflected from the continuous movement of the people across the 'border'. It is not only that people moved in large number in the 1947–48 period, but they continued to move after that. In 1965 there was a huge migration of people from the Indian side to the Pakistani side. Many of these people returned later on. Despite the stringent controls, the movement on both the sides continued till very late.

It was in this process of bordering and movement of people that families got divided and blood relations came to acquire different 'national' and even religious identities. Worse consequences were to follow as these 'divided families' across the border could not communicate with each other. Being part of two antagonistic countries, they had to bear the

burden of the mutual hostility and suspicion between these countries. While the whole of the state of J&K was impacted by the phenomenon of divided families, the twin districts of Poonch and Rajouri were more intensely affected. Almost every family in these two districts has relatives across the LOC. For generation, these relatives could not meet due to stringent visa requirements. However, the opening of cross-border routes and the plying of buses on the Uri–Muzaffarabad and Poonch–Rawlakot routes since 2005 has made it possible for the divided families to meet. However, very few people have been able to avail this opportunity.¹

Apart from the 'divided families', there have been various other border-related issues confronting the people, particularly the issue of displacement. A very large population of the state has suffered one or the other kind border-related displacement. The division of the state in the 1947–48 period resulted in vast migration of people from both sides of the state. While a large part of the Muslim population migrated from the Jammu division towards Pakistan and Pakistan-administered Kashmir, the Hindus from the Pakistan-administered Kashmir, particularly from Mirpur, Kotli, Muzaffarabad, migrated to Jammu. Displacement, however, did not stop with the 1947 'disturbances', but continued in the later period. During every subsequent war, the people residing in the border had to move out for longer periods of time. In the wake of the 1965 war between India and Pakistan, a large number of people had to migrate from the areas closer to borders. But one of the larger migrations took place in the twin districts of Poonch and Rajouri. Here many people feeling the pressure from the army crossed the LOC. Many of them managed to come back later but many others could not. The area of Chhamb was also affected by the 1965 war and many people were forced to flee to safer areas in the Jammu region. In fact, the 'Chhamb refugees' were relocated a number of times. Many of them were forced to leave in the 1947–48 period, but a larger number were forced to evacuate during the 1965 war. However, the largest displacement from this area took place in 1971. After the 1971 war, there was delineation of the LOC under which Chhamb was ceded to Pakistan. As many as 4,300 families were dislocated. Referring to their plight, Jamwal (2004) notes, 'The displaced families had to be kept in tented camps at Manwal, about 60 Kilometers from Jammu. The government did provide them with some land and cash doles in 1976 but their demands of adequate rehabilitation are still pending.' They were resettled around

¹ About the movement of people after the drawing of Ceasefire Line, Ved Bhasin notes, 'There are cases where families have been clandestinely coming, meeting each other and even there have been marriages across the border. Nevertheless they were separated; they could not meet. After LOC was drawn, they could not even travel because Pakistani troops were on that side and Indian troops were on this side' (Dey, 2010).

the international border. This further added to their problems. The volatility of the border made them vulnerable not only to firing, shelling and mining but it also continued their trauma of displacements. Even after settling in their now 'homes' after 1971, they were forced to relocate to safer places whenever tensions built up on the border.

Border-related displacement continued in the later period. More particularly, during the Kargil war, as many as 1.57 lakh people were displaced from various border areas (Mandal, 2009). Though actual fight took place in Dras and Kargil areas, the mobilisation of army took place all around the border areas and hence civilians were evacuated from these areas. Again there was a massive mobilisation of armed forces in 2001 after the attack on the Indian Parliament and again there was a large evacuation and dislocation of people. As per news reports, around 1 lakh people were displaced from the border areas of Jammu alone (*Kashmir Times*, January 13, 2002).

Life in borderlands is not very easy. The people in the border areas are generally insecure because of the uncertainty of the situation. They have to face a number of hazards, including stray bullets and shells coming from across the border, or mine-related accidents. Almost every war or war-like situation leads to the mining of large areas and though there is a process of de-mining, yet a lot of mine-related accidents take place leading to loss of life or injuries. Apart from that, the process of mining leads to the loss of control over the cultivable land for a large number of people. The last time the forces were mobilised around the border in 2001 and the border areas were mined, it took four to six years for the demining process to be completed and all this while a large number of people could not use their land for cultivation. Besides mining, it is the fencing which has kept a large portion of the cultivable land out of bounds for the border residents. As a fallout of the armed militancy and the infiltration of a large number of militants from various routes of the porous border, a project to

fence the whole border area was undertaken. However, due to the resistance from across the border to the process of fencing, the fence at many places was constructed much inside the zero line, bringing the cultivable land of many people inside the fence. This land is not only now 'fenced' but also 'gated' – allowing people access through the gates that are opened for a restricted period during the day time.

In the conflict zone, where there is no sanctity of ceasefire and where guns have actually never fallen silent, there is no meaning of 'normalcy'. What can be described as normal life – the children attending school, the farmers cultivating the land, or even people living in their own homes – can be disrupted at any moment. Almost everyone who has grown up in the border areas can narrate numerous stories of disrupted education, of agricultural fields being mined or coming under fencing, of having to leave the village in a huff and having lived in this or that 'camp'. Apart from that, there are a lot of stories of 'accidents' – a stray bullet/shell from across the border hitting a person sitting in the safety of his/her house or a person losing a limb or, worse, losing life while touching a live mine. These issues apart, there are other problems faced by the people in the border areas. The securitisation of the border generates its own kinds of problems. Referring to the plight of the border residents, Jamwal (2011: 75) thus notes:

On both the sides of the dividing line, people in these border areas have borne the brunt of the hostility between the armies of India and Pakistan, during wars and the so-called peace times. These border areas are too heavily militarized for any semblance of normalcy and normal life. The levels of violence are not always visible, often not reported but felt psychologically due to the build-up of troops, excessive restrictions, fenced and mined areas. The huge military presence imposes restrictions on their movement, often ends up in harassment and keeps the civil administration away, forbidding any development to penetrate.

1.3

The Study

It is in the light of the multiple implications of the 'border' that a number of related but distinct case studies with a focus on the border-related issues in the Jammu region were undertaken. The common thread that runs through all these studies is the 'people–border interface'. In a variety of border-related situations, this interface between people and border has been analysed. The 'border' of the Jammu region has been chosen as the focus of the studies for three major reasons: first, the region has a fairly long border either in the form of IB or LOC; second, the number of people who are impacted by the border is quite significant here; third, the border has impacted people in a variety of ways and therefore there are very peculiar kinds of problems related to border – ranging from living in a constantly war-like situation (facing shelling, mining, fencing, etc.) to facing displacements (again of different kinds, permanent to temporary and one-time to frequent displacements) and divided families, etc.

Rather than a single study, the project was based on a number of autonomous studies which are linked by the commonality of theme. Four such studies were undertaken: "Bordered" People: Impact of Conflict on the Lives of People Living on Border in J&K – A Case Study of Arnia Belt', 'The Shrine of Peace: Baba Chamliyal', 'Internally Displaced People from across the LOC: A case Study of Mirpuris in Jammu'; 'A Study of West Pakistan Refugees in the State of Jammu and Kashmir'.

The overall objective of the research was to highlight the complex character of conflict in J&K and to emphasise its multidimensional character. The idea was also to highlight the 'border' not merely as the 'area' of conflict but also as the locale of conflict resolution. More importantly, it was considered important to analyse border-related issues from the perspective of people. However, what can be characterised as the limitation of the study is that its focus has remained the border and the people in the plains of Jammu. Mainly all the case studies have been located in the districts of Jammu and Samba. Although these case studies reflect many of the problems faced by the border residents elsewhere in the region, yet the peculiar problems faced by the people in the areas around the LOC are not reflected in these studies. More particularly, the twin

border districts of Poonch and Rajouri have been confronted with different kinds of issues and a different kind of interface between the people, the state and the armed forces. Border, in these areas, has provided a different kind of challenge to people with complex continuities across the border. Since these areas demand a very intricate analysis, a separate study may be required.

Of the four studies undertaken, the first is a case study of the border belt and the other two focus on the communities displaced during the partition. The study undertaken by Rekha Chowdhary is a case study of the border belt that has remained quite volatile till very recently. The area chosen for this study is the Arnia belt on the IB area. The belt comprises the town of Arnia and a few villages on the zero line. The study constructs a holistic picture of the life of people living around the border areas. It seeks to portray as to how living in the militarized zones, facing the hostile enemy on one side and the restrictions imposed by their own army on the other, impacts the quality of life. The study refers in detail to the impact of routine firing, shelling, mining and fencing.

The paradox of border is further reflected in Jigar Mohammed's study of Baba Chamliyal. Located on the zero line, the three hundred years' old shrine is revered by people on both the sides of border. The huge gathering of people around the annual festival clearly reflects that despite the continuous hostility between the states, the shrine provides a shared religious and cultural space for people divided not only by religious confines but also national boundaries. So forceful is the enthusiasm of the people on both the sides that both the states (India and Pakistan) are obliged to patronise the festival.

Rajni Dhingra's study focusing on the refugees from Pakistan-administered Kashmir is a case study of Mirpuris dislocated in 1947. Though centering on those who were displaced from Mirpur, its analysis remains relevant for the similarly dislocated people from other parts of Pakistan-administered Kashmir, including Kotli, Muzaffarabad, Bagh, etc.² The study

² The 'PoK refugees', as these migrants came to be called, have been faced with issues related to their rehabilitation and resettlement. To quote Bhasin,

is based on the personal narratives of the displaced Mirpuris settled in the city of Jammu since 1947. Tracing the history of displacement, Dhingra refers to the impact of displacement on Mirpuris as well as the process of their rehabilitation. Through the experiences of eyewitnesses and first-generation respondents, an attempt has been made to reconstruct the moment of partition and displacement as well as the process of their rehabilitation. What is peculiar about this study is that it has travelled through the last 65 years and recorded the responses of different generations. In very interesting manner it has sought to explain the cultural continuities as well as discontinuities over the period and the process of sustenance of community identity as well as the changes in it.

The Mirpuris along with other 'POK refugees' (as those displaced from the undivided princely state of J&K in 1947 are commonly known) are the political victims of the unsettled claims over the territory now under the control of Pakistan. Though they had gone through the same experience of displacement in 1947 as a large number of 'partition refugees' of Punjab and Bengal had gone through, the process of their rehabilitation and resettlement has not followed on similar lines. As per the official Indian position, the territory from which they have been displaced belongs to India and hence, they cannot be treated at par with those who were displaced from Pakistan. They are the residents of the same state and hence can be considered as internally displaced people. It is for this reason that unlike other partition refugees in India whose claims over land and property left back in Pakistan were settled, the claims of these 'POK refugees' have neither been assessed nor settled. The process of their rehabilitation, therefore, has not been completed. They were given only minimal support from the state. While in the urban areas they were given a small plot of land for housing purposes, in the rural areas they were allotted land for cultivation purposes. But since most of this land belonged to the Muslims evacuees, they could not become the owners of this land and their permanent rehabilitation could not take place. Referring to the struggle of those displaced from the rural areas, Ved Bhasin notes, 'As far as agricultural families were concerned, some land (evacuee land) was allotted to them but it took years and even now they have not got full proprietorship rights as certain laws like evacuee's property act acts as a hindrance...' (Dey, 2010). As per the Evacuee Property Act of the state, not only the evacuee has the ownership of the property but also has the right to

claim it.³ While the issue of rehabilitation of Mirpuri refugees has been hanging in the balance, complexity has been provided to it by a few later developments. Of these the first relates to the submerging of the Mirpur town. Under an international arrangement, Pakistan has constructed the Mangla dam in which this town has been submerged and a new town has been constructed at a new locale. The people owning property have been provided compensation. However, this process has excluded the refugees now settled in Jammu and other parts of India. The second issue relates to the Resettlement Act passed by the state legislature, which reflects the commitment of the state government to resettle those people belonging to the state who left the state in the wake of the developments in 1947 and the post-1947 period. Although the Act could not be implemented, it has generated a sense of apprehension among the refugees about their unsettled status, particularly those holding the evacuee land without having ownership rights. Despite the assurance of the state that the Resettlement Act was not meant to destabilise the people from the land they are holding, the refugees are not convinced.

If there was a situation worse than that of the 'POK refugees', it is that of the West Pakistan refugees. This is the theme of the second study undertaken by Seema Nargotra. The strength of this study lies in its very detailed legal and constitutional analysis of the status of these refugees. The study also is based on detailed field analysis. Focusing on two locales, one rural and one urban, she has sought to present an elaborate study of the problems faced by these refugees. The precarious situation of these refugees who are denied the propriety rights as well as the political rights is clearly depicted in this study.

The West Pakistan refugees, like the POK refugees, were dislocated during the time of partition and came to settle in different parts of Jammu division during the 1947–48 period. However, while the POK refugees had migrated from that part of the state which had now come under the control of Pakistan, the West Pakistan refugees had come from outside the state, from Punjab, mostly from the adjoining Sialkot area.

³ However, as Puri notes, there is a limitation to such claim, that such property can be claimed only 12 years after the evacuee has evacuated it. But despite the fact that such period has been long over, no further action has been taken by the state. To quote Puri (n.d.):

Under the Evacuee Property Act, the evacuees who return could claim their property. But the limitation period is 12 years. As this period is long over, no such claims can be entertained. Moreover, most of the evacuees have acquired Pakistan citizenship hence no more entitled to be the state subjects. In any case, I had made a suggestion to Sheikh Abdullah which he had accepted that all the evacuee property should be disposed off and the price thus received be deposited in the bank in the name of the evacuees. Which may be given to them if and when final decision is taken on the whole issue. This would safeguard their rights in a far better way than the present arrangement. The lands thus acquired could be used for permanent rehabilitation of the rural refugees.

...nothing much was done for POK refugees. Some relief was provided. They were put in army camps. There was no medical aid. They were not looked after. The camps were in areas outside of Jammu city. Subsequently, some of them were allotted Rs. 12000 each as rehabilitation grant. Very little was done for them. Ultimately, they rehabilitated on their own. They managed to educate themselves and get jobs. (Dey, 2010)

However, this distinction has been the most crucial one, since not being the permanent residents of the state, these refugees are deprived of various privileges which are attached with the status of the Permanent Residents. The status of the Permanent Residents is defined by Section 6 of the Constitution of Jammu and Kashmir and includes only those persons who were either citizens of status of Class I (born and residing within the State before the commencement of reign of Maharaja Gulab Singh and those settled before the *samvat* year 1942) or Class II (those who permanently settled within the state and acquired immovable property here before the close of *samvat* year of 1968). Since the West Pakistan refugees do not fall under either of the two categories, they are not treated as the Permanent Residents of the state. Hence, they cannot hold property within the state in their own name, cannot seek state employment, and they cannot participate in the local- and state-level politics.

Jamwal (2004) notes, 'While some of these displaced from West Pakistan managed to clandestinely get the permanent residentship of Jammu and Kashmir, there are 4 lakh voters in the state who vote only for the parliamentary elections.' For the last six decades, these refugees have been struggling to enjoy the basic citizenship rights and have taken recourse to agitations, lobbying as well as adjudication but have not

succeeded in getting much relief from the state. Almost 'stateless' citizens, their misery is aggravated due to the fact that most of them are located in the social periphery due to their poor social and economic background. A large chunk of the West Pakistan refugees is comprised of the Scheduled Castes. Since they do not have the Permanent Resident status, they cannot make claim to the various welfare policies either of the state or the Central government. The basis on which they could do so is the Scheduled Caste certificate which is not issued to them in the absence of the Permanent Resident certificate. Therefore, they face double marginalisation, both at the societal level as well at the level of the state. Interestingly, most of the Jammu-based political parties raise the issue of West Pakistan refugees but it is more of an instrumental use rather than the genuine concern for their rehabilitation.

Each of the studies undertaken is illustrative not only of the problems faced by the people due to the borders but also about the gap between the perspectives of the state and the people. The policies of the state driven by the 'larger' security and strategic angle may be at the cost of the people at the margins. As our studies clearly show, the people in the border areas are not only adversely impacted by the hostilities between India and Pakistan, but that they are also marginalised and rendered invisible.

References

- Anderson, M. 1996. *Frontiers Regions in Western Europe*. London: Frank Cas.
- Berg, Eiki and Henk Van Houtum. 2003. *Routing Borders between Territories, Discourses and Practices*. Burlington: Ashgate.
- Dey, Ishita. 2010. 'An Interview with Ved Bhasin on Forced Migration in Jammu and Kashmir', *Refugee Watch*, no. 36, December. Available at <http://www.mcrg.ac.in/rw%20files/RW36/9.Interview.pdf> (accessed on 12 August 2012).
- Donnan, Hastings and Thomas M. Wilson. 1999. *Borders: Frontiers of Identity, Nation and State*. Oxford: Berg.
- Jamwal, Anuradha Bhasin, 2011, 'Women's Voices: From Jammu and Kashmir', in Paula Banerjee and Anusua Roy Choudhury (eds), *Women in Indian Borderlands*. New Delhi: SAGE.
- Jamwal, Anuradha Bhasin. 2004. 'Homeless and Divided in Jammu and Kashmir', *Refugee Watch*, no. 23, December.
- Johnson, Benjamin H. and Andrew R. Graybill (eds). 2010. *Bridging National Borders in North America: Transnational and Comparative Histories*. Durham: Duke University Press.
- Jones, Reece M. 2008. 'Bounding Categories, Fencing Borders: Exclusionary Narratives and Practices in Borderlands of India and Bangladesh', Ph.D. dissertation, University of Wisconsin-Medison. Available at <http://books.google.co.in/books?id=Y8mGNJsgzJMC&printsec=frontcover#v=onepage&q&f=false> (accessed on 6 July 2012).
- Mandal, Monika. 2009. 'Internal Displacement in India: Status, Conditions and Prospects of Return', *Refugee Watch*, no. 33, June. Available at http://www.mcrg.ac.in/rw%20files/RW33/3.IDP_Monika.pdf (accessed on 10 August 2012).
- Martinez, Oscar J. 1994. *Border People: Life and Society in the US-Mexico Borderlands*. Tucson, University of Arizona Press.
- Puri, Balraj. n.d. 'Refugee Problem in Jammu and Kashmir', *Kashmir Newz*. Available at <http://www.kashmirnewz.com/a0002.html> (accessed on 6 July 2012).
- Samaddar, Ranabir. 2004. *The Politics of Dialogue: Living Under the Geopolitical Histories of War and Peace*. Hants: Ashgate.
- Van Schendel, Willem. 2005. *The Bengal Borderland: Beyond State and Nation in South Asia*. London: Anthem press.

CHAPTER 1

‘Bordered People’: Impact of Conflict on the lives of People Living on the Border in J&K

A Case Study of Arnia Belt

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1.1. INTRODUCTION

1.1.1 Conceptualisation of Border

Borders are the physical markers not merely defining the territorial limit and the extent of sovereign authority of the state, but also the psychological symbols dividing people and their sense of belonging between ‘us’ and ‘them’ (Correa, 2011, 189). This notion of border is conceptually linked to the idea of nation-state and is an intrinsic part of the ideology of ‘nationalism’. Borders are significant mediums through which the narratives of national identity are produced. In the formation of ‘national identity’, the modern states use various ideological state apparatuses and practices which in turn create ‘national identity narratives’. Of these ideological apparatuses and practices, the most significant are the ‘foreign policy discourses, educational practices and popular culture’. All these work towards emphasising the idea of a ‘homeland’ that is comprised of a territory and a boundary (Wastl-Walter, 2011: 14).

Such a conceptualisation of national identity essentially draws strength from embedding people within the physical boundaries and providing sanctity to these boundaries. The very history of nation-state itself reflects the double processes of ‘closures’ – ‘on the one hand, the closure of geographical space by borders; on the other hand, the closure of membership’ (Mau et al., 2012: 5). Drawing distinction

between the people ‘within’ and ‘outside’ the boundaries is the logical conclusion of the process of nation and state formation. It was inevitable for the modern nation-state with its concept of citizenship to draw a line between those who were ‘included’ and those who were ‘excluded’ in the state.

The concept of nation and citizenship presuppose some kind of permanency in the relationship between the state, its territory and the people living thereon. Citizens need to ‘belong’ to a specific state and to ‘reside in’ a given territory with some degree of continuity. Given this feature, it comes as no surprise that the development of citizenship and, therefore, of the modern nation-state was closely tied to the regulation of mobility and the establishment of border controls. (Mau et al., 2012: 16)

The processes of defining the national identities are therefore linked with the processes of defining outer limits of the state (Wilson and Donnan, 1998: 12–13). Borders, therefore, by definition are limiting, restrictive and constraining.

The state ideology of border is characterised by its fixity and its permanence. Borders are projected as ‘natural and permanent’ (Banerjee and Choudhury, 2011: 141). However, as the anthropological, cultural and social studies have emphasised, borders can be seen as ‘constructs’ that can not only be defined and redefined but also be traversed.

However, once created, borders become transformed into a reality, a default which impacts upon daily life patterns and social mores, determine the parameters of exclusion and inclusion, and creates the categories through which social and spatial compartmentalization is perpetuated. (Newman, 2011: 36)

Hence, even when these are 'constructs', the borders acquire the nature of non-permeable reality and acquire a restraining character. These become 'institutions which have their own set of rules...' The basic purpose of these rules is 'to control the movement of people, goods and ideas from one side of the border to the other...' (Newman, 2011: 36).

The concept of 'border' in the modern world has been impacted by two contradictory forces. On the one hand there is the process of 'globalisation' leading to the idea of 'shrinking world' – the world as a 'globalised village' with its implications of dissolving borders – and on the other hand there is the increasing concern with security of the state leading to more stringent enforcement of borders. With free movement of goods and capital and the people, one has seen the process of dissolution of boundaries and the emergence of the concept of 'deterritorialization' of the world and the imagination of a 'borderless world' (Wisl-Walter, 2011: 2). What is offered here as an example is the European model with its invisibility of border and free movement of people across the whole of the western part of the continent. The dissolution of the European Union (EU) border for the people changed the whole perspective on border. Rather than being seen as markers of 'inclusion' and 'exclusion', these were now seen 'as challenges to communication and movement to be overcome, and increasingly also, as lines of reference to define identities and belongings in relation to others' (Herrsche, 2011, 15).

Ironically, as globalisation has become the recognised reality of the modern world, it has not necessarily led to open borders. The developed countries, while taking advantage of globalisation and open flow of capital, are not very open to the idea of opening their economies for people of not-so-developed countries. Making rigorous laws of immigration, these countries are controlling borders in very stringent manners.

The borders between the Western countries and less-rich countries have become increasingly fortified, and sophisticated tools are being used to control them. The most documented case is the U.S.-Mexico border, along which walls and high steel fencing have been constructed. A growing number of patrol agents rely on technologically advanced equipment... (Pecoud, 2007: 3)

However, what has been the biggest influence in the severe enforcement of borders is the incident known as 9/11. The terrorist attack on 11 September 2001 in the United States has brought in a paradigm shift in the whole thinking about borders. States the world over are overtaken by the fear of the terror and, therefore, the concern for security and securitising have acquired primacy. Emphasis on border and territory has assumed important dimensions. So much has been the impact of this new paradigm that even those borders which were open earlier have become enforced. Giving an example of Vermont–Quebec border which was never earlier enforced, Mathew Farfan (2009) has pointed to the new phenomenon of 'enforcement' of borders. As he states, this border comprising 90 miles of Canada–US boundary was 'no border' at all and until very recently

crossing in one direction or another was as easy as going to the corner store. For many locals, this was literally the case. They purchased groceries, gasoline for their cars, and browsed for products of all kinds. They crossed to go to the bank, the post office, or local restaurants. Many crossed to visit friends or relatives. Customs officers greeted people they recognized with a wave of the hand – often with no questions asked. (Farfan, 2009: 9–10)

But he notes that 9/11 changed the things drastically: 'border has become the focus of intense scrutiny by the American government. The new Department of Homeland Security is reevaluating traffic across the Canada-U.S. Border, and security has been tightened by both countries...' This is not a singular case. Borders all over the world have become more restrictive. There is top-heavy militarisation not only of the locales which are infested with long-drawn conflicts, but also the borders of relatively 'normal' nature. Excessive emphasis on security actually has implications much beyond the border. As Wastl-Walter (2011: 23) notes, instead of borders, there are 'borderlands' which may include the whole of society. Borders, as he notes, have become

so diffuse that they have transformed whole states into borderlands. Their meanings are thus changing.... [S]urveillance technologies associated with increasing border control – to prevent terrorism, for example – may exist everywhere, even beyond the borders proper: at airports, in shopping precincts, in streets, and so on. This may in fact strengthen bordering in a society and be constitutive of social, cultural and political distinctions.

However, despite these trends prevalent all over the world, one cannot take the position that borders assume same nature in every country and in every situation. Border is not a homogenous phenomenon. There are varieties of expressions

of border and there is a range on which these can be located depending on how open or how closed these may be. It may for instance be important to draw the distinction between the 'relatively open border of Finland with Sweden and Norway' with the 'Finnish–Soviet/Russian border, which has been perpetually exploited as a border that divides' (Wastl-Walter, 2011: 23). Steffen Mau et al. (2012: 9) similarly differentiate borders between wealthy liberal democracies and the borders in other countries. To quote them: 'Borders between wealthy liberal democracies are not heavily controlled, or not controlled at all. In contrast, borders between democratic and non-democratic – or between rich and poor – countries are highly controlled and regulated.'

As becomes clear from these contradictory modern trends, one cannot apply a static meaning to border. That it is a dynamic concept can be gathered from the changing meaning and understanding of the concept in response to the changed political context of the world. In the same time and space, there may be different meanings and contexts of the border. According to Doris Wastl-Walter (2011: 2),

Borders are still ubiquitous, are manifested in diverse ways, and have various functions and roles. They can be material or non-material and may appear in the form of a barbed-wire fence, a brick wall, a door, a heavily-armed border guard or as symbolic boundaries, that is, conceptual distinctions created by actors to categorize components of belonging and exclusion. Such manifestations of borders affect people in their freedom of action and are perceived differently by different actors and groups. For example, while a brick wall may represent security for some, for others, it may be a symbol of suppression of and limitation to their freedom.

1.1.2 An Approach to Border

For many progressive writers, borders are 'hindrances to progressive politics' and hence need to be critically analysed. For many others, including the critical anthropologists, there is a need to erase borders. There are others who talk about 'Postnationalism' or 'transnationalism' who argue about the irrelevance of borders in the context of diffusion of sovereignty and weakening of the 'link between political identities, participation and territorial state' (Wastl-Walter, 2011: 20).

Especially for transnational theorists identities and political activities are now multilocal and loyalties are no longer seen to correspond to the nation-state, that is, territory and politics are not in one-to-one relation....

Similar, a rather normative approach is taken at times by scholars who make claims regarding cosmopolitanism and imply that attachment to a nation's territory should ideally be replaced by an attachment to the whole planet. (Wastl-Walter, 2011: 20)

It is the criticality to the territorial approach to the understanding of borders that is emphasised in this paper. Borders need to be analysed from the perspective of the people rather than from the perspective of the state's assertion of sovereignty or control over the territory. While the latter perspective giving primacy to territory over the people assumes and reinforces the idea of permanence and fixity of borders, the former perspective upholds the idea of borders being the 'constructs' – the human constructs – which are enforced by the states and can be overcome or dissolved by human initiative. With the territorial approach to understanding the border, the invisible 'people' and their specific responses are subsumed in the 'national' and state-oriented responses. This leaves no basis to argue that there may be a contradiction between the interest of the 'states' and that of the 'people'. Such a contradiction is clearly reflected during the times of wars. As Banerjee (2004: 148) notes, 'Wars are never merely over territories but on people who inhabit those territories.' She goes on to argue that the states often 'devastate the lives of people living in' the border areas. Similar point is made by Manchanda et al. (2012: 5):

For people living in the margins of the state, vulnerable to competing nationalist ideologies, what does it mean for their sense of belongings and centrist notions of citizenship, nation and the state? Militarized notions of national security make of the borderland a zone of exception where citizen's fundamental rights to life, livelihood and movement are undermined.

The difference between the territory-oriented approach and the people-oriented approach to border goes much beyond the contradiction between the interest of the state and that of the people. It extends to the conflict-resolution process. While the states remain entrapped in the 'stated positions' of non-negotiable and mutually exclusive interests, conflicts appear to be intractable. The same conflicts seem to dissolve when seen from the perspective of people. People form a cultural continuity across the border which makes it possible to build bridges and to shift the focus from the state-emphasised distinction between us and them to the generation of the linguistic, cultural and other kinds of bonding. At times, the economic compulsions of people also act in the process of bridging them across the border. 'The states continue to erect fences and check-posts to demonstrate their power but

human compulsions force people to disregard borders. This is particularly so because if one side of the border is depleted economically the other side is also affected (Banerjee, 2004: 148).

1.1.3 Methodology of the Study

It is from the perspective of the people that the present study on border is undertaken. It is not an exhaustive study of all kinds of borders of Jammu and Kashmir (J&K) but a case study of the Arnia belt around the International Border (IB) in Jammu district. The study is meant to be illustrative of the common issues faced by the people who have been 'bordered' and are forced to live around the 'hostile' or 'alienated' borders. Though drawing on the common issues of people living around the border, the author of the study is conscious of the variety of border situations in the state and therefore does not claim to have covered the full range of border issues. More particularly, the peculiar issues faced by the people in the Muslim-dominated areas like Poonch–Rajouri are not touched upon. There is a context of specificity in these border districts, defined not only by the Line of Control (LOC) (as against the IB which is the focus of the present study) but by the continuity of religious, community and family ties across the border. The phenomenon of 'divided families' – families divided across the LOC – the ambivalence of national identities and the continuous movement of the people to and fro the LOC are some of the peculiar issues of these districts which are not to be found in the area chosen for this study.

The study of this belt though focused mainly on Arnia, which was earlier known as the biggest village in this area and now has become a town, also covers a few villages located on the zero line, especially Allah, Devi Garh, Treva and Pindi Charkan. The study is based on field study and extensive interview with the people living in the area. The choice of studying the town of Arnia and the nearby villages has been made to understand the intricacies of the bordered lives of people. As the study clearly shows, though people all through this belt have been adversely impacted by the border situation and conflict, there is a marked difference in the ways in which such impact is felt by the people on the zero line and those who are a bit away from the zero line.

1.1.4 Border in Jammu and Kashmir

The undivided state of J&K covers an area of 2,22,236 square kilometres. Of this total area, 78,114 square kilometre area is controlled by Pakistan and around 5,180 square kilometres are under the control of China. This area was ceded by Pakistan to China after a boundary agreement between the

two countries (Government of India, 2003: 366). The state therefore has a complex situation as regards the border. The state as it was separated from West Pakistan had a recognised and settled border known as International Border (IB). However, the division of the state between the Indian and Pakistan-controlled areas resulted in another unsettled border known as the Line of Control (LOC).

In terms of its location, the state of J&K is a 'border state'. Border covers a large part of its area whether in the form of IB or LOC. Of the total border that India shares with Pakistan, a very substantial part is located in this state. As per the Ministry of Home Affairs, 'India shares, 3,323 Km (including Line of Control in Jammu & Kashmir sector) of its land border with Pakistan. This border runs along the States of Gujarat, Rajasthan, Punjab and Jammu and Kashmir.' Of the total 3,323 kilometre India–Pakistan border, one-third, that is 1,225 kilometres, runs through this state ([http://mha.nic.in/pdfs/BM MAN-IN-PAK\(E\).pdf](http://mha.nic.in/pdfs/BM_MAN-IN-PAK(E).pdf)). While the LOC forms a larger part of the border, the IB is 210 kilometres. Around 150 kilometres is Actual Ground Position Line (AGPL) and the rest (around 788 kilometres) is the LOC.

The LOC, to begin with, was known as the Ceasefire Line that was established in 1949 after the war between India and Pakistan was suspended. 'Drawn on the basis of positions held by the combatants at the time of fighting between them ended' (Wirsing, 1998: 62), the Ceasefire Line was supposed to be a temporary one, but continued to remain as the working border between the two sides of Jammu and Kashmir.⁴ This dividing Line was 'marginally altered during India-Pakistan wars in 1965 and 1971 and was renamed the Line of Control (LOC) by India-Pakistan agreement in July 1972' (Bose, 2003: 2–3).

The extensive coverage of the borders within J&K gets reflected from the fact that, of the 22 total districts of J&K, border runs through 10 districts. Of these, five districts fall in Jammu – namely, Jammu, Samba, Kathua, Rajouri and Poonch. Both the districts of Ladakh – Leh and Kargil – are border districts. In Kashmir, border runs through three districts – Badgam, Baramulla and Kupwara.

The district-wise names of the Districts and blocks bordering Pakistan are given in Table 1.1

⁴ To quote Wirsing, It was delimited in general terms in the so-called Karachi Agreement, which was signed on 27 July 1949 by military representatives of the two countries meeting under the auspices of the Truce Sub-Committee of the United Nations Commission for India and Pakistan (UNCIP) Mutual verification of this line, carried out on the ground with the aid of UN military observers, was completed on 3 November. (1998: 62)

Table 1.1 Blocks Bordering Pakistan and China (District-wise)

District	No. of Blocks	Name of Blocks
Jammu and Samba	8	Samba, Vijaypur, Bishnah, RS Pura, Satwari, Marh, Akhnoor, Khour
Kathua	4	Ghagwal, Hiranagar, Barnoti, Kathua
Rajouri	4	Sunderbani, Nowshera, Rajouri, Manjakote
Badgam	1	Khag
Poonch	4	Balakote, Mendhar, Poonch, Mandi
Baramulla	7	Booniyar, Gurez, Tangmarg, Baramulla, Ruhama, Uri, Dangiawacha
Kupwara	9	Tangdhar, Kralpora, Trehgam, Kupwara, Sogam, Langate, Rajwar, Ramahal, Teethwal,
Kargil	3	Drass, Kargil, Shaker Chikten
Leh	2	Khaltsi, Nubra
Leh (China)	2	Nyouma, Durbu
Total	44	

Source: Planning Department, Government of J&K, available at http://planningcommission.nic.in/plans/stateplan/sdr_jandk/sdr_jkch6.pdf, p. 367 (accessed on 12 August 2012).

1.1.5 Border Belt of Jammu/Samba/Kathua Districts

As stated above, 5 of the 10 districts of the Jammu region are situated on the border. The border runs through the tehsils of Samba, Vijaypur, Bishnah, RS Pura, Satwari, Marh, Akhnoor, Khour, Ghagwal, Hiranagar, Barnoti, Kathua, Sunderbani, Nowshera, Rajouri, Manjakote, Balakote, Mendhar, Poonch and Mandi.

The whole area of the IB is located in the Jammu region itself. This border of 210 kilometres runs along the River Ravi in the south to Mannawar Tawi in the north. It runs through the districts of Kathua, Samba and Jammu. Rivers and rivulets mark the border as well. Two important rivers that run across the borders are the River Basantar that runs from Samba towards Pasrur in Pakistan and the other is the River Aik that runs around Arnia towards Sialkot. Among the *tehsils* which border Pakistan include the *tehsils* of Samba, Vijaypur, RS Pura, Satwari, Marh, Akhnoor and Khour in Jammu and Samba districts and Ghagwal, Hiranagar, Barnoti and Kathua in Kathua district. Jammu city is only 6 kilometres away from the IB and it is situated only 20 kilometres away from Sialkot, a major Pakistani town.

1.1.6 Border and the People

All over the world, the life of the people living close to borders is very different from the life of inland people. In J&K, this is

particularly so due to the reason that the hostility between India and Pakistan has kept the borders generally volatile. Not to talk of the various wars that have been fought on the border (in 1947–48, in 1965, in 1971, the Kargil War in 1999, etc.), even in peacetime, the borders have been full of hazards. In the words of Patnaik (2005), the lives of the people in these areas ‘parallel the ups-and-downs of relations between India and Pakistan – ruled by crossborder tensions, fears of militancy, and various forms of destabilisation’. The hostility has led to militarisation of the border on both the sides, often leading to skirmishes between the Border Security Force (BSF) posted on the Indian side and Pakistan Rangers posted on the Pakistani side. There would be informal ‘harvest time truce’ between Indian and Pakistani forces ‘allowing farmers to go about their work’ (Swami, 2001). Other than this truce time, there would be no guarantee that farmers would be able to go ahead with their routine work in the farms. Often, their farming activities would be halted with the exchange of fire between the forces on both sides of the border and for long stretches of months together, they would not be able to take care of the land.

Till very recently, the intermittent firing and shelling in the border was a ‘normal’ phenomenon. As stated above, there was no concept of peacetime for the borders in J&K. The tension continued to build up at the borders and at any point of time there could be exchange of fire. In the words of a respondent, ‘Right since partition, we have borne the brunt of hostility

between India and Pakistan. Guns never fell silent on the border, ceasefire or no ceasefire, war or no war, wartime or peacetime.' For many people here, it has been a continued story of violence since 1947. Violence that accompanied the partition did not end for the border people. With the drawing of new boundaries there started the phenomenon of 'extended violence', which has become a routine and inescapable part of daily life' (Hans, 2004: 280). Uncertainty, unsettled life and abnormal conditions of living, therefore, are 'normal' for these people.

Uncertainties affect the quality of life of border residents. The precarious nature of the border that is unpredictably volatile generates a psyche of fear. With uncertainties characterizing their lives, they fail to make full use of all the life opportunities. With real-life danger looming large, their priorities are linked with the basic instinct of survival. Added to this are the compulsions to evacuate frequently and shift to safer places. Living under the conditions of continued border hostilities, fear of life and multiple evacuations, the border residents are not able to enjoy the settled life. As Joshi (2012) notes, 'With life itself being under danger, people cannot think of bettering their life opportunities. Displacement means abandoning the fields for months and though compensated by the state, the compensation amount does not compensate for the quality of life'. The volatility on the border reduces their concerns to the very basics – protection of their lives, and safeguarding their property when they migrate to safer places involuntarily. Their dependence on the land, however, brings them back to face the vagaries of the aggressive border till they are evacuated once again. In the process of their movement, they face a lot of hardships, making them dependent on the facilities provided by the state.

Border impacts the lives of the people in more than one way. Apart from the fact that it places them physically at the dead-ends with all kinds of restrictions and vulnerabilities, it marginalises them in many other ways. Most of those who continue living on the borders do that because they do not have real choices, because those who have such choices migrate as soon as they are capacitated to do so in search of more settled lives.

1.1.7 Focus of the Study

In order to understand the implications of living close to the border, a study of Arnia belt was undertaken. The people in this belt lived a very settled and quiet life before partition. Partition-generated violence impacted this belt in a very severe manner. The communal violence that followed the partition led to a lot of bloodshed with both the Hindus and Muslims facing the brunt. However, the post-partition period did not end the agony of the people, who now came to face a new

reality of being bounded by the 'international border'. Apart from living with the trauma of violence that they had to face in the 1947–48 period, they were now faced with the hostile situation on the border. Over the years, they were caught up in the crossfire; their agricultural land was mined and they were evacuated a number of times. Wartime was certainly difficult for the people since the area was turned into a battle zone and they had to migrate to safer places leaving their homes and agricultural land totally unattended. Apart from other wars (1947–48, 1965, 1971 and the Kargil War in 1999), the mobilisation of forces in the wake of the militant attack on the Indian Parliament resulted in massive displacement of people. Militancy meanwhile created a situation of fear as the militants chose this belt for infiltration, especially during the initial period.

Since 2002, the situation has substantially changed with the guns becoming silent for the first time in the border with the enforcement of ceasefire. However, the uncertainty continues, especially for the villages close to the 'zero-line' where accidental firing is resorted to once in a while and where infiltration is found to be taking place despite the fencing. Fencing meanwhile has generated its own kinds of problems. While providing a sense of security, it has also led to loss of agricultural land, which has come under fencing.

The Arnia belt is situated close to the India–Pakistan international border. Before partition, the nearest town for the people in this belt was Sialkot in west Punjab, now in Pakistan. The distance of Jammu from Arnia was almost double the distance of Sialkot – while Jammu was at a distance of 28 kilometres, Sialkot was only at a distance of 14 kilometres.

1.1.8 About Arnia Belt

Arnia is now a notified town area committee with 100 per cent Hindu population. The total population of Arnia is around 9,000. This is one of those areas which has substantial Dalit population – one-third of the population is Dalit.⁵ Other castes include the Brahmins, Mahajans, Jats and Sainis. The largest landholding class is that of Sainis. The Dalits or Scheduled Castes (SCs) are also landholders as they were benefitted by the land reforms in the post-1947 period. The SCs are internally divided into Mahashas, who form the largest number, and are followed by Meghs, Batwal and Ramdasis. There are a few Sikh families and also a few families of Christians. The Hindu

⁵ Of the total population of around 9,057, 3,859 are Scheduled Castes (SCs). The ward-wise SC population is: Ward 1 = 519, Ward 2 = 282, Ward 3 = 248, Ward 4 = 406, Ward 5 = 456, Ward 6 = 100, Ward 7 = 96, Ward 8 = 83, Ward 9 = 90, Ward 10 = 89, Ward 11 = 188, Ward 12 = 562, Ward 13 = 370. http://www.censusindia.gov.in/towns/jk_towns.pdf (accessed 6 July 2012).

population is divided into three castes, namely, SCs, Sainis and Brahmins. There are only two families of Rajputs.

Agriculture is the main source of livelihood. Apart from the traditional landholding class, there are those who have benefitted from land reforms. Land reform legislations related to abolition of big landed estates and ceiling on the limit of landholding led to the process of redistribution of land, because of which a large number of SCs who were landless cultivators became landowners. However, not all the SCs are landowners; there are many who still work on the farms as labourers.

Apart from agriculture, the other source of livelihood is the service sector. There is a sizeable chunk of population that is employed in government offices of various kinds. However, a large number of people are part of various security forces including the army, BSF, Central Reserve Police Force (CRPF), state police, etc. The 'belt forces', as these are named, are the traditional means of occupation for the people here.

Although there are a few people who have served in official positions as bank managers (three), university professors (one), superintendent of police (one), principals of higher secondary schools (six), Deputy Director, HRD, Government of J&K (one), army captain (one), most of the people who are employed here in government jobs are working at lower levels like linesmen, tubewell operators, etc. The employment in the 'belt forces' is also at the lower levels.

As far as the public infrastructure is concerned, there are three government schools (one higher secondary, one high school and one middle school), lots of private schools including two higher secondary, five high school, one middle school and one primary level school, one Primary Health Centre, one community hall and one guest house. The Red Rose Cricket Stadium was added to the infrastructure of this village recently.

Being the part of the fertile belt, there is a relative sense of prosperity in this village, and yet there is a large number of poor here. Abhineet, who was working as a teacher in the higher secondary school, informed me that a number of male students belonging to the poor families were working in the fields as well. Though these poor are spread across the caste divide, yet their number among the SCs is the largest. Leaving aside the SCs who benefitted from the land reforms, most other SCs are quite downtrodden, not availing the opportunity to be educated. Located in Mahasha Mohalla, they are cramped in the small *kuchha-pucca* (semi-concrete) houses.

1.1.8.1 Allah

Allah is a village close to the border in the Arnia belt. As per the information provided by the respondents, it was called

Allah-Charwah. Charwah is now in Pakistan. The village was among some of the villages like Pindi Charkan and Kathar that witnessed much violence in 1947. While many Hindus were killed, many Muslims were also killed and the rest fled to Pakistan.

Allah being the village on the border has been designated as a model village. As per the norms of the model village, a number of facilities are provided here. The village is not very poor like Devigarh and there are *pucca* houses. However, there is no sewerage system here. SCs form a very large number of the population here. Other castes include Rajputs, Brahmins, Jats and Mahajans.

Unlike Arnia, which has evolved over the years into a urban area, the remoteness of Allah has kept it quite rural.

1.1.8.2 Devigarh

Like Allah, Devigarh is also the last village near the border. This was part of a farm which was left vacant after partition and the land came under the custody of the state. All those who were settled here came to this place in the sixties. This was a huge piece of land. Some society that was formed to farm the land was not successful, so the land was given to the Chhamb refugees who had migrated in 1947 but were located somewhere near Meera Sahib and were relocated in the sixties. They were given land but not given what they call 'malikana' (ownership).

Most of the houses are still *kuchha* houses. There is low level of literacy. There is no directly recruited officer and no gazetted officer from this village. The total population of the village is around 1,000.

1.2 BEFORE AND AFTER 1947 – BORDERING OF ARNIA BELT

1.2.1 Life in Pre-1947 Period in Arnia Belt

Before 1947, Arnia was a Hindu-dominated village in an area of mixed population. It was a part of Jammu district which itself had mixed population. Though Hindus dominated in this district, the Muslims also formed a substantial part of the population.⁶ In Arnia, Hindus outnumbered the Muslims. However, the villages around Arnia had large Muslim populations.

The Arnia belt was part of one of the most fertile areas of Jammu. Hence, there was abundance of agricultural produce here. Being part of the belt where the world-famous Basmati

⁶ Before partition, the Muslims formed 37 per cent of the population in Jammu district. Hindus were 57.53 per cent of the total population.

rice is grown, it was economically quite prosperous. Describing the life in the village during the pre-partition period, Ganesh Dutt, an elderly person, informed:

It was a fertile land and lots of things were produced. Apart from Basmati, there was production of *dhangar* [a kind of pulse] and *san/patsan* [jute crop] and other food-related items. Almost everything that was required as food item was produced here. We would only buy salt. Pathans travelling through Punjab would come to sell salt here. There were also local crafts based on *patsan*. Beautiful furniture was made using this material, especially the *charpays* [jute bed].

1.2.2 Border of a Different Kind

The Arnia belt including the village of Arnia and other villages like Allah, Devigarh and Pindi Charkan (the villages where we based our study) were quite linked with Sialkot in Punjab. The belt even at that time formed the border, but it was a different kind of border, between the Province of Punjab and the Princely State of J&K. As Master Prakash, an 81-year-old resident of Arnia informed us, the belt formed the border with Punjab and there used to be an excise posts at this border. Customs duty was charged for 'exporting' tobacco from J&K to Sialkot and 'importing' sugar from there. To quote him:

It was a rice-producing belt and there was restriction on 'export' of rice from the state of J&K to Punjab, so there were number of excise posts to check if *mujhi* [rice] was being taken out. There was a post each in Jabba, Allah and Chakrohi. But the largest excise post was in Suchetgar.

As one can get impression while talking to the elderly people here, the concept of border before 1947 was quite different from the concept of border now. It was signified more by the economic barriers rather than security barriers. The concerns of the state related to border were also economic. 'Across the border was the "Angrez Illaqa" [area under British control]. Since rice was not allowed to be imported it was smuggled out because better rate was offered in the market there. The basmati of this place was very highly valued.' Hence, it was through the 'excise posts' that the state's control of border was symbolised. The border as a construct was more of an economic phenomenon than the military phenomenon that it represents now.

1.2.3 Linkage across the Border with Sialkot

Though part of J&K, people in this belt had greater linkages with Sialkot, a major city of Punjab (now in Pakistan) than with Jammu. This was mainly due to the proximity of this area with

Sialkot. Jammu was double the distance from Arnia as compared to Sialkot. Even otherwise, Sialkot was one of the most developed and modern cities of western Punjab. Apart from being a major trade centre, it was also a cantonment, which was established by the British in 1852. Connelley Park, that also served as the cricket ground, Scotch Mission College, also known as Murray College, and shopping areas made this city an attractive option for people in Jammu to look for employment and trade opportunities and to visit this city.⁷ The two cities of Jammu and Sialkot were almost like the twin cities. The proximity of Jammu with Sialkot can be judged from the very nostalgic note written by Khalid Hasan about this city. He writes:

On a clear day in Sialkot, if you stood on a rooftop, you could see some of the temples of the city of Jammu. And you always saw the mountains, including Devi's mountain where Hindus from all over India used to come once a year for yatra (Hasan, 2008)

For economic and trade purposes, the linkage of Jammu with Sialkot was quite strong.⁸ Jammu was linked with Sialkot through a bus route as well as a rail link. Apart from the physical proximity, there was also the cultural-linguistic affinity between Jammu and Sialkot. There was a large population of Dogras, both Hindu as well as Muslim, in the bordering areas of Sialkot.

The life of the people of Arnia belt was therefore intricately linked with Sialkot. They would go to this city in search of jobs. For a large population of skilled and unskilled labour, Sialkot provided a lot of opportunities. 'There was a sugar mill in Sialkot and lots of people from this belt were employed there,' informed Master Prakash, who in his younger days would visit Sialkot very often. Another respondent, Rakesh, informed that there was a very big menthol factory in Chakrohi on the border and a lot of people from Arnia worked there. He says:

People used to prefer to go to Sialkot for business purposes than going to Jammu. Sialkot was certainly closer to people here than Jammu. If you see from the rooftops, you will see that the lights of Sialkot are closer than the lights of Jammu. We were merely 12 miles away from Sialkot. ... There were other towns of Punjab also close to us which were much more developed than towns on our side. We

⁷ Referring to the vibrancy of Sialkot city, Khalid Hasan (2008) talks about the hotels and cafes and a department store, Gollam Kadir and Sons, which he says was the biggest in northern India and which the Maharaja of Kashmir used to visit to shop.

⁸ To quote Rakesh Rocky (2004), 'The 14 kilometer road between R S Pura and Sialkot was also a major trade link before 1947. Sialkot is just 11 kilometers from Suchetgarh.... R S Pura...was main station between Jammu and Sialkot road and also a rail link.... At that time sugarcane used to come from Sialkot in trains and buses to RS Pura.'

were very well connected with these towns by *tonga*, bus and train.

On the basis of information provided by the respondents, one gets a fair idea that the economy of Arnia and other villages close to it was 'Sialkot-based'. However, it was not economy alone which linked the people of this belt with Sialkot. The people in this belt also shared the socio-cultural milieu of Sialkot. 'We also had strong social linkage with Sialkot. Marriages were performed with people on that side and we had a lot of relatives there,' informed a respondent. Lots of people whom we interviewed in the Arnia belt stated that they had relatives in Sialkot and preferred contracting marriage relations in Sialkot and other nearby towns of Punjab rather than in Jammu, mainly due to easy connectivity.

The Sialkot border was actually the nearest route for the people here for going to Punjab. With the partition and the area coming under the IB, the route was closed, putting people to a lot of hardships.

My father's sister was married in Gurdaspur. Before 1947, we did not have any problem reaching there. We would go to Guradaspur via Sialkot and it was quite near. But after partition, it was so difficult to reach Gurdaspur. First we had to take the circuitous route from Jammu to Pathankot. Same was the story of visiting Amritsar. Amritsar via Sialkot is just two hours. But again for visiting Amritsar, one would go via Jammu and that would reach take us around seven to eight hours.

1.2.4 Inter-community Relations

Almost everyone we interviewed remarked about the idyllic inter-community relations before 1947. They said that they were living a good life before 1947 and there was no tension on the basis of religious differences. There was goodwill among the communities and sharing of happiness and grief. Ganesh Dutt, talking about the pre-47 period, says that he has very clear memories of good intercommunity relations:

At the level of people there was no problem. Hindus and Muslims lived here without acrimony. It is only the fundamentalists belonging to the Muslim League who created the divide. Of course, there were Hindu organisations also which were equally fundamentalist. Both created the communal divide.

Sodagar similarly states:

We had much better intercommunity relations before '47 than now. Today, there is hatred in each house. But we had such good relations and we were bonded with each other. We used to share pots and pans and attended each other's marriages.

In Allah, people still talk about 'Massan Telan', a Muslim woman who used to help in marrying off Hindu girls of poor families. She was like a headwoman of the village and was quite rich (the word used for her was '*panch kharpanch*'). The generosity of this woman was so appreciated that the stories about her have been carried over from generation to generation. And even when there are no Muslims left in the village, these stories are in circulation.

1.2.5 The Moment of Partition and the Bordering of People

Partition of India left a huge impact on the people in the areas living close to the border between J&K and Punjab. Due to its proximity with the Punjab border, the Jammu district was particularly impacted. To begin with, the people of this district were witness to the movement of large numbers of people who were using this route either to go to Punjab on the Pakistani side or to come from there to pass on to the Indian side of Punjab. The massive displacement that occurred due to the division of India on the north-western side resulted in the influx of Hindu and Sikh refugees leaving West Pakistan and Muslims from the Indian side to Pakistan. In both the cases, Jammu served as the transit point. As Bose notes,

Because of its location, after partition the Jammu region became a transit point for the huge number of refugees in both directions – traumatized, terrorized Hindus and Sikhs fleeing to India from Pakistani Punjab and the NWFP, and the traumatized, terrorized Muslims fleeing to Pakistan from Indian Punjab – both sides with harrowing experiences of slaughter and atrocities. (Bose, 2003: 40–41)

While many of those passing through Jammu went to either India or Pakistan, a few, especially those belonging to Sialkot and other nearby places, remained here for longer times. As many Hindu and Sikh families from these areas had relatives in Jammu, they stayed on. It has been estimated that around 100,000 Hindu and Sikh refugees came to Jammu from Sialkot. A large number of them were living in the city of Jammu but many of them were accommodated in various other parts of the Jammu region.

The sudden movement of people and the influx of refugees initially did not impact the local people. As Ganesh Dutt remembers, the first response of the people in the Arnia belt was that of sympathy for the refugees who had fled Pakistan and a sense of responsibility for those who had taken shelter in their villages. He narrates:

At first we were not affected by violence. The clashes that were taking place at that time were between Sikhs and Muslims. Sikhs would come as refugees to our village and we would feed them. That is all. Otherwise we were not disturbed.

The influx of refugees and the stories of their traumatic experience gradually generated an environment of tension in this district which ultimately resulted in tension at the local level and communal killings all over the region of Jammu. By the time the dust had settled, the state, mostly on the side of the Jammu region, had been divided; the areas of Muzaffarabad, Bagh, Rawalkot, Kotli, Mirpur and Bhimber were divested of its Hindu and Sikh population (with many of them being killed or forced to migrate to Jammu city) and the Muslims in large numbers killed or migrated from the areas of Jammu, Kathua and Udhampur (Bose, 2003: 40–41).

By October–November 1947, the situation in the newly developed Jammu–Sialkot border had become very tense. Following the tribal raids, there was a war-like situation and, besides the incursions on the border, there was a free-for-all kind of situation. Apart from the battle being fought between Indian and Pakistani forces, there were attacks by organised civilian groups from one side to the other. A cycle of violence was started which was motivated by communal rage and revenge.

People on the border were caught up in this situation. The Arnia belt being closest to the border had to face the brunt of such violence. Though violence reached upto the Arnia village, yet the villages which faced the violence the most were Allah, Pindi Charkan and Kathar. Most of these were the Hindu-dominated villages.⁹ Besides these, the violence had overtaken nine other villages mostly populated by Muslims. Many respondents in this belt informed about the mayhem that took place in their villages. 'It was first Navratra, I remember it distinctly when our village was attacked. The whole village was burnt. Almost all the houses were destroyed. A few women were also kidnapped,' reminisced Ganesh Das of Allah village. He said a total 350 people were killed in Allah. Sodagar Mal Sharma of Pindi Charkan Kalan recalled:

In 1947 we had to flee from the village. It must be the month of October; there were continuous attacks by

Pakistanis. They came in hordes and burnt out houses and killed people in our and other villages around. Around hundred people were killed from this village. The weapons were not guns but the things available at home – swords, axes, knives, or any other kind of sharp-edged things.

Since it took some time for order to be restored and protection to be provided to the people, the affected villages were evacuated and people fled to safer places. As Ganesh Dutt stated:

We did not know what was happening. We were just stuck with the situation. While many from our village were killed, many fled. We left our fields unattended and shifted to Jammu and stayed there in government hospitals. Muslims of the village also fled.

On the whole, it was a very chaotic situation. With no single authority available either to explain the situation or to provide assistance, people were left on their own. So much was the confusion there that even family members could not support each other.

When the attack took place, we were not even prepared for it. Everything was going on in a normal manner. All the members of the family were busy in their own routine. That is why the sudden attack created so much confusion that all the members of the family were separated. While other members of family could unite after some difficulty, one of my sisters reached some other place and was found only after eight days. Every day my parents would go to identify the dead bodies and try to find her among those dead. (Ganesh Dutt)

For an area which had a history of mixed living with not much acrimony between communities, the situation turned so uncertain that the communication between the communities was totally broken. With hatred and suspicion reigning in the minds of people, they were fully destabilised.

My uncle who fled from the village did not know where, in which direction, he was moving. Running all the time, he reached a village near Bishnah but dared not to come out of the bushes. For days together he was hiding in the fields trying to escape the attention of Muslims. He used to eat *hirham* – a kind of plant – and take water from the river. So scared he was. (Ganesh Dutt)

The intensity of violence was so high that people of both the communities were killed in large numbers. The nine villages dominated by Muslims, called Naunama, were deserted after the Muslims fled from there. However, the cycle of violence did not end with the killings and displacements on both the sides but continued even after that. There were revenge killings later on.

⁹ A mention of the ongoing violence in this belt has been made in Maharaja Hari Singh's correspondence with Sardar Patel: On the Kathua-Sialkot border attacks have been intensified. Everyday there is one raid after another. A number of villages have been burnt, women abducted and there have been killings also. The result has been that all the border villages have been vacated and we have about 70,000 to 80,000 refugees in the city of Jammu... (Letter from Maharaja Hari Singh to Sardar Patel, Home Minister of Government of India, January 31, 1948, in Aggarwal and Aggarwal [1995]: 86–87)

The Muslims who were affected by violence fled from the nearby villages and went to the side of Pakistan. But they came back with Pakistanis and attacked us. Brigadier Ghulam Baksh of JK Rifles was sent to protect us. But he joined forces with Pakistanis and started killing. (Ganesh Dutt)

It took a lot of time for the people to rehabilitate themselves. Since there was a lot of retaliatory attacks, the villages were burnt a number of times and people did not dare to come back to stay there. As a resident of Allah, which was very severely affected by violence, informed:

Our family came back in 1952–53. Since the whole of village was burnt, there were not many places to live. Hence, a few houses were constructed. Not only our village [Allah] was burnt but many other villages also were burnt. Dwalian (Barhi and Choti), Chak Gran, Khoju Chak, Gulab Singh Pura – all these villages were burnt.

Even after coming back after a few years, the villages around the newly formed border were not free from disturbances. Since it was almost an open border, the movement to and fro was unrestricted. Organised gangs from both the sides would look for an opportunity to attack the other side, either for the purpose of looting or for retaliatory reasons. We were informed:

There was uncertainty all the time. *Jatthe* [organised group of people] used to come from Charba in Pakistan and would burn down the villages. A number of times, a number of villages were burnt. So frequently were these villages burnt that many people chose not to go back to these villages. These villages continue to remain uninhabited till this time. (Rakesh)

These uninhabited villages are officially known in the revenue records as *bechirag* villages – literally meaning villages in which no lamp is lighted or, more specifically, ‘deserted villages’. These *bechirag* or deserted villages till now represent the psyche of fear that was linked with the partition- and post-partition-related violence.

Safety was the major concern when people fled. While many fled to Jammu, many others went to Punjab on the Indian side. Many even went to Punjab on the Pakistani side. As one respondent stated, ‘At that time it did not matter where we are going. What mattered was the safety, the towns and villages which were known to be safe, we took the decision to go there.’

This was reflected from the story of Gyan Chand of Charwan village. Irrespective of the considerations of religious affiliations, many Hindus of this village faced with sudden violence, rather

than fleeing towards the Indian side, fled towards the side of Pakistan, to a village near Sialkot. While some of these people stayed on forever, others like Gyan Chand stayed as long as 10 years across the border, on the Pakistani side. Explaining the reasons as to why he came back to the Indian side, he stated:

From being part of a Hindu-dominated society, we were now part of a Muslim-dominated society. Though no one compelled us to change religion, yet some Hindus volunteered to be Muslims. We remained as we were. But there emerged issues related to marriage. The Muslims would not give us their daughters in marriage, so we decided to come back.

Gyan Chand says that the border being porous, people kept on crossing the border on both sides. While many people who had temporarily settled in Pakistan came back, a few went on to settle down on the Pakistani side. He stated that in the face of uncertainties of war, a few people fled to Pakistan in 1965. He talked of a person from his village whose family had gone to Pakistan in 1965. ‘While he came back after some time, his sister did not. He goes to meet her once in a while. Since long she has become Muslim.’

In this whole situation of violence, women had to face further problems. Like elsewhere, they became the target of sexual violence in this area as well. Many women were abducted while a few were killed by their own family members. One respondent in Devipur informed us that his maternal uncle had killed his wife and daughter fearing the loss of their honour. Similar stories were narrated in Allah and Biaspur. Talking about Allah, Ganesh Dutt informed about a situation when the locality in which his family was living got caught up in a situation of uncertainty:

Our locality was surrounded by the attackers. All the people of the locality, around 150 men, women and children, took shelter on the roof of one house. At one point of time it seemed that they would not be able to save themselves from the enemy. It was decided to kill the women so that they did not get into the hands of the attackers. Each woman was given a rupee as a ritual preparing them to be killed. Many women started crying. But meanwhile the army came and we were saved.

But the situation could not be saved in every case. Women were to face sexual violence on both the sides. As per Ganesh Dutt, at least three or four women were abducted from Allah. This was the situation in the whole of the Arnia belt. Women from both the sides were abducted. There was later a process of exchange of women. Muslim women who were left back in Arnia were exchanged with the Hindu women who were now

located in Pakistan. Some women returned and some chose not to go back to their families. There were also the stories of men who were left back. Ganesh Dutt talks of a family where one brother was left on the Pakistani side of the border:

He is now a practising Muslim. He came recently to meet his family. Although he came to meet them but due to the religious differences he maintained distance from them and would not eat with them.

The 1947 violence changed the demographic structure of the area. The Arnia belt which was an area of mixed population came now to be comprised mainly of Hindus. We were informed that there is no Muslim population in the Arnia belt as of now. It is a 100 per cent Hindu area. Most of the Muslims of this area moved to areas across the border in 1947. Rakesh told us that there were three houses of Muslims in Arnia. But they do not live there anymore. Since long they have shifted to Gandhi Nagar, a posh area of Jammu city.

But that was not the situation earlier. A mosque and a Muslim shrine located in the centre of Arnia are still witness to the fact that this place had a substantial Muslim population. This fact is corroborated by Master Prakash, an elderly respondent from Arnia. According to him there were lot of Muslims in the area. The area which now has the middle school was populated by Muslims. However, most of them were from very poor background. To quote him:

With the exception of one Muslim family which was landowning and was producing and selling rice, others were poor and did not own land. They were mostly craftsmen and labour like *dhobi*, *teli*, etc. There were a few Muslim *fakirs* [Sufi ascetics] who were dependent on the offerings of Peer Baba. There were a few government employees and a few Gujjars.

The neighbouring villages had a large Muslim population. But after the violence of 1947, not only Arnia village but the whole belt area became mostly Hindu populated.

The memory of the violence has been etched on the minds of the people. The stories of violence have been narrated from generation to generation, and even those who were not witness to it and were born years after it took place, talk about it in a very intense manner. However, the intensity does not reflect hatred towards the 'other' community. More or less, the accounts are inclusive of the losses faced by the Muslims. There is a general feeling that neither the Hindus nor Muslims were perpetrators of violence as such, but the circumstances created a sense of insecurity and chain reactions. Each narrator sought to emphasise the normal and tension-free intercommunity relations before 1947. The problem, they emphasised,

started only after the refugees started coming. A respondent narrated:

A large number of refugees came in Arnia and other villages nearby. They came in hordes from the Sialkot side. Those who had relatives stayed with them but the rest took shelter in the temple. It was then the responsibility of the village to feed them. Food would be collected from house to house. It was in this process that one became aware of what was happening. There were too many horror stories and physical injuries. This changed the environment.

The communal nature of violence is acknowledged but explained with reference to the larger context. Most of the respondents that we talked to vouched that this was not an isolated act of violence. It was the situation triggered by the politics of the time and affected both the communities. As a respondent stated:

Muslims were as much affected by the violence as we were. Just like we have *bechirag* [deserted] villages which were burnt frequently by attackers, there are these nine villages called Naunama where Muslims used to live. All these villages have been left devoid of Muslim population. They had to flee. Like many Hindus who came here leaving back their property and other valuables, many Muslims had to leave back their valuables when they left this place. One often hears stories about valuable being dug up from the land which was left by the Muslims when they were forced to leave in a hurry.

Despite the fact that the Arnia belt has been divested of its Muslim population, people here have retained pleasant memories of the inter-community life of that time. Interestingly, they are maintaining some of the traditions of that time even without Muslims being part of this society. An evidence of this could be seen in the shrine of Peer Wali Shah Kamal Dana as a prominent part of Arnia town. The history of the shrine is traced back to the Dogra period. The story about the shrine that everyone in Arnia was familiar with goes as follows: During the period of Maharaja Gulab Singh a fort was being constructed in this area. The Sufi saint came here from Baghdad and started working here as a labourer. But his Sufi stature and the miracles that he performed made him famous. It is said that the basket of construction material that he carried did not touch his head but rather floated in the air. ('*Tokri unke sar se sawa hath upar rahti thee*,' informed a respondent). Hearing about his fame, the Maharaja came to see the miracles himself. The Peer asked the king to start a practice of offering *prasad* and *chadar* and told him that till the time this practice was continued, the power of the king would be retained. It is said that the practice

was discontinued during Maharaja Hari Singh's time. There is a very strong belief in Arnia that this led to the downfall of Hari Singh as well as the Dogra rule. Our respondents informed us that they had great faith in this shrine. In their belief, the shrine has been able to protect itself as well as the village of Arnia through all the periods of turbulence. They also repeated an incident that took place in 1947 when an unsuccessful attempt was made to demolish the shrine. The person was hit by a bullet from the back and he died instantly. He was the only person who was killed in the village during that time. Our respondent emphasised that other villages suffered ghastly violence during that period with a lot of killings, but in Arnia that was the only killing that took place. There are other stories of the shrine protecting the people during the 1965 war. The Pakistan forces, the respondents stated, could not cross the river to reach Arnia and were blinded.

The faith of the people of Arnia is so strong in the shrine that they have continued to revere it. Every Thursday there is a big festivity in the shrine and lots of people throng to it that day. Not only are the devotees Hindu, but even the caretakers are Hindus who lead life as Sufis. Every year during a particular day of the monsoon months, an *urs* is organised which is attended by people from far off places as well.

While referring to the demographic change in the Arnia belt, it is not only important to refer to the exodus of Muslims from this area to Pakistan, but also the influx of Hindu refugees from Pakistan-administered Kashmir and West Pakistan. Besides the local inhabitants, the belt therefore comprises a large number of refugees. Of these, two kinds of refugees are more prominent – the West Pakistan refugees and the Chhamb refugees (including both who were displaced in 1947 and those who were displaced in 1965). The West Pakistan refugees are those who migrated from the Pakistani side of Punjab and stayed back in various places in the Jammu region, including the Arnia belt. The Chhamb refugees are those who were displaced during the 1965 war from the area of Chhamb and were resettled in Jammu and Kathua districts.¹⁰ While the Chhamb refugees, being the permanent residents of the state, have been allotted land and given political rights, the West Pakistan refugees are still struggling for these rights.¹¹

¹⁰ During the 1965 war, a large number of people were displaced (around 8,100 families) from Chhamb and a large number of these (around 3,500 families) were resettled in the districts of Jammu and Kathua.

¹¹ To quote Ved Bhasin, Several people crossed over to Jammu from Pakistan, large number of them especially from Sialkote and adjoining areas.... There were few families, mostly rural people who crossed over and settled in border areas of Jammu...but they continue to be stateless. That time, their number was 60,000 to 70,000 but now their number has gone up to 2 lakhs. (Dey and Sengupta, 2010: 123)

1.3 BORDERED LIFE

1.3.1. Bordered Life with Porous Border

Though borders were drawn, yet for a long time these remained porous. This was true not merely of the Ceasefire Line but also the IB. People who came to settle back in the villages like Allah, Devigarh, etc. had to live with a new reality of being 'on the border'. Living on the border meant living with uncertainties of a new kind. Despite the security forces manning the border, there were a lot of unmanned gaps from where people could move across, especially along the Rivers Basentar and Aik. For the villages close to the IB, this possibility of free movement resulted in a lot of insecurity. As stated by Sodagar Mal Sharma of Pindi Charkan village,

When we started living here after the partition, the conditions were quite hazardous. We did not have a sense of safety and we were vulnerable. Our cattle would be frequently taken away. We would keep watch by turns.

Incidentally, this was the practice in most of the villages near the border. Every village would have a team of people keeping vigil at night, since that was the time when the thieves and looters would come from across the border and take away the valuables, but mostly the cattle. However, the crossborder theft was not a one-sided affair. The thieves and looters from the Indian side would also go across the border to fetch the cattle from the other side. Our respondents in Arnia informed us about a very well-known character named 'Charna Kumhar' who had made this his profession. In a much organised manner, he would cross the border and bring the cattle from there which were then sold to people. Ganesh Das argues that much of the cattle-related theft was linked to the poverty of the people living close to the border. 'With not many opportunities of finding a livelihood, some people, especially those who did not own any land, would find this as an easy option to make some money.'

However, it was not only the looters and robbers who would make use of the porous border; the smugglers also used it. Like many other borders, this border also became a route for international drug and other kinds of trafficking. Our respondents agreed that the border was being used for the purposes of smuggling. They told us stories about various kinds and ways of smuggling. Apart from the cattle being smuggled from both sides, there was smuggling of gold and liquor. A respondent narrated a story of smuggling taking place through donkeys. The donkeys, apparently carrying mud and sand, would carry liquor and dump it on the border and bring gold from that side in a similar fashion. As time

passed, smuggling of other items including *charas* and heroin began.¹²

It was in 2003 that the border was fenced. But before that it was not completely sealed and therefore there were many possibilities of crossing it. Actually, at that time, it was quite difficult to trace the border at many points and hence many people would inadvertently cross the border. Since the straying of animals was a usual phenomenon, there would be regular flag meetings between the Pakistani Rangers and the BSF for exchange of such strayed cattle. Referring to this phenomenon, Sodagar Mal Sharma thus stated:

Though there was a demarcated border between India and Pakistan, it was not possible to follow it all the time. For human beings there was some idea of 'our land' and 'their land', they were taught so by their governments, their politicians and their leaders. But for animals, no such training was possible. They followed their instincts and their instincts did not tell them the difference between 'our land' and 'their land'.

He informed us that for the cattle, certain rivulets were marked as free spaces by both the sides as common places where cattle could drink water. 'There was this Dhamala Nala where cattle from either side could drink water. Water is a common need and hence under an agreement a time was fixed for animals of each side to drink water.'

But it was not only the animals which could stray to the other side of the border; even human beings accidentally crossed borders. We came across many personal stories of people straying to the other side of the border. Rakesh informed us that when he was a teenager and as a student of class eleven he was to attend a marriage in Jabbowal, but by mistake he strayed to the Pakistani side.

There was no sign of border. No fencing or anything. I was on my motorbike and I did not come around any barricade. I saw a board in Hindi stating 'Savdhan, aage Pakistan hai' but I did not pay any attention to it, because I always thought that there would be some barrier. There was no way I could know that I had already crossed the border. It was the same terrain, the same kind of fields, the same kinds of houses. I could hear the music being played but that was also the familiar one. These were the

same songs that we used to play – the Punjabi songs of Mohd Sadiq and Ranjeet Kour. When I approached a house and asked about the way to Mr. Prakash's house where I had to go for wedding, I was asked by an old woman as to who I was, from where I had come and where I wanted to go. I told her that I had come from Arnia and wanted to go to Jabbowal. She told me that I had strayed to Pakistan. I was stunned. It took me some time to collect my wits and in a very fast speed drove back to my village. So scared I was that I did not dare to go to the place of wedding. When asked by my family members whether I had attended the marriage – I said yes. It was after four days that I could tell them that I had strayed to Pakistan.

A similar story was told by a villager in Devipur about an old woman who had strayed to the other side and on being found that she had come from the Indian side, the villagers on the Pakistani side told her to remain quiet and not tell anyone from where she had come. It was during the evening that she was guided to walk along the River Aik to reach her village. Similarly, Ganesh Dutt told us about his experience of going to Pakistan:

I was in school, must be a student of class five. I remember going across the border a number of times along with other school friends. We would just go across and bring sugarcane and melons from there. We would go out of curiosity to see what Pakistan is like. I remember feeling bad seeing the sorry state of the people there. There were very few *pucca* houses. These were mostly *kuchha* houses. But land was very good and fertile.

All these stories had the similar reflection of empathy at the level of people on both sides of the border. Understanding the hassles that the people would face if they were 'officially' detected to have crossed the border, they were helped quietly without any fuss to reach back their own side. These stories also reflect that despite the border being drawn and no communication being allowed between the two sides there was continuity of lifestyle, language and culture.

1.3.2 Militarisation of Civilian Areas

Borders are no ordinary areas and cannot be compared to other areas where civilian population lives in normal manner. Seen from the perspective of the state, these are the 'strategic points' which need to be 'secured' at all costs. 'Securitisation' being the priority vis-à-vis these areas, the people are secondary and their lives get bound by such prioritisation of the state. In any case, the people on the border face the brunt of the hostility of the other country and are not counted in when this 'other' state strikes. In the fight over and on 'territory', 'people'

¹² Acknowledging the phenomenon of smuggling around the border areas and the involvement of locals in it, Swami notes, There is, however, a curious ambiguity in local responses to the conflict. Plush farm houses appearing at regular intervals across rural Samba are the wages of the region's vibrant, but illegal cross-border trade. Gold, silver and liquor, the traditional commodities handled by border smugglers, have been displaced by a single, more sinister substance - heroin. (Swami, 2001)

become the major casualty. But the irony of the border residents is that they not only face the consequence of the action of the 'enemy' but also of their own state. The securitisation of the borders results in the militarisation of the areas in which these are located, and the lives of the people get confined by this process of militarisation. Apart from the constraints of various kinds, particularly the freedom of mobility around and the areas being declared 'out of bounds', there are other implications of the process of securitisation and militarisation. Of these implications, one of the most important relates to the usage of land that people own. There are various situations in which people are alienated from their own land. Such situations may be caused by shelling by the 'enemy' or by the mining by their own army. There may be other 'security' reasons for which the land may be under the control of the armed forces. As the *State Development Report* generated by the Planning Commission in 2003 notes, 'According to the available reports, about 70,100 acres in Jammu and Kashmir is being occupied by the army, which has land mines in 25,000 acres of land. The remaining land is being utilised by the army for other defence related purposes' (Government of India, 2003). Though much of the mined land in the Arnia belt has been de-mined and reclaimed (as discussed below) by the people, there is still the issue of land coming under fencing and people not being able to undertake normal cultivation process (also discussed below).

The whole process of militarisation, however, takes many shapes and affects the lives of people in a variety of ways. Importantly, army presence invokes a sense of security to the people as they feel vulnerable being located in the hostile border. Hence, they generally take the presence of army for granted. Their lives are interwoven in many ways with the armed forces, more specifically due to the fact that the 'belt forces' form a major source of occupation of the people here. Like many other areas of the 'Duggar belt', the villages in the Arnia belt have a very old tradition of serving in the armed and other forces and almost every family has a member serving in one of the forces – whether army, BSF, CRPF or even the local police force. As Ganesh Dutt informed, 'There is a large number of people who serve the forces, at least 30 to 40 per cent of the total employed are in one or the other kind of "forces".'

The tradition of serving the armed forces is an old one for the Dogra belt both for the elites and the masses, dating much before the partition. Dogras were part of the Frontier Force and later the Dogra Regiment was formed in 1887. The Dogra battalions became important constituents of the Indian armed forces. While the elites joined the forces in commanding positions, the other classes joined in the lower positions. Even now, most of those who are part of the army join at the lowest ranks. Despite their lack of education a large

number of people are accommodated in the army. The 'Dogra certificate', which is a privilege of the people of the Dogra belt, is additional incentive because it places them in a beneficial position for being employed in the army. 'Soldering', therefore, is an important aspect of Dogra life and can be seen to be linked to the lives of the people beyond the occupational and livelihood level. It is also integrated with the social and cultural aspects of their lives (KT News Service, 2011). In many of the Dogri folk songs, the male hero is depicted as a soldier and his long absences from the family is the recurrent theme of these songs. *Bhalla Sipahiya Dogrya*, one of the most popular Dogri songs, for instance, eulogises the 'Dogra soldier'; *Chann Marha Chariya*, another popular Dogri song, talks about the moon being the witness to the distance between the Dogra soldier in the service of king and his beloved left back at home.

Identification with armed forces, therefore, is very strong in the whole of the border belt in Jammu, including Arnia. In fact, a visit to the villages clearly reflects this sense of identification through a number of monuments and memorials of the 'martyrs' all through. Since many people are in the forces, there is a large number of 'martyrs' who have been killed during various wars. Other than wars, many people have been killed during the period of militancy. Being part of the CRPF and BSF, a large number of people belonging to these areas have been involved in counter-insurgency operations and have been killed by the militants. Besides this, there were a few casualties during the Kargil War. The armed forces therefore create lot of emotions for the people in general.

It is because of this reason that the lives of the people here are economically, socially and culturally linked to the armed forces, that their presence does not invoke negative response. But such identification with the army notwithstanding, one finds some kind of reaction to the situations when people feel too constrained by the militarisation of their areas. They express their resentment about the restriction on the freedom of movement, about the overarching authority of the army during the hostilities and its intervention in their lives. Many of our respondents talked about the situations when their movements are restricted by the army. 'During any tension at the border, we are not allowed to move around in a normal manner. That is the time that we feel alien in our own place. We need permission to do our daily chores.' Another respondent resentfully pointed to a high school in Treva which had a hall that served as an underground ammunition store during the tension at the border. Labha Ram stated:

Army becomes hostile to the villagers during the period of tension. It has its own priorities and goals and hence when things are not normal at the border, the forces view things from the perspective of national security only.

Then all kinds of restrictions are placed on people, which makes the normal life of people difficult. There would be a lot of restrictions on movement. I am a teacher but I would not be allowed inside my own school. To enter it, I would require the permission from the army. But not only for this, for everything we would require permission. We would not be allowed to move freely, visit our fields and at night would be asked not to put on the lights.

1.3.3 Shelling and Firing

‘Goli Ghar Pahunchati Hai’

Continuous tensions on the border impact the quality of life of the people residing close to it. Analysing the border situation, Surinder Singh Oberoi notes that ‘the people along the border live under a state of siege’ (Oberoi, 1998: 12). This feeling of siege was expressed by a respondent in Allah. He stated:

It has not been easy living near the border. There are too many problems, not merely the problems of facing the enemy on the other side of the border but the problems of day-to-day kind. Actually one does not know what is going to happen. Everything may seem to be normal and suddenly something might happen.

Echoing this feeling another respondent stated, ‘When there is firing, life stops. Crops remain unattended. Life becomes endangered. Being inside the locked room is also not safe as the firing and shelling reaches the interiors of our homes.’ The feeling of living under constant danger is shared by most of the residents of those villages which are on the zero line. To quote Kaith:

Goli ghar pahunchati hai [gunfire reaches home], it can happen any time, even now. Anything can trigger this process anytime. A mere suspicion of someone crossing the border can lead to the escalation of tension and an exchange of fire can take place. The people on the border become the hostage of this situation.

During our visit to the villages touching the border we could feel that every house has a story to tell – a story of facing a bullet or someone being injured due to sudden firing. Many of them had personal cases to inform. Of these one stated that his brother-in-law was injured in firing while sitting in his room. He died a few days later. Another respondent (Attarchand) stated that his son was similarly injured within his home, though he survived the attack. Prakash Singh told us how there was an explosion inside his house when he and his grandson were taking care of the cattle. Talking about Treva, Bishen Das informed that during the shelling in 2000, there were 19 explosions in the village and two people (one man and one woman) were killed.

In Allah and Devipur we could see that the houses did not have windows facing the border. This clearly reflected the vulnerability of the villages on the border. The borders in J&K have not been quiet even during peacetime. Since 1948, when the ceasefire was declared after the war, there have been numerous violations and frequent cases of firing and shelling. However, the situation improved after 2003 when as a result of the Indo-Pakistan peace process, it was formally agreed to have ceasefire on the IB, LOC and AGPL. This ceasefire came into effect from the midnight of 25 November 2003.¹³

The effect of ceasefire was felt in this belt. The tension that had prevailed here since the onset of militancy was greatly eased in the initial period of ceasefire. Earlier, shelling and firing accompanied the process of infiltration and whenever a major attempt was made by the militants to cross the border, the Pakistan Rangers would start firing. The silence on the border, with the enforcement of ceasefire, also helped the border residents to go back to their economic activities. And especially after 2006, they could reap the benefits of peace through their agricultural produce, especially the Basmati. However, as time passed, the pressure on the border also started increasing and the number of ceasefire violations went up. In the RS Pura–Arnia belt of the border, there have been many ceasefire violations in the last few years. Throughout the summer of 2010, especially in the months of June and July, there were frequent ceasefire violations. More recently, in the months of July–August 2010, there have been again reports of frequent ceasefire violations. These violations result in bringing back uncertainty in the lives of the people in the border areas. More recently, in 2012, there are again reported cases of ceasefire violations all over the border areas – both around the IB as well as the LOC. Such violations continued throughout the summer months. There were as many as 23 ceasefire violations in the period of two months following the month of August itself.

1.3.4 Displacement

Living by Suitcases

All through our field visit we were confronted with the issue of displacement as a major one. Displacement has been the normal story of the people living around the border. Rather than being a one-time affair, there have been multiple displacements. All the major wars between India and Pakistan resulted in tensions on the border and therefore the residents had to flee to safer places.

¹³ The ceasefire came into effect following a ceasefire offer by Zafarullah Jamali, Pakistan’s Prime Minister. The offer of ceasefire was for the IB and LoC. After India proposed that the ceasefire also be extended to the AGPL, the same was accepted and the ceasefire came into effect.

The story of displacement of the people here starts in 1947 and continued till very recently. As narrated above, the partition itself resulted in the displacement of people. The next major displacement of people took place during the 1965 Indo-Pakistan war. All the villages around the border including Arnia were severely affected and people had to be evacuated. After the ceasefire, however, not only the people who had left the villages returned but also those who were dislocated from the Chhamb area were settled in many parts of this belt, particularly in Devigarh. Devigarh formed a part of the land which was left vacant after the migration of Muslims from this belt. At some point of time, this vacant land was converted into a farm which was run by a society. But this society could not run this farm successfully. Therefore in the sixties, the refugees from Chhamb or Bhimber who were dislocated in 1947 or in 1965 were allotted land here. However, they were not given ownership rights and the land till date belongs to the state. These people are called allottees who are allotted land and hence they do not enjoy the *malikana* (ownership) rights.

There were other problems which the people in Devigarh had to face. This gets reflected in the story of Prakash Singh who came from Chhamb in 1947 and was relocated in this place in the sixties. He claimed that he was a big landowner of Chhamb but was reduced to a labourer when he was displaced:

Loss of land also meant loss of livelihood and socio-economic status. I was forced to work as labour. It was a difficult life. In 1951–52, I used to get six *annas* as the wage per day which was later increased to 12 *annas*, and then it got increased to one rupee and later to one and half. In the 1960s we were asked to move to Devigarh and were given the land that was vacated by Muslims. Since land was lying like that for decades, it had become totally barren and difficult to cultivate. Only wild animals were there. In the beginning these animals were a big menace and spoilt the crop. We had a very tough time relocating ourselves to Devigarh. There was nothing here – no shop, no vehicle, no water. There was only one old well. We did not feel safe as we were confronted by the cattle thieves from across the border. No one lived without arms as the cattle thieves could come any time and take away our cattle.

Being at the edge, Devigarh remains a place vulnerable to firing and shelling, whether wartime or peacetime. Hence, the people who were settled here could not be free from uncertainties. Already displaced from their homeland, they were still to suffer displacement whenever there was a state of tension at the border. Their search for settlement and certainty continues to elude them. The story of multiple displacements remains the same for most of the other villages in the Arnia belt. The

narratives remain the same. – of normalcy being suddenly shattered and dislocation being imposed upon people.

After 1965, it was in 1971, in the wake of the India–Pakistan war that the people of this belt had to evacuate their villages. Talking about the situation in Allah during the 1971 war, Ganesh Dutt recalled,

When the war broke out in 1971, I was in Jammu pursuing my studies in MAM college. I rushed home but on reaching there found that Allah was already deserted. Almost everyone except our family had shifted elsewhere. We also decided to move out. But since it was late in the evening we decide to leave the next day. But it was such a difficult and long night. Fire would come from all sides. There was so much sound of blasts that we had put cotton in the ears. As soon as the day dawned we moved out of the village.

During this time also, many people originally hailing from Chhamb were relocated to this belt. This was a major relocation as India gave up its claim on Chhamb and gave it away to Pakistan. People belonging to 28 villages had to give up their lands and had to relocate themselves on lands allotted to them by the state. Among other places, the vacant land in the Arnia belt was chosen to accommodate many of these people.¹⁴ So huge was their migration that the whole village as such was relocated to a new place. We were shown a government school which was run in Deva Batala in Chhamb which is now running from Arnia with the same name and the same staff.

Although there was no war in 1986, yet the people in this belt were forced to leave their villages to safer places. This was the time when tensions had increased between the two countries and forces on both sides indulged in military exercises on the border. Again in 1999 during the Kargil conflict, the borders became tense and the people had to evacuate. The next major migration took place in 2002.¹⁵

¹⁴ About the Chhamb refugees of 1971, Prashant Sood notes, Unlike the other 1.50 lakh persons inhabiting about 380 villages that were uprooted by the 1971 war, Chhamb residents could not return home as most of their land, estimated at 37,000 acres, where Pakistan had always enjoyed a strategic advantage, was given by India under the Line of Control delineation of 1972 in lieu of advantageous positions elsewhere.... [They] were put up in refugee camps ... till their rehabilitation for which the Chhamb Displaced Persons Rehabilitation Authority (CDPRA) was set up. Against the 20 villages in which these 17,400 persons stayed in the Chhamb niabat ..., the CDPRA in its rehabilitation award of 1976 scattered them over 129 *bastis* in seven *tehsils* in border areas of Jammu and Kathua districts. (Sood, 1998)

¹⁵ Referring to the process of displacement due to the border tension during this period, Jamwal thus notes:

In recent cases of displacements, large sections of populations were uprooted in the wake of the Kargil war and later during Operation Parakram, one of the greatest mobilization of Indian and Pakistani troops along the border. When the Kargil war began, people in thousands were uprooted from the borders of Kargil, forced to a life of deprivation in the already

Referring to the multiple dislocation of people due to border tension, Sodagar Mal of Pindi Charkan stated that he had migrated 11 times in his life. The same story is told by Bishen Das about Treva village. He also stated that he had witnessed migration a number of times. Master Prakash of Arnia thus stated:

During all these years, whenever there was warlike condition – we would be living by our suitcases – suitcases were packed for leaving anytime. We would be prepared to leave and carry the suitcase along with some rice and wheat flour and *gur*. Generally the pattern was like this – when we would get some indication of some tension on the border, women and children would leave. Men would remain in the village during the day time but by the evening, the men would also leave. And then there would be a time when the men also had to migrate.

In the more recent period, the major displacement in this area took place during the Kargil War in 1999 and 2001–02. In 1999, the areas close to the border started coming under fire and the people started moving out. They camped in school buildings in various places. As per the government figures, around 18,252 families, comprising 83,804 persons, migrated from border areas to safer places after May 1999. Of these, only 2,625 families were provided tents and other facilities, while the rest of them made their own arrangements. Apart from the dislocation, there was also loss of life. Around 12 persons were killed and 37 were wounded.¹⁶

Talking about his displacement in 2002, Sodagar Mal stated:

We were moved to a camp which was located in a government school in Bishnah. We had to stay there for three months. To begin with we were fed by the people of Bishnah. They would collect food from each house and provide it to us. But later on government started giving us ration and some cash compensation which amounted to Rs. 400 per head upto the maximum of Rs.1600. It was bare minimum and we could just survive on that.

Following the attack on Parliament in December 2000, India launched Operation Parakaram because of which there was

a massive mobilisation of forces. As a result borders became quite tense. As per a news item published in *Daily Excelsior*, around 16,000 people 'deserted their houses in 12 forward villages of Arnia and Ramgarh sector following shelling by Pakistan army leading to the killing of a civilian' (Daily Excelsior, 26 May 2002). As per this report, thousands of people had shifted from six villages closest to the border in Arnia sector. These included the villages of Nilowal, Sei Khurd, Sei Kalan, Kaku De Kothe, Treva and Pindi Charkan. A civilian, Bachan Lal, was killed in the Arnia–RS Pura sector while preparing to migrate. This triggered migration of people from other villages to safer places. In the month of June 2002, Arnia came under heavy Pakistani fire. Mortars reached the town of Arnia and its suburbs and this triggered fresh migration (Tribune, 9 June 2002). Such a situation continued for months and even in late July there were reports of Pakistani troops opening fire on various border outposts including those in Arnia sector.

Sodagar Mal of Pindi Charkan says the continued tension on the border and its impact make the lives of people near the border very uncertain. It is because of this reason that those people who can afford shift out of these villages permanently. That is the reason one does not find many educated and prosperous people in these villages. Those who are educated and employed and those who have improved their economic status have moved out and settled elsewhere. According to him, 'Due to displacements many people from my village have constructed houses in Jammu, many have shifted to Bishnah, Sarore, Bari Brahmna. On the whole I can say that around 30 per cent people have shifted away.'

1.3.5 Mines Endangering Life

Among the biggest hazards to life that the border residents face is the process of mining. Almost each war has led to the mining of the border areas which has resulted in not only the displacement of people and loss of their livelihood but also incidents of loss of life and limbs. To quote Masood Hussain (2002),

Since 1947, Jammu & Kashmir has been a perpetual minefield. Since 1947, every time there is a conflict, vast areas are mined. It started after the Indian army landed at Srinagar to push back the tribal raiders in October 1947. The cease-fire line was mined to prevent further infiltration. The 1965 and 1971 conflicts saw vast areas on either side of the IB and LoC being mined by rival armies, in August 1997, (then) Colonel G K Reddy told media persons in Srinagar that there were 51 minefields near the LoC in the border district of Kupwara with a minimum of 100 landmines in each field.

backward cold desert.... The fresh exodus began in December 2002 when Operation Parakram began and over 1 lakh families were uprooted along the International Border (IB) and the LOC. The areas in a mad frenzy were being forcibly evacuated, though shelling and heavy mortar firing had forced several people in these villages to flee. What added to the woes was the largest ever mine laying operation along the IB and the LOC... (Jamwal, 2008: 246–47)

¹⁶ This information was provided by the Minister of State for Home, Mr. Mushtaq Ahmad Lone, in the J&K Assembly. According to him an assistance package comprising free ration, kerosene, tents, water and electricity was provided by the state (Ahmad, 2000).

As per the *Landmine Monitor Report* (2003: 588), India is not a signatory of the Mine Ban Treaty.¹⁷ Landmines here are used actually as a very crucial defence strategy. As Mahapatra notes,

During the time of actual Indo-Pak hostilities in 1965 and 1971 mines were planted all along the border, in cultivated land and pastures, around infrastructure and even houses, to obstruct movement from across the border. In late 1980s with the rise of militant movement in the Indian state of J&K heavy mining in border areas was undertaken purportedly to check cross-border infiltration, and to stop all kinds of support and patronage from across the border. (Mahapatra, 2011: 8)

The respondents in the Arnia belt informed us that their villages were mined a number of times during the wars and even otherwise. As Bishen Das of Treva stated:

We have faced the incidents of mining a number of times. In 1987, there was some tension, maybe some false alarm but even then our area was mined. It was after six months the area was demined. This was despite the fact that there was no war going on. But certainly during the war, the mining is inevitable, like in 1965 and 1971 when our areas were mined. In 1971, our side of the border was peaceful, even then our area was mined and people had to flee from their villages. This also happened during the Kargil war in 1999.

One of the largest mining operations, however, was undertaken after the terror attack on Parliament in 2001. Though the actual number of landmines planted during this time is not known, the high level of the landmining process can be gauged from the total area covered in the mining process. *Landmines Action Report* has noted that, 'between December 2001 and July 2002, India laid MPTAPM along its 1,800-mile northern and western borders.' About J&K, it reports:

Landmines including MPTAPM were reportedly planted in cultivated and uncultivated land and around villages in defensive positions. According to government officials, the positions were recorded and marked and local population was informed and educated about the location of the minefields. (Landmine Action, 2005: 82)

Although there is no official acknowledgement of the mining, there have been studies which have reported that almost all

the villages on the border in the Jammu region were mined.¹⁸ To quote Mahapatra,

Indian army took under its control a total of 70,100 acres of land in Jammu, Kathua, Rajori and Poonch districts after deployment of forces.... As per the unofficial claims, more than 25,000 acres of land in the state came under minefields by the plantation of Anti-Personal Mines (APMs) and Anti-tank Mines (ATMs) with a density of 1,000 sq miles per square km. (Mahapatra, 2011: 8)

Though the logic of laying the mines is to restrict the process of infiltration, yet it impacts the lives of people in the areas where such mines are laid. The villages and agricultural lands are converted into minefields and these become 'forbidden zones' for the people who are forced to move out of these places. Writing about this period, Jamwal in a report of the Mahanirban Calcutta Research Group (MCRG) notes that 'much of the migration this time took place, not just due to the shelling and firing exchange between the two troops on both the sides but more so, because of the heavy landmines emplaced by the Indian and Pakistani troops in their respective territories' (Jamwal, 2004).

What was the most problematic part of mining for the people of the border villages was the fact that it impacted on their agricultural activities. For a long period after the areas were mined, the fields had become out of bounds. There were large agricultural areas where no cultivation could take place. Giving a graphic report of this situation, Jamwal noted,

Walk anywhere along the 1,000 kilometre stretch of the international border and the line of control that the state of Jammu and Kashmir shares with Pakistan and Azad Kashmir, and one would find the villages at the fringes abandoned and empty. They are almost out of bounds and a visit could well be 'at your own risk' with signboards on the paved pathways or roads leading to these villages saying 'danger'. A major reason is the extensive mining operations that began in the fog end of 2001. (Jamwal, 2002)

The Indian Campaign to Ban Landmines reported after a field study of the border villages in 2000 that 'more than 200 people had been injured by mines'. According to this study, a number of military and police personnel along with

¹⁷ According to this report, there are 15 countries which are still producing antipersonnel landmines, of which 9 producers are in Asia and include Burma, China, India, Nepal, North Korea, South Korea, Pakistan, Singapore and Vietnam. It notes that 'India and Pakistan are actively engaged in new production of antipersonnel mines that are compliant with Amended Protocol II of the CCW' (*Landmine Monitor Report*, 2003: 8)

¹⁸ The situation along the LoC is much more severe, as far as the process of mining is concerned. To quote Jamwal, The army maintains that since 1947, both Indian and Pakistani armies have heavily mined their respective territories along the LOC permanently. There is no effort de-mine these areas. They, however, claim that the civilian areas are not mined on the LOC and the civilians are not affected. Facts and figures dispute the claim... (Jamwal, 2008: 147)

civilian farmers were killed by the landmines (Landmine Action Campaign, 2002: 6). Our respondents informed us that after the Parliament was attacked, the whole area was mined and remained like that for four years. 'Our land remained mined for four years and we did not have any access to it,' stated Bishen Das of Treva. 'It created lot of inconvenience to us. We could not move freely in our village. The whole place was mined. We did not even have a place to go for latrine. Then two latrines were constructed with the help of the army,' stated Sodagar Mal about Pindi Charkan.

While some areas remained mined for four years, there were also areas which remained mined for six years. Some areas in this belt were mined during the Kargil War in 1999 and were demined in 2006. It was after a long period therefore that the people could access their land. This directly impacted the livelihood of those people whose cultivable land was mined. To quote Bishen Das,

As the tensions started on the border, we had to leave the village and go to safer places. We stayed in a camp which was located in a government school for girls in Bishnah, for three months. After we came back, life was not normal for us. The whole place was mined and we did not have access to our lands. Agriculture is our main source of occupation and livelihood and we could not pursue that. It was after four years that the area was de-mined. But by that time the land had become infertile. There were weeds all around and due to the lack of irrigation, the land had dried. Though the government had cleared the fields and prepared for cultivation, but still there remained the impact of land not being used for four years.

Another resident stated, 'For years together we were dependent on government's dole for our survival. This is ironic since we are the owners of such a good quality of land. But instead of living on our own hard work and our land, we were living on the money and ration being paid by the government.' The dole consisted of a ration of 9 kilograms of flour and 2 kilograms of rice per person and Rs. 1,600 per month per family.

There are thus huge implications of agricultural land being mined for four years. Despite owning the land people were forced to be dependent on the dole from the state. The state was committed to provide compensation but there were a number of issues in getting the compensation as well. Further, there was the problem of reworking on the land once it was demined. Not cultivated for years together, it required extra effort to make it cultivable. Referring to these issues Prakash Singh stated:

After the Kargil war, the border was mined. There was no crop for six years. Only in 2006, mines were cleared. Till

that time we could not pursue agricultural activities. Of course we were given compensation. But compensation does not come immediately. It takes years to get compensation and to get it we have to face all kinds of hurdles. Compensation comes through tehsildar who was asking for 50 per cent share to release that money. Some people bargained, but I refused to pay the *tehsildar*. It was after the intervention of a political activist that I could get the full money.

However, many respondents questioned the very logic of compensation itself. They felt that the amount that is given to them in lieu of the land being mined is very meagre and does not do justice to the loss that they face when they cannot cultivate it. As one respondent stated:

Compensation is not enough and does not compensate what we actually lose when we do not have our land under our control. Money that is given is not enough. It is a fertile area and we produce rice which has huge demand in the market. Basmati grown here is famous all over the world. We get only Rs. 50,000 as compensation. This is not equal to the value of Basmati that we would have produced. For all the long years when our areas were mined we were telling the government that we do not want compensation, we want our areas to be vacated.

Once the fields are mined, it is not easy for the people to reclaim their land. People are allowed to go back only after senior officers of the army have certified that the area is demined. However, even for the areas that are certified to have been cleared of mines, there remains the threat of live mines. There are a number of reported cases of deaths and injuries due to the live mines that have remained undetected. The process of demining itself is full of hazards and leads to injuries and casualties. Landmine Action has reported that 73 people were killed and 216 injured in the demining operation that started in June 2002 in Rajasthan, Punjab and J&K (Landmine Action, 2005: 83).

In the Jammu region, there are a number of reports of people getting injured by the undetected mines. So frequent are such cases that these do not make much news. To quote Mahapatra,

Many times mines remain undetected. Hence, deaths and injuries due to mine explosions are not considered ... unusual.... Though the exact number of victims of the landmines is not available, an estimate of heavy physical losses can be gauged from the fact that in Chagia, a small village in Ranbir Singh Pura sector of Jammu, landmines set up during the 1971 war have injured as many as 23

residents till end of December 2001.... As per another report, more than 2,000 victims of landmines had been recorded in the Rajouri belt between 1947-1989. (Mahapatra, 2011: 10)

One gets often to read news reports about landmines being detected by villagers and being defused or of people accidentally getting injured by undetected live mines. A random Google search of news reports about accidental detection of landmines in Jammu and Kathua districts gave us the following results from *Times of India*:

A man reportedly was critically injured in Ramgarh while he walked over a landmine (18 October 2002); Five people injured in Arnia sector when mine exploded when villagers were cutting grass in their fields (14 November 2002); An army personnel being injured in a mine blast during demining operation in Samba sector (31 December 2003); A person injured in Akhnoor while grazing cattle in his field in Akhnoor belt (15 May 2006); Panic being created by explosion of two abandoned landmines in Vijaypur belt (10 June 2006); A landmine that was detected by a farmer in his field in RS Pura (29 November 2006); Another landmine discovered by a farmer in Jabbowal border outpost (3 November 2006); Panic created in nursery border outpost in Ramgarh belt by explosion of two landmines (10 January 2007); One farmer detected a live landmine in his agricultural field in Khoda village of Dayalchak belt of Kathua district (2 January 2007).

Our respondents also reported a number of cases of mine-related accidents. In every village that we went, we were told stories of people being injured, maimed or killed by the accidental explosion of undetected landmines in the fields. They remarked that the frequency of the cattle being caught by the mines was very high and they had to suffer huge losses because of that. Keith told us about an accidental killing of a villager in Arnia in 2003 when he walked over a landmine. He also informed of another case of injury to another man the same year when he was taking back his cattle towards his home. Prakash Singh told us about Devigarh, 'Daya Ram lost his leg when he had gone with the cattle for feeding them. He slipped and his leg accidentally touched the mine and he lost his leg. Similarly a few more people lost their legs.' He further informed us that two landmines were recovered in the village in 2011. These were removed but created lot of psychological impact on the people.

1.3.6 Fencing

One of the issues confronted by the people living close to the border is that of fencing. Fencing is a part of the 'multi-tier security structure' set up by the army during the last one

decade or so (Mahapatra, 2011: 10). Apart from fencing, this security structure is comprised of the ditch-cum-bandh system (DCB). Before the process of fencing was undertaken, a ditch was dug some distance away from the zero line of the border and a *bandh* was erected there. While the ditch served the purpose of sheltering the forces during shelling and firing from across the border, the bandh worked as a 'barrier to prevent the rival forces from watching the activities of their troops' (Mahapatra, 2011: 10). The pressure on the border during the period of militancy resulted in the decision to further fortify the border and create an electrified fence. The IB on the side of Jammu, being porous, was used by militants in the early 1990s to cross over from Pakistan. The early-1990s, therefore, 'saw an influx of militants, who used the Jammu route in order to circumvent patrols along the Line of Control up north in the Kashmir Valley'¹⁹ (Patnaik, 2005). The decision of constructing the fence was to counter the process of infiltration.

It was in the year 2000 that the decision for constructing the fence and floodlighting along the IB in Jammu was taken by the Government of India. By March 2006, BSF was able to fence 186 kilometres of IB and had illuminated 176.04 kilometre length of the IB (Verma, 2011). Swami (2001) explains the need for fencing thus:

It is not hard to see why the new fence is so important to India, while being a real threat to Pakistan. For one, both National Highway 1 and the Pathankot-Jammu rail line are only a few kilometres from the border. With the fence in place, the kind of sabotage enterprises and terrorist attacks that have been taking place regularly since 1994 would become extremely difficult to carry out. Pakistan would also find it difficult to push espionage operatives across the border, while Indian intelligence would have no difficulty in identifying them. Also significantly, the fence would make an important symbolic point. India argues that the southern frontier in Jammu and Kashmir is a border, because it has remained unchanged ever since the accession of the state. Pakistan accepted this position until the rise of insurgency in the late 1980s. It now describes the border as a 'working boundary'.

The fence forms a 'wall' which is comprised of 'twelve-foot-high fences of barbed wire, set about twenty feet apart' (Hagerty, 1998: 148). It is equipped with electric wire that runs throughout its length. To prevent the infiltrators from sneaking into the Indian side, there are numerous watch towers and searchlights.

¹⁹ Patnaik (2005) further notes, 'Suddenly, the villagers began to notice discarded Pakistani biscuit-wrappers and cigarette packs in their fields.' The militants at that time chose the route from Jammu to cross over to India from Pakistan since there was a very strict vigil on the LoC.

Given the fact that the influx of militant infiltration had generated a sense of insecurity, the erection of the fence helped create a sense of security in the Arnia belt. However, it also led to problems for the people. The intensity of shelling and firing increased during the period when the fence was being erected. 'All through the period that the fence was being erected, the border did not remain silent. There was far greater frequency of firing by the Pakistani Rangers as compared to the earlier period,' informed a respondent. Because of the intensity of the fire from across the border, the fence could not be constructed at the zero line but quite inside the border. As per a report of Ministry of Home Affairs, '... due to heavy fire from across the border, in a stretch ... IPB fence was erected at a distance, varying from 400 meters to 1.5 Km away from the IB' (Government of India, undated).

With fencing around 400 meters to 1.5 kilometres inside the Indian territory, a substantial part of the agricultural land has come under fencing. Most of this land, especially in the Arnia belt, is very fertile and was being cultivated by the villagers. However, this land has now become restricted due to the fence. Though there are gates built along the fence to allow the people to have access to their land, yet it constrains their agricultural activities. Normal farming, therefore, is not possible. The opening of gates is as per the scheduled timing and it is only during this time that farmers are allowed to access their land and indulge in agrarian activities. Most of our respondents whose land came under fencing reported that the time during which people could enter the gate was not sufficient and this impacted their overall level of productivity. As one respondent stated:

We do not get sufficient time for our activities. Every day we have to wait for the time for the gate to open and then it takes us at least one hour to reach our land. And before we know, it is the time to close the gate and we are forced to shortcut the whole process. I need to stop work one hour before the gate closes so that I can get back to the gate and that does not leave me much time.

Similar opinions were expressed by many other respondents. Another respondent thus stated:

We have lost the pleasure of being in the field for longer time. Sometimes we are in the middle of watering the crop or harvesting and we have to leave it, since we have to follow the rules. I used to be in my field before the sunrise and remain there till it would become dark. But that is not possible anymore.

As per many respondents, the fencing had deeper impact on the way they controlled their land and pursued their agricultural

activities. This feeling was expressed by one respondent in the following manner:

It has changed our relation with our land. Earlier we would not be bothered about the time. It was our field and we could enter it any point of time. We did not need to take anyone's permission. But now we need to have formal permission. I cannot take the liberty of going to my field when I feel like.

The farming, as most of the respondents stated in this belt, has been traditionally 'family farming' with all the adult members of the family including the women participating in it. But with the land coming under fencing, this has been affected. 'Our farming activity has been quite restricted, not only because of the shorter duration of time I get to spend on my field but also that I don't have the support of my family. Now I cannot take my wife along for farming activities. I do not feel that it is safe for her,' stated a respondent.

Apart from this there are many other issues related to the land being fenced. Of these one is related to compensation. Compensation was due to people whose land had come under fencing and they could not access it. Many people in this belt stated that the compensation is still pending and they have not been given the money, though around two decades have passed when the land was acquired by the BSF. The fence was completed in 2000 but their land had been acquired much earlier and they could not use it for cultivation purposes. The issue has acquired political connotations and the local political leaders often raise it at public platforms and governmental forums. It has often been raised in the meetings of the District Development Boards and even the Legislative Assembly of the state. During the Assembly session of April 2012, a question was raised by the MLA of Bishnah as to how much of the agricultural land was acquired by the BSF for fencing in the border areas of Jammu division, particularly in Bishnah Assembly constituency and how much compensation has been paid to the landowners. Though the government could not provide the exact details of agricultural land acquired by BSF (since revenue documents of such land were being prepared), it stated that 'in respect of Tehsil Bishnah, about 1495 kanals of land falling in 14 villages is expected to come under fencing' (*Rising Kashmir*, 5 April 2012). Unofficial reports, however, state that around 6,000 kanals of land has been acquired by the BSF and 60 villages have been affected in Jammu district alone, of which 800 families belong to Bishnah constituency (Sharma, 2012).²⁰ As per the

²⁰ As per the Bishnah MLA, Ashwani Sharma, 'Despite repeatedly raising the issue in District Development Board meetings, not even a penny has been given to the affected farmers in my constituency' (Khajuria, 2012). This is despite the fact that the BSF, according to Sharma, has started to widen the border fence from 60 feet to 135 feet.

government's version, the process for revenue survey is under progress and once that survey is completed, compensation would be provided (Khajuria, 2012).²¹

But not all the people who are dependent on land are entitled to compensation. To quote Ganeshdas, 'Most of the land under fencing is the state land where people do not have the land right and the land is just allotted. Hence people do not get compensation for that. Compensation is given only to those who have ownership right (malikana) on land.' Echoing this sentiment, Bishen Das stated:

Compensation is given only to owners. I am an allottee and though I am as much dependent on land for my livelihood as those who have the proprietary rights, yet I will get much less as compensation – may be Rs. 200 or Rs. 300 per canal.

One major concern of the people arising out of fencing is that the land which lies between the fence and the actual border will gradually be claimed by Pakistan. 'The land has not been fenced at zero point but much farther. This has now become "no man's land". It seems that unofficially India has given up this land. Why should Pakistan not claim it?' asked a respondent.

For the reason that the cultivable land coming under fencing is creating a lot of difficulty to the people, there has been a demand in this area that the Government of India should reconsider the decision to have the fence much inside the Indian side. The demand has been raised by political parties and leaders as well. It is in response to such a demand that the Government of India has been considering the realignment of the fence in such areas where there is a very wide gap between the fence and the actual border. As per the 2011 *Annual Report* of the Ministry of Home Affairs,

It has been decided to shift 38.015 km. of fencing erected on Jammu International Border ... close to the border to facilitate the border inhabitants to cultivate their lands without problems. Presently, the work of earth levelling, erection of pickets and barbed wire is in progress. (Government of India, 2011: 43)

1.4. RESPONSE OF THE STATE

1.4.1 Response of the State to Border-related Problems

The extraordinary nature of problems faced by the people living close to borders is recognised by the state and its various

agencies. To quote a report of the Planning Commission of India,

People living in these [border] areas continue to suffer from various problems.... People have long been the victims of hostility between the two countries as a result of frequent shelling along the Line of Control (LOC) and International Border, which has inflicted miseries on the poor, downtrodden inhabitants. On the other, lack of employment opportunities other than in the government sector and improper functioning of the sectors of the state governments have also contributed to an increase in the problems of the border areas. Consequently, literacy rates still remains quite low, there is little improvement in infrastructure – schools, hospitals, paved roads, electric powers and piped drinking water are almost non-existent, especially in remote border villages... (Government of India, 2003)

Acknowledging that there are special needs of the people living close to the border and that they need to be supported by the state, a special programme was initiated in 1986. Known as the Border Area Development Programme (BADP), it caters to the people living in the states bordering Pakistan, including J&K, Punjab, Gujarat and Rajasthan. Of the two objectives of this programme, one relates to ensuring balanced development of border areas through 'adequate provisions of infrastructural facilities' and the second relates to 'promotion of a sense of security amongst the local population' (Government of India, 2003: 370). A 100 per cent centrally sponsored scheme, the BADP in J&K has been intervening in border areas in matters related to education, health, roads, bridges, water supply, etc. It was introduced in the state during 1992–93 period. Among the works undertaken via this programme are those related to schools (buildings, additional classrooms, toilets, hostels, playfields), health (public health centre [PHC] buildings, MOD quarters, sub-centres, dental units, operation theatres), rural development (community centres, link roads, lanes/drainage, bunkers, latrines, *sarais*, etc.), power (construction of sub stations, electrifying villages), Public Health Engineering (upgradation of water supply and sanitation, construction of dug wells, installation of hand pumps), road and building, agriculture, food and supplies, irrigation, animal husbandry, horticulture, etc.

However, despite the intervention by the state, the people in the border areas, especially in those areas which are very much on the zero line, feel neglected. A general feeling in these areas remains that whatever advantages of these schemes be, these are accrued by the areas which are closer to the towns or have been urbanised over the period. This point has been acknowledged in the report of the Planning Commission itself

²¹ In response to the questioning in the Assembly, the government set a two-month deadline for compensating the farmers. As per a report, the state government had got the clearance from the Centre and that the Centre had settled the rates of compensation (Sharma, 2012).

which notes, 'Most of the developmental activities has taken place in urban areas, where the index of Social development (which includes indicators like literacy, health care, access to other social services, etc) may rank moderately high' (Government of India, 2003: 370). This point was emphasised by Labha Ram while explaining the lack of development of Devigarh village. In his opinion, all the benefits that are provided by the state are monopolised by the better-off villages/towns, and the places that really need attention remain neglected. To give an example of the lack of development of his village, which is lying on the border itself, he informed us about the pathetic condition of this village as compared to Arnia and other better-off villages. He told us about the meagre infrastructure of the village. There is only one middle school, and no higher secondary school. It is because of the lack of educational facilities that people cannot be educated beyond a point. There is no graduate in the village and he is the only one who succeeded in completing his education through the Indira Gandhi National Open University (IGNOU). No government bus plies upto this point; there are private Matadors, which also have a very low frequency. People walk for one and a half kilometres to reach Sai, which has better facilities. The supply of drinking water and electricity is also not sufficient.

The sense of neglect is deep-rooted in the villages around the border, and due to the lack of attention of the government officials or even the politicians, it gets expressed, at times, in atypical manner. For instance, the people of Jabbowal organised a unique kind of protest that caught the media and governmental attention. To make a point that they are not being looked after in their own country and are not able to enjoy their basic rights as citizens, they made an attempt to cross the border on 21 July 2011. This was a symbolic protest and was foiled by the BSF (*Early Times*, 22 July 2011). In a similar instance of protest, the villagers in Devigarh also sought to highlight their plight by making a symbolic attempt to cross the border. Prakash Singh told us about an incident where the government had taken the decision that the land on which they were cultivating would be given to the 1971 refugees. The villagers protested and crossed the border and went towards the Pakistani side and camped there for around two weeks. The whole village participated in this protest. They were persuaded to come back only after the intervention of Babu Parmanand, a prominent politician of the state.

1.4.2 Issues Related to Land

There are various issues related to land in the border belt. Other than the land coming under mining and fencing, there are issues related to ownership of land. Not everyone who cultivates the land owns it. There are two kinds of

relationships with the land – those who own the land and have the ownership right – *malikana* – and those in whose name land is allotted and they do not have the ownership rights. The Arnia belt, like many other places in Jammu, Samba and Kathua districts, hosts many people who have migrated from Pakistan-administered Kashmir or from West Pakistan at different points of time. They were settled by the government in different places. These migrants included those who were displaced in 1947 or even later due to hostilities and war. For instance, refugees from Chhamb were relocated both in 1947 as well as in 1971. Many of these displaced people were settled in the border areas, especially in the erstwhile Muslim-dominated areas which were lying vacant after 1947. They were 'allotted' land to cultivate but were not given occupancy rights since the state took the position that the land so vacated belongs to the original owners who are living in the area now controlled by Pakistan. Since that area is still officially claimed to be a part of the state, the original owners living in that area are also considered the citizens of the state. Hence, the right of *malikana* remains with these original owners who can officially claim it back when they return. Many of the refugees have also been given state-owned land but, as Gupta notes, even the 'rights on the land allotted to the Chhamb displaced have stringent conditions that if the land allotted is acquired back by the Government, they would not get any compensation' (Gupta, 2005).

As Ganesh Das tells us, in Arnia belt there are many refugees from West Pakistan who are not the state's subjects. To quote him:

Every village has around 10–20 per cent of people who are refugees from West Pak. Disturbed by the chaos of 1947, many people from Punjab took refuge in this belt. This area was close to Sialkot and hence became a place of refuge for those dislocated from Pakistan. Moreover, many of them had relatives here and due to their support they restarted their lives here.

However, not being the original residents of the state, they were not entitled to be considered as State Subjects or Permanent Residents of the State. As per the law of the state, only those people are to be treated as the Permanent Residents of the state who were either state subjects of class I or class II before 14 May 1954 or, having lawfully acquired immovable property in the state, were the ordinary residents in the state for not less than 10 years prior to the date. Since the West Pakistan refugees do not fall in either of the two categories, they are not entitled to the Permanent Resident Certificate with which a number of privileges are attached. Of these, the most important privileges include the right to state employment, the right to own land within the state and the right to vote and be elected

in the state's political institutions. The West Pakistan refugees, denied of these privileges, therefore cannot own the land even if they may be cultivating it for years.

However, it is not only the West Pakistan refugees who are non-state subjects but also many of the refugees from Pakistan-administered Kashmir (or POK refugees, as they are officially termed), who are allotted land but not given the right of ownership. This is due to the reason that for these refugees, the settlement of their claims to land left behind in Pakistan-administered Kashmir has not been finalised. The reason for this lies in the complicated situation in which this category of refugees is placed. This situation is defined both by the Indian claim on the areas under Pakistan's control, as it is defined by the state's official position of treating the people of that part of the state as its own citizens and retaining with itself the property left by them. All such land which were vacated due to the migration of people across the border is categorised as 'evacuee property' and is under the ultimate 'custody' of the state. It is for this reason that the land claims of the people who crossed over the border from the Pakistani side towards the Indian side have not been settled. The refugees from Muzaffarabad, Mirpur, Kotli, etc. have been given some package in lieu of compensation (some land to cultivate for the rural population and some plot to build houses on for the urban population) but their claims remain unsettled. It is for this reason that these refugees feel aggrieved that no attempt has been made even to assess their individual loss of land. Many such refugees have been 'allotted' a fixed portion of land but such allotment entails its own kind of problems. Not having the right of ownership, they are always faced with insecurity that the land they are cultivating may be taken away from them. This is more so in the context of the political position taken by the state government and the keenness shown by it to 'resettle' the people who crossed border to the Pakistani side during 1947, 1965 or later. During the chief ministership of Sheikh Abdullah in 1982, the state Assembly passed the Jammu and Kashmir Resettlement Act. As per this Act, residents of J&K who had migrated to Pakistan-administered Kashmir (as well as their descendants) were permitted to settle down in J&K and claim the property which they owned before their migration.²² However, the Act could not be implemented since it was sent to the President of India who referred it to the Supreme Court for seeking its opinion. However, the Supreme

Court did not take any decision on it and returned it without any remarks. In 2002, the Act was challenged in the Supreme Court which issued a stay order on it.

The passage of this Act created a lot of apprehensions in the mind of those people who are holding evacuee property. Despite the assurance given by the state that the Act did not affect the status of evacuee property holders, the apprehensions remain. As per a statement issued by the government in 2005, the Act only deals with issuing permits to citizens of undivided J&K to return to the state and settle here and that there is no specific provision in it for dealing with issues related to ownership of property now known as 'evacuee property'. It sought to assure the evacuee property holders that the 'interests of displaced persons, now in possession of the evacuee property, are fully protected under the law and there is no way to dispossess them and therefore there should be no apprehension on that account (Rediff.com, 2005). However, despite such assurance, the people are quite apprehensive about the return of migrated people from across the border. Many of our respondents referred to one particular case of a migrant who had returned and had claimed land in this belt. Many of them feel that while the state has shown its intent to protect the rights of the people who have left the state and preserved their rights, it has done nothing to protect the rights of the people who have migrated to this part of the state. That is the reason that they generally object to the idea of opening the borders and allowing the people from Pakistan-administered Kashmir to settle in this part. They clearly see the loss of their rights in such settlement, since no alternative policy has been simultaneously devised for them. Acknowledging this problem, Balraj Puri states that the issue of land allotment can be sorted out but the state is not taking any step towards it. To quote him,

Under the Evacuee Property Act, the evacuees who return could claim their property. But the limitation period is 12 years. As this period is long over, no such claims can be entertained. Moreover, most of the evacuees have acquired Pakistan citizenship hence no more entitled to be the state subjects. (Puri, n.d.)

He further states:

I had made a suggestion to Sheikh Abdullah which he had accepted that all the evacuee property should be disposed off and the price thus received be deposited in the bank in the name of the evacuees. Which may be given to them if and when final decision is taken on the whole issue. This would safeguard their rights in a far better way than the present arrangement. The lands thus acquired could be used for permanent rehabilitation of the rural refugees. (Puri, n.d.)

²² The law was made in view of Section 6(1) (2) which reads: '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.'

Similar suggestion is put forth by Ved Bhasin as well. He argues that 'one of the alternatives that could be drawn up is that this [evacuee] property should be given to the people who are staying there and owners should be provided with alternative ... [property] as and when they return' (Dey and Sengupta, 2010: 124). However, no serious thought on the issue has been offered by the state government.

1.5 RESPONSE TOWARDS PEACE PROCESS

1.5.1 Attitude towards Pakistan and the Peace Process

Elisa Patnaik, who studied the responses of the people living close to border about Pakistan and the peace process, noted that the response is not as aggressive as in the areas where people have not directly confronted the wars.

Even so, antagonism towards Pakistan is more palpable in New Delhi and the Indian hinterland than it is in these frontier communities of Jammu, among villagers who have been on the receiving end of various aggressions for the past five decades. Most harbour little ill will towards Pakistan, even though it is they who have faced the brunt of crossborder firing and militant infiltration. (Patnaik, 2005)

This comment is very interesting in view of the ground situation. Being on the border, the reality of Pakistan has affected the border people in more than one way. As we have seen in this study, the people on the border have been severely affected by the creation of Pakistan as they had to bear the brunt of partition-related violence. They have been further forced to face the brunt of the hostilities between India and Pakistan and have faced firing, shelling, mining and displacement umpteen times. The high proportion of employment in the security forces is another factor which is important in understanding their response vis-à-vis Pakistan. The hostilities, war and the recent period of militancy have seen a large number of casualties from this area. In this situation, hostility towards Pakistan or distrust is expected. However, the intensity of such distrust is not that high. In fact, if one talks to the people on the border area, one comes to see a very strong peace constituency. People on the whole are very favourable to the idea of building bridges with Pakistan and having normal relations with it. There are a number of factors which explain this peace constituency. Of these, the first most important factor can be termed as a 'vested interest' in peace. Living on the border and facing its vagaries for the last six and half decades, they understand the human cost of conflict. Being the constant victims of this conflict, they would like to see its end. Having experienced

ceasefire in effective ways in the post-2003 period, they understand what they have been missing on the side of their normal development. The transformation of Arnia in the last one decade (discussed below) has given them a very strong incentive for demanding peace.

People here nostalgically talk about the pre-partition era when the people in this belt were closely connected with Sialkot and their economic life was linked with it. They refer to their cultural linkages. As Rakesh stated,

When I had accidentally strayed towards Pakistan, I was not able to distinguish the two places (India and Pakistan) as different. The woman who guided me back spoke the same language. But what confused me most was the music. The same music that we used to hear was being played on that side, the same singers, the same songs...

It is in this context one would tend to agree with Patnaik's perception that, 'after so many years in the crossfire, Jammu's border residents would still be the first to wave the flag of peace to their next-door neighbours on the Pakistani side'. Certainly people living close to the border are the biggest stakeholders of peace.

However, despite this response, one may find it strange that there is not much enthusiasm towards the idea of opening of the routes. Most of the people whom we interviewed were hesitant to endorse the idea of the opening of the Sialkot–Jammu road. It was in this case that one could see that their response was quite ambivalent. But as explained above, such a response is linked with their unsettled claims and their sense of insecurity vis-à-vis land. There is a sense of apprehension, particularly among those who cultivate 'allotted' land, that if the roads are opened then the people from the other side would claim the land and they would be left landless. To quote Bishen Das,

Opening the road would lead to a lot of disturbance in this area. This would open the floodgates for those who owned the land earlier. They would come and claim the land. Our problem is that the land that we cultivate does not belong to us. We do not have ownership rights. And the ownership still remains with the original owners according to the official record.

Another respondent stated:

We were big landowners back in the Chhamb area but when we came here we could not bring the land with us. We worked hard on the land allotted to us. But we do not have *malikana* right for this land. And suppose the road opens and the owners of this land come and ask

for it, what would happen to us? We know that the state government wants to bring those people back and that is why the Resettlement Act was passed. It is good that it was not implemented. What would happen to us in case the owner of this land comes back and reclaims it?

Sodagar Mal in a similar vein stated:

There is no problem if the roads are opened. But we do not have trust in our government. With so much corruption they may not be able to stop infiltration. And then there is the issue of land. Already we have a case when a person from the other side had come and made a claim on the land. It is only because the court stopped the process, otherwise it would have started a trend for others to similarly come back and claim their land.

On the whole the respondents did not have any issue with Pakistan or Muslims who have left the villages, but their concern was mainly the land that they were dependent upon. There is a sense of uncertainty emanating from the lack of a clear policy of the state towards the people who migrated at different points of time.

1.5.2 Dividends of Peace

What the dividends of peace can be and how the life of the people in the border areas can be changed – an example of this can be given from a comparative study of Arnia on the one hand and Allah and Devigarh on the other. The difference between these villages lies in their exact border location and the different implications of living near the border. Allah and Devigarh are examples of two villages which lie just on the border, while Arnia is at some distance from the border. To begin with, the situation in all these villages was the same as they were located away from the main town of Jammu and faced with the tough conditions of bordered life. However, the situation in Arnia changed over the period, especially during last two decades. Such improvement was accelerated during the last one decade or so – since the 2003 ceasefire. 'It was a village but it has now become a town. Like a town there are bazaars, each bazaar is differently named. This happens only in towns, not in villages,' informed Rakesh. It was mainly because of the road connectivity that has helped Arnia overcome its basic problems. In 1995, a bridge was constructed which provided the link to the road connection towards Jammu.

When I was young, it took us a long time to reach Jammu. We used to start at seven in the morning and reach back home when it was quite dark. We had to walk up to Palorian, which was the last bus stop for the buses coming from Jammu. When I joined college in Jammu, I remember crossing through water. I never wore light

coloured clothes since I had to cross the water and my clothes would be invariably wet. We had to struggle a lot. There used to be only one bus in the day.

Avineet informed that her senior colleagues would remember the days before the bridge was constructed. During those times, they would keep an extra dress in the school since the one they would wear from home would be full of dirt by the time they reached the school. 'With the construction of the bridge and improvement in the roads, now Arnia is considered quite near to Jammu. Even by bus, it takes one hour and fifteen minutes to reach this place from Jammu,' she informed.

While road connectivity has brought about tremendous change in the situation of Arnia, the ceasefire since 2003 has also accelerated the process of change. However, before that, the fencing also contributed in bringing about a sense of confidence. 'Otherwise, till the fence had come around, we were quite vulnerable. We were vulnerable from the thieves and robbers from the other side and we needed to guard our village every night,' stated one respondent.

With all these changes, the quality of life started changing in Arnia. 'The situation is so changed that people belonging to Arnia who had shifted to Jammu in search of normal life and development, have started coming back to live here,' says Rakesh. He further states:

One can see the transformation. There are signs of prosperity and development. About two decades back, one could see that people here were joining the army only and that also at the lowest level. But now there are lots of educated people and many of them are in government service. Peace has allowed people to take care of their fields and with such a fertile land as we have, one can see the result. Agriculture has become more organised and more modern.

What one finds in the story of development of Arnia is the fruit of peace. Here people do not feel the impact of the tensions related to border. 'Today, short of war, there is no effect of conflict on this border town. The life has become normal and people are investing their money and efforts over here,' stated another respondent.

The situation in Allah and Devigarh is altogether different. Both the villages are on the border and still face the impact of conflict. Although ceasefire has been in place, yet there are violations of ceasefire once in a while. These are the places where the people have faced the maximum brunt of mining and fencing as well. Because of their remoteness, neither the government nor the people are investing in these villages. Despite the fact that Allah is chosen to be a model village and

enough interventions are made not only by the government but also by the army, yet the villages present a picture of underdevelopment. Though the situation of Allah is better than that of Devigarh, it does not compare with Arnia. The backwardness of Allah is established by the low literacy rate and the very scant educated class. We were informed that Allah had one bank, Jammu Rural Bank, but that was shifted to Arnia because it was not doing well in the village. A respondent told us that 'people would not invest in Allah because it is too close to the border. In Arnia people are investing.' People name a few persons belonging to Allah who have risen to very powerful positions, but these people, not finding opportunities in Allah, almost abandoned it. This has happened with everyone who could attain a little education and some level of prosperity. Worse is the story of Devigarh which still has very few *pucca* houses and which has no signs of development. Similar is the story of other forward villages, where the level of literacy is low, the infrastructure quite poor and level of social mobility not very high. Referring to Nandpur, one of our respondents, a school teacher who was assigned census job there, stated that in that among the 200–250 households that he visited there was not a single person with high school qualification. Most of the villagers were doing odd jobs for their livelihood. A few of the residents of the village go to Azadpur Mandi in Delhi and work as labourers.

I.6. CONCLUSIONS AND RECOMMENDATIONS

I.6.1 Conclusions

Being invisible in the high profile context of conflict, the issues concerning the border residents do not get enough attention. Like their peripheral location, their concerns also remain peripheral in the context of more 'high profile' aspects of conflict. Our study of the Arnia belt was designed to throw some light on these concerns.

As the study has already elaborated, bordered life is not very easy and is full of hazards, particularly so in the context of the conflict situation in which the state has been embroiled since 1947. The Arnia belt has been one of the very active border areas and has gone through various phases of conflict situation starting from the communal frenzy and violence of the partition period to the shelling and firing of war and peacetimes, in addition to fencing, mining and the like. The people here have been witness to multiple displacements of long and short durations. The belt has also seen the impact of militancy and infiltration during the last two decades. The overall militarisation of the area has generated its own kinds of issues.

Of the various problems faced by the people of these areas, the most crucial ones emanate from the unpredictability and uncertainty of the borders. Even during the best of times, when there is an overall improvement in the relationship between India and Pakistan and when 'peace' is the major narrative between the two countries, the borders may not necessarily be peaceful. Numerous ceasefire violations since the initiation of the peace process between India and Pakistan and the declaration of formal ceasefire have already proved the point. The year 2012, for instance, has been very fruitful in the India–Pakistan relationship. Not only the stalled talks between the two countries since the Mumbai terror attack have been resumed but significant developments have also taken place with regard to various outstanding issues including trade and the visa regime. However, the border situation the whole year has been very volatile. The cases of ceasefire violations have been reported from all over the IB as well as the LOC for almost the whole of summer and early winter.

The uncertain borders certainly impact the quality of life of the people. As our study has clearly revealed, the areas near the zero line are the most vulnerable ones. It is in these areas that people suffer loss of life either because of firing or shelling or because of accidental stepping on the mines. It is from these areas that people get displaced whenever tension brews between Indian and Pakistani forces. These are also the areas which have not experienced development. With all those even with limited resources shifting to 'safer' places, these areas are inhabited by the most hapless people who have neither assets to improve the quality of their lives nor the voice to demand attention from the state. The commitment of the state towards these areas and various policy pronouncements notwithstanding, the people in these peripheral areas remain marginalised.

The people in the areas near the zero line are doubly marginalised due to the fact that these people were the displaced war-victims (1947, 1965, 1971) and were relocated and settled in the land vacated by the Muslims in this belt. Already having gone through the miseries of violence and displacement from their homelands, they could not escape the hazards of war in this hostile belt nor could they have the satisfaction of settled life.

The belt, as we have recorded, is one of the most fertile ones producing one of the best qualities of rice. Agriculture therefore remains the most important occupation of the people here. However, being the border belt, agriculture in this area is infested with its own kind of problems, including mining and fencing. With agricultural area coming under mining for long years, people here have not only had to face displacement but also to undergo material loss. There have also been lots of other issues related to compensation, etc. Besides mining,

it is the fencing which has generated lot of issues related to agriculture. With a huge chunk of land having come under fencing, fertile cultivable land has either become totally out of bounds for many people or has been limited to restrictive use. Apart from these, the agricultural issues emanate from the pattern of ownership of land. As a significant portion of the population settled in this belt is comprised of those who have been displaced from other border areas, including the Chhamb refugees and other POK refugees, many of them have been 'allotted' the land evacuated by those who have migrated in the wake of partition disturbances. Not having the ownership rights not only creates a sense of insecurity among this population but also generates other issues. For instance, they may not be treated at par with those who have propriety claims over the land when it comes to compensation in case of mining or fencing. The category of the *allottees*, however, is internally differentiated and comprises those who have migrated from areas under the control of Pakistan and those who have migrated from West Pakistan. This last category of people is the most vulnerable one as they do not enjoy the rights claimed by the *allottees* who are state subjects.

However, whether the *allottees* are of the category of state subjects or non-state subjects, there is a general sense of insecurity vis-à-vis the land they cultivate. Comparing their situation of displacement with the partition-related displaced in other parts of India, they express their resentment that not only their property claims have remained unsettled due to the continued situation of conflict in the state but that they have also continued to bear the burden of insecurity due to the lack of propriety rights over the land they cultivate.

The issue of land is important for these people since there are not many other sources of livelihood. Placed at the periphery of the state, the area is not only landlocked but also hazardous and hence there are neither investors for industry nor many possibilities of trade and commerce. Other than agriculture and the jobs in the lower ranks of police and armed forces, there are not many sources of employment.

It is a matter of imagination that had the borders not been hostile and there were possibilities of interaction with people in the adjoining areas of Pakistan, what would the economic scenario of this belt have been. Certainly the rice-rich fertile land would have been a boon for the people here and they could have carried on their agricultural activities unhindered either by the fear of shelling and firing or by the restrictions placed by mining and fencing. Agricultural prosperity would have led to other opportunities of development as well.

Conscious of this prospect, people in this belt are very strong votaries of the peace process. Despite the fact that they have

faced the maximum brunt of hostility of Pakistan's armed forces, they do not carry any bitterness towards Pakistan or its people. Interestingly, as the two countries have been engaged in hostilities throughout the post-1947 period, the people in this belt have kept themselves away from chauvinistic feelings. Throughout our study we found that at the level of people, there is a strong sense of empathy for the people across the border. Even those people who had suffered violence in 1947 did not display a sense of hatred either for the Muslims or for the people of Pakistan. On the contrary, we heard many stories etched in their memories about the shared Hindu-Muslim ethos of their village. Unlike many people in the mainland who display a sense of abhorrence for Pakistan and its people despite having remained untouched by the horrors of partition or by the numerous miseries faced by people in the border areas, the people in this area did not express any kind of revulsion towards the people on the other side. On the contrary, their narratives displayed a very strong sense of emotional bond with the people across the border. They emphasised their cultural and linguistic links and still saw them as extension of their own selves.

1.6.2 Recommendations

On the basis of the analysis of the issues confronted by the residents of the border areas, the following recommendations can be made:

- The ceasefire declared in 2003 should be strictly followed. After the effective implementation of ceasefire in the initial years, the people in the border areas had felt relief. For the first time, the guns on the borders of J&K had fallen silent. As our study has shown, there is a clear relationship between peace at the border and development. Lack of development in the areas at the zero lines is mainly due to the volatility and unpredictability of the border. Since the peace process is on, it becomes the international obligation of the states concerned to see to it that the ceasefire is also respected.
- Property claims of all those displaced from Pakistan-administered Kashmir in 1947, 1965 and 1971 should be finally settled. While the claims of partition refugees from Punjab and other parts of the country were settled in the post-partition period, the claims of the people displaced from Pakistan-administered Kashmir were not settled because of the official position of India. This official position was that the area from where these people have come actually belongs to India and is illegally occupied by Pakistan. When India reclaims this part those displaced from there would be settled again in that part. As per the implications of this position, the claims of those who

had been dislocated from Mirpur, Bhimber, Muzaffarabad, Bagh, Rawlakot, Kotli, etc. have not been settled till now. It is important that the Government of India takes up the issue of these displaced afresh and settles the case of their property claims.

- The Government of India should also settle the issue of rehabilitation and settlement of the refugees from West Pakistan. These people do not enjoy the basic citizenship rights and are denied the legal right to ownership of land, the fundamental right to equal opportunity to employment and are denied basic political rights including the right to vote in the State Assembly and local *panchayat*, not to talk of the right to contest local elections.
- People living in the villages situated close to the zero line be considered as citizens needing special protection and not only their life and property be secured but also they be provided special provisions for their development

and for improving the quality of their lives. They may also be provided land for alternative settlement, in case they would chose to settle permanently elsewhere.

- In the peace dialogues between India and Pakistan, the issue of landmines should be raised and both the countries should enter into an agreement that they would not use landmines as an instrument of war. The mined areas should be de-mined and both the countries should sign the International Treaty to Ban Mines.
- The due compensation for agricultural land coming under mining and fencing be paid in all those case where it is still not paid.
- The decision of the Ministry of Home Affairs to relocate the fence closer to the border be implemented. That would allow the cultivators whose land has come under fencing to have full control over their land.

References

- Ahmad, Mukhtar. 2000. 'J&K Border Shelling Forces Thousands to Migrate'. Available at <http://www.rediff.com/news/2000/oct/13mukh.htm> (accessed on 15 July 2012).
- Aggarwal, J. C and S. P. Aggarwal. 1995. *Modern History of Jammu and Kashmir*, Vol. I. New Delhi: Concept Publishing.
- Banerjee, Paula, 2004, 'Introduction' (141-150), in Ranabir Samaddar (ed), *Peace Studies : An Introduction to the Concept, Scope, and Themes*, Delhi: SAGE.
- Banerjee, Paula, Anusua Basu Ray Chaudhury, 2011 *Women in Indian Borderlands*, Delhi, SAGE
- Bose, Sumantra. 2003. *Kashmir: Roots of Conflict, Paths to Peace*. Harvard: Harvard University Press.
- Correa, Elaine. 2011. 'Borderlands: Risky Spaces of Safe Places? "Real and Imaginary" Borders – (Re) Framing Identity and Privilege' in Isidro Morale (ed.), *National Solutions to Trans-Border Problems? The Governance of Security and Rist in a Post-Nafta America*. (189-204) Surrey: Ashgate
- Dey, Ishita and Sucharita Sengupta, 2010 'An Interview with Ved Bhasin on Forced Migration in Jammu and Kashmir', *Refugee Watch*, no. 36, December.
- Farfan, Matthew. 2009 *The Vermont-Quebec Border: Life on the Line*. Chicago: Arcadia Publishing.
- Government of India, n.d. 'Fencing and Flood Lighting of Borders', Ministry of Home Affairs. Available at <http://mha.nic.in/pdfs/Fencing.pdf> (accessed on 12 July 2012).
- Government of India. 2003. *State Development Report: Jammu and Kashmir*. New Delhi: Planning Commission. Available at http://planningcommission.nic.in/plans/stateplan/index.php?state=sdr_jandk.htm (accessed on 12 August 2012).
- Government of India. 2011. *Annual Report 2010–11*, Ministry of Home Affairs. Available at <http://www.scribd.com/doc/58869744/Annual-Report-2011-ministry-of-Home-Affairs> (accessed on 6 July 2012).
- Gupta, Virender. 2005. 'Refugees in J&K – A Hapless Lot', *The Daily Excelsior*, 11 September.
- Hagerty, Devin T. 1998. *The Consequences of Nuclear Proliferation: Lessons from South Asia*. Massachusetts: MIT Press.
- Hans, Asha. 2004. 'Women across Borders in Kashmir – The Continuum of Violence' in Ranabir Samaddar (ed.), *Peace Studies: An Introduction to the Concept, Scope, and Themes*, pp. 268–291. New Delhi: SAGE Publications.
- Hasan, Khalid. 2008. 'Sialkot, City with a Difference'. Available at <http://www.khalidhasan.net/2008/08/23/sialkot/> (accessed on 6 July 2012).
- Herrsche, Tassilo. 2011. *Borders in Post-Socialist Europe: Territory, Scale, Society*. Surrey: Ashgate Publishing.
- Hussain, Masood. 2002. 'India, Pakistan Mine LoC, Border', *Economic Times*, 15 January.
- Jamwal, Anuradha Bhasin. 2002. 'Walking into the Deathtrap' Newline, February. Available at <http://www.newlinemagazine.com/2002/02/walking-into-the-death-trap> (accessed on 6 July 2012).

- Jamwal, Anuradha Bhasin, 2004, 'Auditing the Mainstream Media: The Case of Jammu & Kashmir'. In Samir Kumar Das (ed.), *Three Case Studies: Media Coverage on Forced Displacement in Contemporary India*, Mahanirban Calcutta Research Group. <http://www.mcrg.ac.in/mediareport2.htm> (accessed on 12 August 2012).
- Jamwal, Anuradha Bhasin. 2008. 'Homeless and Divided in Jammu and Kashmir', (244-248) in Sibaji Pratim Basu (ed.), *The Fleeing People of South Asia: Selections from Refugee Watch*. Delhi: Anthem Press.
- Joshi, Bino. 2012. 'An MBA from Derbyshire, Now a Sarpanch in Kashmir', *The Weekend Leader*, vol. 3, no. 13, 30 March—5 April. Available at <http://www.theweekendleader.com/Heroism/512/Born-to-serve.html> (accessed on 12 August 2012).
- Khajuria, Ravi Krishnan. 2012. '20 Years on, Farmers Await Compensation for Land Acquired by BSF', *The Tribune*, 25 July. Available at <http://www.tribuneindia.com/2012/20120725/j&k.htm#4> (accessed on 12 August 2012).
- KT News Service. 2011. 'Dogra Certificate Row: Oscillating between Ignorance and Confusion', 23 April. Available at <http://www.kashmirawareness.org/Article/View/6173/dogra-certificate-row-oscillating-between-ignorance-confusion> (accessed on 7 July 2012).
- Landmine Action. 2005. *Explosive Remnants of War and Mines Other than Anti-personal Mines: Global Survey 2003–2004*. London. Available at <http://www.landmineaction.org/resources/UKWGLM.pdf>
- Landmine Monitor Report 2003: Toward a Mine-Free World*. International Campaign to Ban Landmines.
- Mahapatra, Debidutta Aurobinda. 2011. 'Positioning of People in the Contested Borders of Kashmir', CIBR, Working Paper 21. Available at <http://www.humiliationstudies.org/documents/MahapatraContestedBordersKashmir.pdf> (accessed on 7 July 2012).
- Manchanda, Rita, Tapan Bose, Sahana Ghosh and Bani Gill. 2012. *When Home Is the Edge of the Nation: Dialogue with 'Border' People of Rajasthan, West Bengal and Bangladesh*. New Delhi: South Asia Forum for Human Rights.
- Mau, Steffen, Heike Brabandt, Lena Laube and Christof Roos. 2012. *Liberal States and the Freedom of Movement: Selective Borders, Unequal Mobility*. New York: Palgrave Macmillan.
- Newman, Davide. 2011. 'Contemporary Research Agendas in Border Studies: An Overview' (33-49) in Doris Wastl-Walter (ed.) *The Ashgate Research Companion to Border Studies*. Surrey: Ashgate Publishing.
- Patnaik, Elisa. 2005. 'Jammu's Borderlanders', *Himal*, November. Available at <http://www.himalmag.com/component/content/article/1680-Jammus-borderlanders.html> (accessed on 6 July 2012).
- Oberoi, Surinder Singh. 1998. 'Kashmir: Caught in the Crossfire', (13-15) *Bulletin of the Atomic Scientists*, vol. 54, no. 5, September.
- Pecoud, Antonie. 2007. *Migration without Borders: Essays on the Free Movement of People*. New York: Berghahn Books.
- Puri, Balraj. n.d. 'Refugee Problem in Jammu and Kashmir', *Kashmir Newz*, <http://www.kashmirnewz.com/a0002.html> (accessed on 6 July 2012).
- 'Regional Profile: Kashmir', *Landmine Action Campaign*, 2002, Issue 5, Spring.
- Rediff.com. 2005. 'Kashmir Resettlement Act under Review: J&K', 3 May. Available at <http://www.rediff.com/news/2005/may/03jk.htm> (accessed on 10 July 2012).
- Rocky, Rakesh. 2004. 'Jammu-Sialkot: Residents of Border Town Hope to See Floodgates Open', *Express India*, 7 December. Available at <http://www.expressindia.com/news/fullstory.php?newsid=39287> (accessed on 6 July 2012).
- Sharma, Artee. 2012. '20 Yrs on, Govt Sets Deadline for Compensation to Farmers', *The Tribune*, 7 April. Available at <http://www.tribuneindia.com/2012/20120407/j&k.htm#2> (accessed on 6 July 2012).
- Sood, Prashant. 1998. 'Once Landlords, Chhamb Refugees Now Work as Labourers', *Indian Express*, July 14. Available at <http://www.expressindia.com/news/ie/daily/19980714/19550504.html> (accessed on 6 July 2012).
- Swami, Praveen. 2001. 'Border Barrier', *Frontline*, 15–28 September. Available at <http://www.frontlineonnet.com/fl1819/18191290.htm> (accessed on 12 July 2012).
- Verma, Mohinder. 2011. '2/3rd Length of Border Bund along IB Demolished, Remaining in Next Phase', *Daily Excelsior*, 19 December. Available at <http://www.dailyexcelsior.com/web1/11dec19/news.htm> (accessed on 10 July 2012).
- Wastl-Walter, Doris (ed.). 2011. *The Ashgate Research Companion to Border Studies* (1–10). Surrey: Ashgate Publishing.
- Wilson, Thomas M. and Hastings Donnan (eds). 1998. *Border Identities: Nation and State at International Frontiers*. Cambridge: Cambridge University Press.
- Wirsing, Robert G. 1998. *India, Pakistan and the Kashmir Dispute: On Regional Conflict and Its Resolution*. New York: Palgrave Macmillan. Chapter Two

CHAPTER 2

The Shrine of Peace

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2.1 INTRODUCTION

The fragmentation of the subcontinent into the two countries of India and Pakistan was the worst implication of the end of the colonial rule. The boundary line that was drawn between the two created a new problem in form of 'border tension' for both India and Pakistan. Because of the continuous hostility between the two, the border areas were militarised and it impacted the lives of the common people. It is a well-established fact that common people feel threatened with the presence of army in their areas. Though army deployment is meant for the protection of lives of the border areas, yet the people on the border do not feel comfortable with militarisation. But the border between the two countries remains as a reality that people cannot overcome.

However, the perception of the state and of the people vis-à-vis border does not remain the same. While the state sees the border from the perspective of its security, the people see it as a line that divides the people. However, there are certain exceptional times and places where the perceptual gap between the state and the people gets to be totally covered. The annual festival of shrine of Baba Chamliyal represents one of those times and places.

At a distance of 42 kilometers from Jammu city, the shrine falls in the Ramgarh sector on the International Border (IB). The Ramgarh sector remains in news because of the border hostilities between India and Pakistan. A random Google search gives news items like: 'IED defused in field'; 'BSF foils successive infiltration bids'; '12 Pak intruders gunned down on IB in Ramgarh'; 'BSF shoots man in Ramgarh'; 'Explosive haul in Ramgarh sector'; 'Firing across the border'. However, the same Google search also brings out another kind of news about Ramgarh: 'Baba Chamliyal mela'; 'Message of peace sent from Chamliyal in Ramgarh sector'; 'Two lakh Indo-Pak devotees offer prayers;' etc.

The combination of these two kinds of news gives us a lot of information about the paradoxes of the borders like those of the Ramgarh sector. On the one hand, this border, like other parts of the IB of Jammu and Kashmir (J&K) has remained hostile and has brought in miseries to the people living close to it and, on the other hand, the same border becomes the bridge between the two countries and sends the message of human bonding and peace.

Like all other borders, the border in the Ramgarh sector has remained quite volatile throughout the post-1947 period. People living close to it have experienced the bombing, shelling and firing that is a normal phenomenon in the border. They have also had the experience of the various wars between India and Pakistan. They have been uprooted and displaced during these wars. They were also the sufferers of the period of armed militancy when the IB of this area became the route for armed infiltrators. More recently they experienced the 1999 Kargil War as well as the tense border soon after the Parliament was attacked.

However, despite these hostilities and problems which the people experienced because of the border, there was another story of the same border. This was the story of the border becoming a symbol of peace, a place where, rather than hostilities, the common faith would bring the two countries together, year after year, during the *mela Chamliyal* (the fair of Chamliyal). Held on the last Thursday of every June, the fair became an occasion when rather than the guns, the common faith in the Baba brought the people and even the forces together.

2.2. SHARED RELIGIOUS SPACES – A CULTURE OF THE INDIAN SUB-CONTINENT

In order to locate the study of Baba Chamliyal in its proper perspective, it is important to refer to a peculiar tradition of

the Indian subcontinent where despite deep religiosity and the identification with different religions, there are shared religious places. These are those spaces where people overcome their separate religious identities and have common beliefs. This tradition has continued into the present period. These shared religious spaces not only transcend the religious boundaries but also the national boundaries. Baba Chamliyal is one such shared space where both the religious as well as national boundaries are transcended.

People of both countries have many things common in terms of beliefs and practices, leading to the identification of the common places of their meetings. One of the places of the meeting of the people of India and Pakistan is the religious shrine of Baba Chamliyal. It is a well-established fact that shrine worship is one of the popular trends of Indian culture since ancient times. When Sufism entered India during the medieval period the concept of Sufi shrine worship was established. Though the border of India and Pakistan divides the population of both the countries, the shrines of both countries remain the meeting places of each other. The continued popularity of shrines shows that the border can divide and restrict people into different nations but it cannot divide their beliefs. Irrespective of their national and social differences they feel obliged to preserve the Sufi shrines as a common tangible heritage. The social histories of India and Pakistan show that both countries followed a policy of preserving and propagating the philosophy of sages, Sufis and social reformers through the maintenance of their shrines. The shrine of Khwaja Moinuddin Chishti at Ajmer is very much respected by both Indians and Pakistanis. A large number of people from various countries of Asia attend the *urs* of Khwaja Moinuddin Chishti. Similarly, the shrines of Chishti Sufi Fariduddin Ganj-i-Shakar, popularly known as Baba Farid, and Suhrawardi Sufi Bahauddin Zakaria, situated at Ajodhan and Multan in Pakistan, are visited by people of diverse cultural identities.

2.3. THE SHARED RELIGIOUS SPACES AND THE SHRINES OF JAMMU AND KASHMIR

The state of J&K of India is studded with Sufi shrines. Moreover, the local deities are one of the most popular cultural aspects of the Jammu region. Both the Sufi and non-Sufi shrines attract huge gatherings in terms of faith and cultural celebration. These shrines provide a basis for a plural and tolerant society. Though the seeds of pluralism were sown by nature from the earliest time in the form of diverse topography, climate and forest products, people's faith in these shrines connects both nature and humanity in a very convincing manner. Most of the

shrines are part of the popular cultural and religious ways of life and therefore have the capacity of transcending religious boundaries.

The people of J&K are associated with shrine culture for a long time. It is known that some of the localities of the Jammu region are named after the names of Sufis. The Peer Mitha and Lakhdatta Bazar localities are known to have been founded during the medieval period with the settlement of Peer Mitha and Lakhdatta Peer. With the formation of the J&K state in 1846 a special emphasis was given on the preservation of the shrines of the state. The Dogra Maharajas of the state, starting from Maharaja Gulab Singh (1846–57) to Maharaja Hari Singh (1926–47), patronised the shrines. Most of the shrines of the Jammu region received financial assistance from the rulers to carry on their activities for the devotees. The common people of J&K treated these shrines as the places of their shared culture.

Baba Chamlyal Shrine, situated on the border of India and Pakistan, of Samba district of J&K state is a living example of people's recognition of diverse cultures.

2.4. BABA CHAMLIYAL

The present paper is based on field work. The author of the paper for its completion visited the shrine and the adjoining areas. He interacted with the devotees of the shrine and the people of the adjoining areas. Their views and experiences were collected. Through this process several types of information pertaining to the people's perception of Baba Chamliyal were received, which have been utilised for the writing of the present paper.

As far as the life history of Baba Chamlyal is concerned, no literary source is available. Even the oral traditions do not reveal the exact period of the life and times of Baba Chamliyal. But as per common belief, the Baba's story can be traced to more than three centuries back. As everyone associated with the shrine informs, the shrine is around 320 years old.

Since there is no contemporary record, it is not possible to trace the family history of Baba Chamliyal. The residents of the neighbouring villages of the shrine refer to Baba Chamliyal as a saint whose activities accelerated the process of the social development in the area. The story of the life and works of the Baba have been maintained through oral tradition.

It is important to mention that the oral traditions are the most effective sources of the social history of the Jammu hills. The local heroes of Jammu such as Baba Jitto and Mian Dido are celebrated by the people through oral traditions. The history of the Sufis of Jammu is also based on the oral traditions. The people trace the periods and places of these

Sufis in accordance with the existing oral traditions. These oral traditions are maintained in vernacular languages. Consequently, people construct popular history through the utilisation of these oral traditions, which is evident from the preservation of these oral traditions from generation to generation.

Seen from this perspective, one can trace the significance of Baba Chamliyal. Without any state patronage and by the sheer force of popular reverence, faith and devotion, the history of the place is carried forward.

According to the oral tradition of the area, Baba Chamliyal's real name was Baba Dalip Singh Manhas. He was a saintly person who lived in the village called Chamliyal. As per one story, he used to give drinking water to thirsty travellers. According to other stories, he used to work for the welfare of the needy and talked about universal brotherhood. It was because of his good deeds that he became very popular among people. However, his popularity was not acceptable to a few people who hatched a conspiracy against the Baba and killed him at the Saidawali village, now situated in Pakistan. The head of Baba Dalip Singh fell far away from the place of his assassination, whereas the rest of his body remained at Saidawali. The people decided to keep the philosophy and practices of the Baba alive by constructing his memorials on the border of India and Pakistan.

After the death of the Baba, the people of the area constructed two shrines in his name. One shrine was made at the place where his head was fell, now known as Chamliyal, near Dug village of the Vijaypur block of the Samba district of J&K state of India. Another shrine of the Baba was made at Saidawali, now situated in Pakistan.

The making of shrines of saints, sages and local heroes is a social practice in India from ancient times. Existence of shrines ascribed to different historical periods is found in almost every locality of India. These shrines are perceived by the people as possessing the power of eliminating the miseries of people. They also serve the purpose of religious tourism in a very effective manner. They are the sources of the interaction among the people of diverse backgrounds. In the Jammu region, the Vaishno Devi shrine attracts a sizeable number of pilgrims from different parts of India. Similarly, the Sufi shrines are very important sources of domestic tourism.

It is in the same vein that the shrines of Chamliyal became very popular and also became the cause of bringing people together. Interestingly, both Hindus and Muslims have constructed their own stories about the Baba and his death. While Hindus claim that the Baba was born Hindu and

therefore is a Hindu saint, many Muslims argue that he was a Muslim. However, for many, the religion of the Baba is not important. What is important is that they have faith in him. The shrine is also known as *dargah* in local parlance. The performance of rituals within the shrine is on the line of other *dargahs*, for instance, the offering of *chadar*.

The term *dargah* is used by the people for the shrine of the Baba. It is important to mention that the terms *dargah* and *ziyarat* are the popular terms of the Jammu region, Linguistically, *dargah* is a Persian word but has been incorporated in the local vocabulary of the region. Since the Jammu region developed a philosophy of inter-trans-regional dialogue from the ancient period onwards, the people of diverse backgrounds in terms of regional identities came to Jammu and adopted the local culture along with their own previous cultural characteristics. It is known that the Dogri, one of the most popular languages of the Jammu region, is spoken by the people of multi-religious, multi-caste, multi-class and multi-ethnic backgrounds. The term *dargah* started to be used from the medieval period in the Jammu region when the Sufis from Iran, Arabia and Central Asia came to Jammu and settled there.

The term *dargah* used for the shrine of Baba Chamliyal shows that the Baba has acquired a popular image and people remember him as one of the popular personalities of the area similar to various other saints and Sufis. From that perspective, Baba Chamliyal was the man of the masses.

The people of the area ascribe some miracles to the Baba. One of such miracles is associated with the Baba's power to cure people suffering from skin disease. According to an oral tradition, one of the followers of the Baba was suffering from some skin disease which could not be cured with the application of the usual medication. One day the Baba appeared in his dream and told him to apply soil, popularly known as *shakar*, and water, known as *sharbat*, on his body for some days. When the follower used the prescription of the Baba he was completely cured. From that time onwards the Baba became famous as Baba Chamliyal. Another oral tradition tells that one day an injured camel reached and fell there. It was bleeding miserably and was unable to get up. It was also suffering from hunger and thirst for many days. To quench its thirst it used to eat wet soil. But after some days it was cured and reached the house of its master. The story of the recovery of the injured camel with the blessing of the Baba spread fast and now the local people narrate it before the devotees coming from outside.

Although the shrine is visited by people daily, on Thursday of every week it is visited by the people as a matter of faith. It is

important to mention that the visiting of a shrine on Thursday is a popular practice in the Sufism of the Indian subcontinent. Richard Maxwell Eaton has worked extensively on the Sufis of Bijapur of the state of Karnataka in south India. According to him, the people of multi-religious backgrounds visit the shrines of the Sufis of Bijapur on every Thursday (Eaton, 1978: xxiv).

In the Jammu region the Peer Baba cult is very popular and visiting the shrines of Peer Baba on Thursday is one of the most popular cultural trends of the region. Since Baba Chamliyal is remembered as a saint, people's visit to his shrine on Thursday is based on the well-established tradition of the country as well as of the Jammu region. Thus, for the people of multiple social backgrounds, Thursday is a common day to meet at Baba Chamliyal's shrine to remember him. The visitors belong to diverse social backgrounds. Hindus, Muslims, Sikhs, etc., and all of them visiting the shrine on the same day give social legitimacy to its status as a shrine.

Interestingly, this tradition of visiting the shrine on Thursday has been followed on both the sides of the border. At both the shrines, people visit on the same day. At the time of their visits to the shrines the devotees follow the well-defined rules and regulations of the shrine. According to these rules and regulations, all the visitors have to keep their shoes outside the premises of the shrine. Similarly, they have to keep all their belongings made of leather outside the shrine. All of the visitors irrespective of religious, caste and regional identities respect these rules and regulations and treat them as sacrosanct. They practise them as their duties in terms of their faith in Baba Chamliyal. For them, these are inseparable parts of their visits to the shrine.

The organisation of a *langar* or open and free kitchen is a regular activity of the shrine. According to this practice, all devotees are provided free food by the management committee of the shrine. The food that is served here is vegetarian. It is understood to be good for the well-being of the devotees.²³ However, the *langar* of Baba Chamliyal has huge significance in terms of peace, inter-regional, inter-faith and inter-class meetings. It is not simply an act of providing food to the devotees; it strengthens the concept of multi-culturism and propagates the concept of inclusiveness. By participating

in the *langar* of the Baba in terms of taking food together, people celebrate the Baba's concept of inclusiveness.

The organisation of *urs* (death anniversary of the Baba) annually is a regular feature of the shrine. A huge *mela* is held in the month of June every year. Organisation of *melas* on the shrines of local deities and heroes are integral aspects of the cultural life of the Jammu hills.²⁴

When the devotees come to the shrine of Baba Chamliyal they take a *parikarma* (circumbulation) of the shrine and touch the *chadar* as part of the rituals of the shrine. The colour of the *chadar* is green. Both the shrine and *chadar* are greatly respected by the people and treated as complimentary to each other. The *chadar* is treated as a common heritage of devotees of the shrine of the Baba. For the devotees, the *chadar* is a symbol of the Baba's identity which is a matter of celebration. More importantly, the colour of the *chadar* is celebrated in an inclusive way and not as a colour of an exclusive community. It is important to mention that the offering of *chadar* to Sufi shrines is a pan-Indian practice. Since common Indians are well versed with the significance of offering *chadars* to the Sufi shrines, they treat them as the sacred items of the shrines. In the similar manner devotees of the shrine of the Baba find solace in respecting the *chadar*.

The devotees come to the shrine to get the blessing of Baba Chamliyal. Some of the devotees pray for the well-being of their children. They bring their children along with themselves to the shrine and conduct *parikarma* of the shrine and get the *chadar* touched with their hands. They eat the *prasad* made available by the management committee of the shrine. The *pahalwans* (wrestlers) come to the shrine to pray that they become stronger with the blessing of Baba Chamliyal, so that they can become successful wrestlers.

However, most of the visitors come for the treatment of their skin diseases. The *shakar* (soil) and *sharbat* of Baba Chamliyal's shrine are said to possess medicinal value and are very effective in curing skin diseases. There are some set rules and regulations for the application of the *shakar* on the body of the patient suffering from skin diseases. Most of the patients stay there for several days. According to the well-established practice of the shrine, the patients have to apply the soil and water for at least 21 days. But some of the patients who suffer from acute skin diseases stay there for

²³ As far as the history of *langar* is concerned, it is understood that it was Baba Farid, a Chishti Sufi of Punjab, who introduced the concept of *langar* and from the thirteenth century onwards *langar* became a popular practice of India. It is important to mention that *langar* is a Persian term and with the passage of time it has been included in the vernacular languages of India. During modern times it is not confined only to Sufi shrines, but has also become the practice of multi-social groups. As far as the religious significance of *langar* is concerned, it is treated as a pious work of all types of shrines and Indian societies.

²⁴ At most of the Shakti shrines of Jammu *melas* are organised. It is known that at the shrines of Bawe wali Mata, Mahakali, Mahamaya, Sukrala Devi and Chichi Mata, etc., *melas* are organised annually. Similarly, Jhiri Mela is organised to celebrate Baba Jitto's resistance to the feudal system and Jagti ka Mela to celebrate the heroic deeds of Mian Dido against the army of Maharaja Ranjit Singh of Lahore Darbar.

longer periods. These patients come from different parts of India. The patients also belong to multi-religious, multi caste and multi-class backgrounds.

As far as the visitors of India to the shrine of Baba Chamliyal is concerned, they generally belong to the states of J&K, Himachal Pradesh, Punjab, Haryana, Uttar Pradesh, Rajasthan, Bihar and Madhya Pradesh. Though they come there for the treatment of their skin diseases, there are various other implications of their visit. Most importantly, their notion of 'border' is demystified. Generally, for the people of the mainland, a border is not a normal part of the country. It is seen as a place of 'tension' or a place of 'isolation'. However, with their visit here, they come to have a first-hand experience of border and see it as an extended part of their own country. After their arrival here they feel that the border is not a place of isolation. It is a place where people live with peace and get their skin diseases cured. Their visits also demolish the concept of border as a place of tension. More importantly, they get an opportunity to live at the border line and witness the practice of inclusion at a place of exclusion. Their sense of living together is strengthened and the rhetoric of the divisive elements of the both countries gets subdued.

Several rooms are constructed for the purpose of boarding the patients. Both male and female patients are accommodated in different blocks. These are provided free of cost. This facility provides huge relief to the patients. Since most of the patients belong to ordinary background, they utilise this facility joyously.²⁵

Patients from various parts of the country come and get their diseases cured. When some of the visitors were contacted by the author of the present paper, almost all of them expressed happiness that their diseases were cured. Even many of them expressed that they spent huge money for both the allopathic and *ayurvedic* treatment. But there was no relief for them. They were very thankful to the management committee for the facilities provided to them during their stay. All of them also expressed that they lived just like family members and their differences in terms of region, religion, caste, ethnicity, etc., did not stop their interaction with each other. When asked about their opinion regarding border, most of them expressed that they did not face any inconvenience because of the border issues.

²⁵ It is important to mention that both the allopathic and *ayurvedic* hospitals charge huge amount for the treatment of patients. It is virtually impossible for the plebeian population to bear the charges of these hospitals for the admission of their patients. In this way, the free accommodation provided to the patients by the management committee is a unique charitable act. It not only gives unusual relief to the patients in economic terms, but it also keeps them far from the class consciousness.

What is the most important aspect of the visit of Chamliyal shrine for most of the devotees is that it provides them an experience of an inclusive community life. By living together for weeks, they realize that their regional, caste and religious differences are not obstructions in the way of living and working together.

2.5.VANISHING BORDER: BABA CHAMLIYAL AS A BOND BETWEEN PEOPLE OF INDIA AND PAKISTAN

The fame of the shrine of Baba Chamliyal and its miraculous curing of skin diseases precedes the period of partition. For the people of Chamliyal and Saidawali, the shrine was the most revered one and a part of their religious, social and cultural life. The fact that the Baba was revered by both the Muslims as well as Hindus, the shrine had spiritual and devotional value for all the people, irrespective of the religion. In their own ways, both the Hindus and Muslims had owned the Baba and the shrine, and had constructed their own narratives. However, neither these narratives nor the religious practices followed by the Hindu and Muslim devotees could be bound in a singular religious manner. As the study of the religious practices followed in the Chamliyal shrine clearly show, the practices have elements of practices followed by both Hindus and Muslims.

The shrine, rather than being seen as a place of exclusivity, can be considered as a space of inclusivity as well as a shared space where people belonging to different religions can comfortably participate without any contradiction or mutual hostility.

What remains important about the shrine is that it is a space of popular importance. Its significance lies in the fact that it is revered by people and it is through the sheer force of popular patronage that the shrine has maintained its importance. And as our study clearly shows, the popular force alone has made it possible to transcend not only the religious but also the national boundaries.

The shrine is important also for people across the border, for both people in India as well as in Pakistan. Its popularity is not only limited to Chamliyal village or to the Jammu and Samba districts on the Indian side or Saidanwali village or Sialkot on the Pakistani side, but much beyond these places. The popularity of the shrine was spread upto Punjab on both the sides and hence people from both the Indian and Pakistani sides of Punjab visit the shrine on each side.

The importance of the shrine to both the sides of the border gets clear from the annual fair that is organised in the month

of June. When India was partitioned in 1947, the tradition of organising the annual fair continued. On the Indian side, the fair would be organised in the Chamliyal shrine and on Pakistan side, the fair would be organised around the shrine situated at Saidanwali in Pakistan. Both the places simultaneously became places of popular gatherings for the celebration of the life and works of the Baba. Both shrines of Baba Chamliyal have become the living traditions of the border areas of the two countries.

Hence, in the month of June, two separate fairs are held. While the major activities take place in the Chamliyal side, the people on the Saidanwali side also simultaneously celebrate the occasion. The fair there continues for three days. However, the most important part of the fair is the distribution of the *shakar* and *sharbat* for the devotees on both the sides. It is the *shakar* (which is the soil of the Chamliyal shrine) and the *sharbat* (which is the water of well located in the shrine) that are supposed to have miraculous medicinal values. This *shakar* and *sharbat* are available to Indian devotees throughout the year, but it is not available to the devotees in the Pakistani side. And even for the Indian devotees, the miraculous value is available mainly during the time of the fair.

Before the partition, the devotees from all over could visit the place freely, but after the place was bordered and the two villages of Chamliyal and Saidanwali were divided by the IB, the free movement of the people to the two shrines was discontinued. However, because of the popularity of the shrine, the annual fair continued to be organised on both the sides and till quite late people from across the border from the Pakistani side could visit Chamliyal. As reported in a news item, the elderly members of the organising committee of the annual fair remember the early post-partition period when people from across the Pakistani side were allowed to visit the shrine and become part of the rituals there. They would offer the *chadar* on the shrine and take back the *shakar* and *sharbat*.²⁶ However, after the major wars between India and Pakistan in 1965 and 1971, the borders were closed for the common people.

However, what remains important is that the practice of the fair continued and what continued was the practice of offering *chadar* from the Pakistani side and the presentation of *shakar* and *sharbat* from the Indian to the Pakistani side. The only difference being that rather than the people, now

the ritual was continued by the administrators and security forces. Every year since then a new ritual is followed on the day of the fair. The Rangers of Pakistan present *chadar*, which is offered to the shrine of Baba Chamliyal. The Rangers of Pakistan are also in turn presented the *shakar* and *sharbat* of the shrine by the Indian BSF men. The Pakistani Rangers carry these and offer these to the people. The *chadar* presented by the Pakistani Rangers is kept as a pious material.

This ritual involves the following:

- Early in the morning the BSF and the district officials on the Indian side receive a team of Pakistan Rangers along with members of the Sialkot civil administration and some civilians (depending on the situation – if the situation in the border is tense and hostility between the two side is aggravated, then the civilians may not be a part of the group)
- The Pakistani Rangers offer *chadar* at the shrine
- There is exchange of sweets between the Pakistani and Indian officials
- There is a meeting between the Pakistani and Indian officials
- The *shakar* and *sharbat* are loaded onto trollies and sent to the Pakistani side

What remains important about the whole ritual is the involvement of Indian and Pakistani border forces as well as administrators and politicians. The fair is organised under the supervision of BSF and Pakistani Rangers. The district administration meanwhile organises the fair. The politicians and ministers participate on such occasions.

The significance of the fair lies in the fact that the ritual of exchange of *chadar*, *shakar* and *sharbat* has continued through the worst periods of hostility between India and Pakistan. During the period of militancy, the fair was organised at low key. But since 2003, the fair is being organised in a very celebrative manner. On both the sides a large number of people participate. Every year since then the number of people participating on both the sides is said to be increasing. During the 2007 fair, it was stated by the officials of the Chenab Rangers on the Pakistani side that 'at least one lakh [a hundred thousand] people have assembled across the border and were waiting for *tabaruk* [blessing]' (Twocircles.net). Although they cannot cross the border and mingle with each other, yet there is a sense of common participation. Not many people are allowed to visit the zero line on the Indian side, because there is some distance between the shrine and the no-man's land where the two sides actually meet. However, even so, there is a lot of gathering. On both the

²⁶ A news item as reported in the Twocircles.net reports that a member of the Baba Chamliyal Committee stated, 'I have seen people from Pakistan coming here in Ramgarh on the day of Mela (Fair) but circumstances created a gap between the two'. Twocircles.net, 'After Mumbai Attacks Chamliyal Mela brings Indo-Pak closer'. Available at http://tcn.twocircles.in/2009jun25/after_mumbai_attacks_chamliyal_mela_brings_indo_pak_closer.html (accessed on 1 December 2012).

sides of the no-man's land there are people and they can see each other with binoculars. From the Indian side, one can see the Saidanwali village and can have a feel of the festivity on that side.

The administrators and security forces on both the sides see the event as a symbol of peace and without displaying hostility celebrate the occasion and pray for peace. 'The fair and interaction between two sides' officials is seen as a positive sign of peace between the two sides' (Sharma, 2012).

2.6. CONCLUSION

- The study of Baba Chamliyal clearly reflects as to how on the one hand political arrangements of both countries divide the people, while on the other the shrines of Baba Chamliyal bring people together. And what is most interesting is that while there has continued hostility between the states, it has neither affected the faith of the people in the shrine nor stopped the people across the border on both the sides from having a sense of participation on the shrine on the other side.
- The shrine actually is a very important space for understanding as to how the borders are constructed artificially and how these can be transcended by the common bonding among people. It also reflects the power of popular belief which cannot be overcome by the ideological divide between the nations.
- The places like these which represent the emotions of common people can actually transcend the hostility between nations, even if it be momentary. As our study has clearly shown, during the worst phases of India–Pakistan relations, the annual fair became an occasion of bringing the security forces and administrators of both the sides together. Of these occasions, one very recent one was after the Mumbai terror attack which led to the stalling of all peace processes between the two countries. During that time, this fair, which was held later, was reported as the first occasion for a formal meeting of the forces of the two sides. The relationship was normalised with the distribution of sweets (Twocircles.net).

It was the same situation in 2012. The fair this year had taken place amidst continuous ceasefire violation. Three months preceding the fair, a number of cases of ceasefire violations had taken place. And as reported in a newspaper, barely three days before the fair, 'there were incidents of firing on the BSF men in Abdullian area of R S Pura. Nearly seven new BSF "nakas" at the re-aligned

fence near the zero line were targeted from across by the Rangers' (Sharma, 2012). However, when the time for the fair came, the tension dissolved and the spirit of peace and goodwill was reflected. As the newspaper reports:

In last three months nearly ten such incidents have taken place only along the International Border in Jammu sector while around a dozen have been reported from the LoC in Rajouri and Poonch. Some casualties on our side have also been reported in Poonch and Rajouri.... Setting aside all such bitter incidents, the people on this side have great enthusiasm to participate in the annual fair and the District Administration had a couple of meetings with the BSF officials for ensuring smooth conduct of Mela at Zero line taking all precautions and measures to facilitate the people.

- A very important conclusion that can be drawn from this study is that the state actors do not remain untouched by the fervour among people and are impacted by the common bonding and cross-border festivity. One can provide various examples of the positive impact of the popular response on administrators, politicians and security forces. To prove the point we can refer to the statements made by some of these state actors during 2007 and 2012 Chamliyal fair:

2007

Col Mehmood of Pakistan said,

People on both sides of the border want to live in peace. It is because of ongoing peace process between the two countries we are celebrating such occasions.... We hope that peace will continue. As the peace process further progresses it will generate love thereby narrowing down the distance between the two sides. (*Kashmir Observer*, 2007)

His counterpart, DIF BSF, G. S. Virk, said,

We feel relaxed on the border because of the peace process. There has been no violation of ceasefire from either side which is a good omen. (*Kashmir Observer*, 2007)

2012

Israr Khan, SSP Samba, said,

We all felt that the meeting has been very successful in reducing the tension in our relations. It proved a very successful venture and we all see it as a ray of hope in improving Indo-Pak relations. (Suthra, 2012)

DC Mubarak Singh said that the 'event is a symbol of peace' (Suthra, 2012).

- On the whole one can argue on the basis of this study that borders can at the most create physical divides between the people and stop them from physically meeting each other, but these can neither take away the local traditions nor fetter the common emotions of the people. The continuity of the importance of the shrine of Chamliyal on both the sides during the best and the worst periods of India–Pakistan relations is a clear evidence of that. What is further reflected from this study is that bonding of people is more forceful than divisions created by the states.

ANNEXURE 2A.1

Following is the story (translated from Hindi) of Baba Chamliyal as written in the precinct of the shrine:

This revered place is established in the memory of Baba Dalip Singh Manhas (Baba Chamliyal). Baba was a great saint whose place of residence was the present village of Chamliyal. Baba remained busy in the selfless service of people. He was very influential in the nearby villages and he had many followers because of which some mischievous elements became jealous of him. Once those anti-social elements called him to Saidainwali village (which is now in Pakistan and located around 500 metres on the southern side of this shrine) and severed his head. While the body fell in Saidanwali village, the head by some mysterious power came back to Chamliyal. It is on this place that the head of Baba fell and at this very place his head was buried. His followers built a samadhi in Saidanwali (which is now in Pakistan) where the body of the Baba fell. The devotees of Baba from both the countries come to pay their regard to Baba at both the shrines.

Once a devotee was suffering from a skin disease. Baba came in his dream and asked him to make a paste of the soil (shakar) and water (sharbat) and use on his body. The devotee did as he was asked. And in a few days he was cured. Since then people of all religions come for darshan of the samadhi with lot of devotion and belief and get cured of their skin diseases.

Every year on the Thursday of the fourth week of June, a fair is organised in the memory of the Baba. This fair is celebrated in both the shrines of India and Pakistan. The devotees from Pakistan give their chadar to the BSF officials who place it on the shrine in Chamliyal. From here, the BSF presents the soil (shakar) and the water of the well (sharbat) to the devotees in Pakistan.

The BSF takes care of the shrine with the help of the villagers. The BSF also provides for the free langar and boarding.

ANNEXURE 2A.2

There are several rules and regulations for the patients visiting the shrine for the cure of their skin diseases, which are to be followed by them. According to the pamphlet, the following things are to be followed by the patients:

1. The patients have to avoid leather materials.
2. After the application of *shakar* they have to let it dry for two hours and during this duration of two hours, they have to neither eat anything nor spit anywhere.
3. Use of soap, oil, sour items, curd and tomato are to be avoided.
4. Eggs, meat and wine are not to be consumed.
5. They have to use neither chair nor cot for taking rest or sleeping.
6. They must not participate in festivities or mournings.
7. After the application of *shakar* they have to take bath at a clean place.
8. After the application of the soil they must not clean their cloth with soap.
9. They must not cut their nails, hair and beard.
10. They have to follow *brahmacharya* (celibacy).
11. They have to avoid all types of tobacco items and other intoxicants.
12. They must not share their food with other (*Joothan ka parhez karen*).
13. It is a must to follow discipline for staying in the ashram of the Baba.
14. Their presence is must at the time of the *arti*.

It is important to mention that when the author of the present paper interacted with the patients they told that all of them followed the above-mentioned instructions and these patients belonged to diverse religious and regional identities. They were of the opinion that they did not feel these instructions as compulsions; rather, they enjoyed them and treated them as sacred. All of them were very punctual in the application of the soil and following the above-mentioned instructions. These instructions work as the source of solidarity in overcoming social and regional differences.

References

Eaton, Richard Maxwell. 1978. *Sufis of Bijapur*, 1300–1700. Medison, University of Wisconsin

Kashmir Observer. 2007. 'At Baba Chamliyal the Weapons Are Laid down', 28 June.

Sharma, Gopal. 2012. 'Thousands Set to Throng Chamliyal Shrine on IB', *Daily Excelsior*, 24 June

Suthra, Varun, 2012, 'India, Pakistan Get Together at Baba Chamliyal Fair', *Tribune*, 28 June.

Twocircles.net, 'After Mumbai Attacks Chimlyal Mela Brings Indo–Pak Closer. Available at http://tcn.twocircles.in/2009jun25/after_mumbai_attacks_chamliyal_mela_brings_indo_pak_closer.html (accessed on 1 December 2012).

CHAPTER 3

Internally Displaced People from Across LOC: A Case Study of Mirpuris in Jammu

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3.1. INTRODUCTION

3.1.1. Borders and Individuals

Borders have long been associated with the tensions caused to people and have frequently been seen as the source of all problems between neighbouring countries and individuals. While this is generally true of borders in many places, the strains underlying the border areas specifically reflect the realities of the Indian sub-continent.

The borders dividing these countries [India, Pakistan and Bangladesh] are markers of past bitter history, current separate, distinct and independent existence and the sign of territorial integrity/disintegration of these states. (Banarjee and Choudhury, 2011, xv)

There are not one but several contentious cartographic borders in J&K – the international border between J&K and Pakistan that is known as the working border in Pakistan's terminology; the Cease Fire Line (CFL) of 1949 that was redesignated as the Line of Control (LOC) in 1972; the extension of the LOC beyond NJ 9842 in the Siachen sector which is known as the actual ground position line (AGPL); and finally the segment east of AGPL bordering or controlled by China which is known as the line of actual control or LAC (S. DasGupta, 2011).

The LOC between India and Pakistan is alive only for administrative purposes. Indian government still claims that the area on the other side of LOC under the control of Pakistan will be regained one day. However, more than six decades have passed and the uncertainty created by the LOC continues to

persist. This border for most of the period has remained tense and has often generated situations which are sufficient to produce insecurity among the minds of people living around it.

However, it is not only for those living around the LOC that the problems have been aggravated. Life has also been difficult for those who were displaced due to the abrupt formation of the LOC. On both sides of the LOC, many people suffered because of violence and communal frenzy. Many people were forced out of their villages and had to move to safer places. For these people border does not merely stand for lines on the map, but represents living symbols of fragmentation. It brings them back the memory of their dislocation. The consequences of dislocation (whether violent or otherwise) are quite traumatic for those who have undergone this process. Such a trauma has been recorded in varied forms in case of many who were dislocated from Punjab and Bengal during partition. However, not much attention has been paid on the dislocated within Jammu and Kashmir (J&K). This being so, despite the fact that the situation for those located in J&K has been much more complex as compared to those dislocated in rest of the sub-continent.

For the majority population of India and Pakistan, the traumatic memories of partition have become historical narratives, but in Jammu and Kashmir, because of the disputed nature of its borders, these memories are a festering sore, which continues to bleed and make people suffer in the form of displacements and dispossession on account of border skirmishes between the hostile neighbours. (Banarjee and Choudhury, 2011, xxii)

How did the formation of this border influence the lives of people dislocated from their original homeland? What were the problems faced by them when they started their lives once again in the new places of their settlement? What was the process of their rehabilitation?

It is in the background of these questions that an analysis of the problems, needs and aspirations of the displaced people from Pakistan-administered Kashmir (or PoK, as they call this part) has been undertaken in a phenomenological research perspective. Rather than the whole universe of the those displaced from the part of the state now under the control of Pakistan, the study is confined to one community, that of Mirpuris – the people who were earlier residing in Mirpur and nearby areas and came to settle in Jammu after their displacement in 1947. The idea underlying this study is to evolve an understanding of the relevant issues and build awareness regarding those.

3.1.2 Internally Displaced Persons

Definition of Internally Displaced Persons

Internally displaced persons (IDPs) are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violation of human rights or natural or human made disasters and who have not crossed an internationally recognized state border. (Inter-Agency Standing Committee, 2010)

This definition of IDP is a descriptive definition rather than a legal one. It simply describes the factual situations of uprootedness of persons from their habitual residence within the country of residence. It does not confer on them a special legal status or rights in the same way that recognition as a refugee does. IDPs remain entitled to all the rights and guarantees as citizens and other habitual residents of a particular state. Unlike refugees, however, they are not protected by international law and they are not eligible to receive many types of aid (Inter-Agency Standing Committee, 2010).

It is often difficult to get accurate figures for IDPs because populations are constantly fluctuating. Sometimes, some persons may return home while others flee. Other instances could be the visibility of IDPs in terms of projecting their own selves. In more than 50 countries around the world, some 2.6 crore individuals are uprooted from their homes and displaced in their own countries as a result of conflict or human rights violations. In addition, natural disasters caused the displacement of 3.6 crore persons worldwide in 2008 (UNHCR, 2008).

IDPs are part of the broader population that needs protection and assistance because of their displacement for reasons such as conflicts, human rights abuses or due to natural disasters. Apart from several common risks, IDPs also experience specific forms of deprivation such as loss of shelter. They also often face 'heightened or particular protection risks' (Inter-Agency Standing Committee, 2010). These risks may vary according to factors such as age, gender but commonly affect all persons. Some of these include: armed violence and abuse while fleeing for safety; family separation (members of family especially children getting separated); increased risk of sexual and gender-based violence (particularly affecting women and children); deprivation of land, home and property and other assets; displacement into a new (possibly inhospitable) environment; loss of means of earning wages (employment), cut from normal source of livelihood; adaptation in a new environment (possibly stigmas, discrimination, hostility and marginalisation); identity documents lost, destroyed or confiscated leading to increased risk of exploitation and detention; competition for scarce resources; psycho-social effects as a result of witnessing unpleasant events (such as violence, abuse, homelessness).

Rationale of the Study

Knowledge of local understanding of the impact of conflict and forced migration and of strategies of dealing with them is crucial for effective support of the affected community and individuals (www.forcedmigration.org). Effective intervention need to be built upon the pre-existing capacities and structures of communities. Knowledge gained from the experience of stress in one situation and of the ways of dealing with it could be applied to other communities.

Refugees, asylum and other forms of forced migration have become major themes of political debate in many countries. Social policy in many countries is increasingly concerned with these groups (Castles, 2003). Discussions on forced migrations are closely linked to several national-level concerns with border control and national security. These themes are also related to global considerations about migrations, conflict and development.

Forced migration has grown drastically and is a crucial dimension of globalisation. It is also linked in complex ways to processes of societal change in both the areas of origin and of destination of forced migrants.

The number of IDPs – those forced to flee their homes but who have not crossed an international border (IB) – has rocketed from 12 lakh in 1982 to 140 lakhs by 1986 and to over 200 lakhs by 1997 (Cohen and Deng, 1998: 436). The number of countries with populations of IDPs grew from 5 in 1970 to 34 in 1996 (UNHCR, 1997).

3.1.3 The Displaced Community from POK

Like the rest of South Asia, people of J&K were also impacted by the events following the partition of India. However, the situation as it evolved in this state was made quite complex due to the peculiarities of this state. Like the other princely states of India, the decision to join Indian or Pakistani dominion lay with the princely ruler. However, the decision for the ruler was not very easy, the reason being the ongoing anti-feudal and anti-monarchy movement in the state, especially in the Valley of Kashmir. Though it was a Muslim majority state, the political leadership of Kashmir was not very keen on joining Pakistan. Maharaja Hari Singh, the princely ruler at that time, was quite hesitant about joining India and therefore could not take a decision till 15 August 1947. He had meanwhile requested for a 'stand-still' arrangement from both India and Pakistan. While Pakistan had agreed for this, India was still deliberating on the request. It was in this situation of indecision of the maharaja that the tribal invasion took place. Though subsequent to the signing of the Instrument of Accession, the Indian forces sought to repel the tribal forces from the state, yet by the time the ceasefire took place in early 1948, the state was divided into two parts – one under the administration of India and the other under the administration of Pakistan. Almost one-third part of the undivided state came under the control of Pakistan.

The sequence of the developments during this period can be summarised as below:

In the months of September–October 1947, there were localised troubles in the areas of Jammu and Poonch. Communal polarisation had taken place during this time and hence there were also communal riots in these areas. Tribal invasion took place in the month of October 1947. It began with the town of Muzaffarabad being captured by the invaders. Thereafter, there was a major attack on Kashmir valley along the main Rawalpindi–Srinagar road.²⁷ Disturbances started from Poonch to Bhimber in October 1947. Towards the months of October–November 1947, there were attacks in the towns of Mirpur and Kotli. In the last week of October 1947, Gurez and Tithwal were also simultaneously attacked. Annexation of Gilgit and Skardu and raid towards Leh: August–November 1947. (Karim, 1994, 68)

These political developments starting from the tribal invasion to the declaration of ceasefire resulted not only in violence

but also in the uprooting of a large number of people on both the sides of the divided state. While a large number of Muslims were killed and a still larger number were uprooted in the plains of Jammu, Hindus in the areas that came under the control of Pakistan also met with a similar fate. The demography of the Jammu region, now under the Indian administration, changed largely due to the killing and migration of Muslims – from a Muslim-dominated region, it became a Hindu-dominated region. Similarly, the demography of the areas now under the administration of Pakistan also changed. Almost all these areas were emptied of the Hindu population. Though Muslim-dominated areas, the areas now forming Pakistan-administered Kashmir had a minority Hindu population. The towns like Muzaffarabad, Mirpur, Rawlakot, Kotli, etc., had substantial Hindu population. This Hindu population had to face the trauma of partition almost in the same manner in which the Hindus and Muslims in other areas affected by partition had to face. While many of them were killed, many others had to flee. They were uprooted and had to seek protection in the refugee camps. It took them a long time to start their lives again, almost from scratch, and to be rehabilitated.

The plight of these people had started around the last week of October 1947. The tribal forces had begun by capturing Muzaffarabad and then had taken the route to Kashmir valley. Meanwhile, other parts of the state were also affected by the tribal invasion, including Leh, Zojila and Kargil on one side and Rajouri, Poonch and Naushera on the other. As Rao (1991: 49) states:

The Raiders crossed over into the State and attempted to capture several important towns from Poonch in the North to Kathua in the South-East. They succeeded in overcoming what little resistance was offered by the Jammu and Kashmir State Forces and surrounded the towns of Poonch, Kotli, Mirpur, Jhangar, Naushera, Bhimber and Rajouri.... Despite being vastly outnumbered, the State Force Garrison held on to the various important towns and awaited relief by the Indian Army. A large number of non-Muslim refugees gathered at these various towns and took shelter under the protection of the State forces.

After Indian forces confronted the tribals and the Pakistani raiders, they were able to get some areas cleared (like Rajouri, Naushera and Poonch town) but had to surrender certain others. By the time ceasefire was declared Gilgit–Hunza–Baltistan on one side and the Muzaffarabad–Kotli–Mirpur belt on the other were separated from the Indian side of J&K.

For those who were uprooted from one side and forced to settle in the other, the division of the state was a very traumatic

²⁷ Karim (1994: 68) notes, 'On 22 October 1947 hordes of tribesmen, organized into armed units with machine-guns, mortars and other infantry weapons attacked both the valley of Kashmir and the Jammu province. *OP Gulmarg*, the clandestine Pak invasion of the valley was now in full swing.'

experience. The people of Jammu were to suffer the division in the most distressing manner.

Being a transit point for huge number of refugees in both directions – traumatized, terrorized Hindus and Sikhs fleeing to India from Pakistani Punjab and NWFP, and traumatized, terrorized Muslims fleeing to Pakistan from Indian Punjab – both sides with harrowing experiences of slaughter and atrocities. This destabilizing influx combined with rising tensions within the region to set off further carnage. The entire Hindu and Sikh populations of Muslim-majority districts in western Jammu like Muzaffarabad, Bagh, Rawalakot (western Poonch), Kotli, Mirpur, and Bhimbar were killed or expelled. Mass murder and expulsions of Muslims occurred in Hindu-dominant eastern Jammu districts – Udhampur, Kathua, and Jammu city and its environs. (Bose, 2005: 40)

Apart from the violence that they had to face, there was the problem of rehabilitating in an altogether new place. The trauma that it caused left the scars on the one hand and the feeling of uprootedness on the other. So deep was the emotional impact of forced displacement that it left a life-long effect. This clearly gets reflected from the personal memoirs written by the displaced people. Interestingly, on both the sides of divided J&K, one can find the feelings of longing and nostalgia for the 'homeland' which people were forced to leave. As an illustration of this similar feeling of nostalgia, one can refer to Khalid Hassan and Rehmatullah *Rad's Memory Lane to Jammu* (2004), which has contributions by a number of original Jammu natives who were displaced and were located in Pakistan and Pakistan-administered Kashmir after 1947. Though one part of the book refers to the situation in which the Muslims were forced to leave Jammu, most of the other articles idealise everything located in Jammu, not only its people but even its water and air. Similarly many of those who were forced to leave the towns of Muzaffarabad, Mirpur or Kotli had their own tales to tell and to express their own sense of nostalgia for their homeland. Krishna Mehta's book *Kashmir 1947: A Survivor's Story* (2006) provides a detailed version of the experience which each of the displaced persons had to face one way or the other, and various personal notes written by the Mirpur refugees reflect their strong urge to connect back with the towns and villages where they were born.

Despite the fact that a large number of people were impacted by the division of the state in 1947, there have not been many systematic studies which have documented the impact that the displacement had on these people. In the light of the very important research gap, this study of the Mirpuri community has been undertaken. The major objective of the study is to assess the perception of members of the Mirpuri community

about the impact of divide created by displacement from across the LOC on their lives. The specific objectives include the following:

- Investigation of effects of displacement at personal, familial and social levels from a phenomenological perspective
- Analysis of perception of participants (members of Mirpuri community) about LOC and people on the other side
- Getting sensitized to the problems faced by the displaced community and the unresolved issues with a view to building awareness about these issues
- Documentation of the extent of transmission of ideas/feelings related to displacement to younger members of the community

The research exercise was based on qualitative phenomenological research design. (The goal of qualitative phenomenological research is to describe the 'lived experience of a phenomenon'.)

The locale for the present research study was Jammu district in the state of J&K in India. It focused on Mirpuri families who had faced the trauma of displacement. The areas from where the sample was drawn included Bakshinagar, Sarwal colony and Janipur. These are the urban areas in the heart of Jammu city under the Jammu West assembly constituency (for details refer Annexure 3A.1).

3.1.4 The Mirpuris

'Mirpuris' studied here are the Hindu inhabitants of Mirpur (district as well as town) who emigrated out of it in 1947. Before the division of the state, Mirpur was one of the districts of Jammu division and was comprised of three administrative divisions, namely, Mirpur, Kotli and Bhimber. Noshara was also a part of Mirpur district. Predominantly an agricultural area, it was a Muslim-dominated district. However, the three main towns of the district, namely, Mirpur, Kotli and Bhimber, had majority of Hindus. The town of Mirpur, was also the district headquarter. Describing the geographical situation of Mirpur town, K.D. Maini notes that it was situated around '120 miles in the south-west of Jammu and 99 mile in the eastern side of Poonch.... This beautiful town was located on the bank of river Jhelum and dominated by Hindu and Sikh population apart from Muslims' (Maini, 2010). The town was an important trade centre and was a major linking point with Punjab.

Among the Hindus, it was the people of the Mahajan caste who formed the majority of the population. They were the most prosperous among the whole population of the district. Though in majority, the Muslims of the district were quite impoverished

and were either small landowners or landless people. Many of them were so pressed by economic problems that they had started migrating to far-off places like England in search of jobs. To quote Roger Ballard (1991: 516),

As long ago as the closing decades of the last century, Mirpuri villagers had begun to take jobs as stokers on British merchant ships operating out of Bombay. Just why they began to do so is most obscure, but the most likely explanation is that it was their way of coping with a major disadvantages of their status as Kashmiris...

The situation of most of the Hindus was quite different. Not only were they landowners, but many of them were traders and moneylenders. Displacement for them therefore was a major catastrophe since they were mostly affluent and were forced to leave Mirpur without any assets. Devoid of land or wealth, they were reduced to penury and destitution. They were forced to leave the town of Mirpur in the month of November when Mirpur fell into the hands of Pakistani raiders. It was in the months of September–October that there were local disturbances in the Jammu and Poonch areas, which were followed by communal riots. In the months of October–November, there was an attack on the Mirpur–Kotli area.

As an aftermath of the 1947 disturbances, the district of Mirpur was divided into two parts. It was only Nowshera and some areas close to it which were located on the Indian side of J&K; the rest of the district, including the *tehsils* of Mirpur and Kotli, were now located on the Pakistani side of the state.

Mirpur town was defined by its plurality. Due to the domination of Hindus, the town had a number of temples which were spread all over the town. But also situated in the city were a number of mosques and shrines. The general environment of the town was of co-existence with strong bonds between the Hindus and Muslims. The popular narrative about the town is based on a version of Hindu–Muslim co-existence. As per this version, the town of Mirpur, in the words of Puri (2007),

was founded nearly 600 years back by two saints Hazrat Ali Mira Shah Ghazi (also called Mian Mohammed Mir) and Gosain Budh Puri (also called Govardhanwal Puri) who lent a part of their respective names to the town. These two saints in this popular history symbolized the good relations between the Muslim and Hindu communities. At the eastern end of the town, there was Hazrat Ghazi's tomb (as per some it was a Samadhi) and at the western end Gosain Puri's temple. It was widely held that if the population crossed the limits of the darwazas (gates) of the town where these two popular shrines were situated, Mirpur would be ruined.

There is no historical record to prove this version. However, the fact that this version has travelled from one generation to another gives evidence not only about the mixed society of Mirpur town, but also of a cultural space wherein the two communities would overlap and with which both the Hindus and Muslims could identify. However, the situation changed over time. The first time communal tension is reported in Mirpur is in 1931. That is the time when the first manifestation of discontent against the feudal regime is reported in Kashmir as well. In Mirpur, the communal response was very much linked with the land-related exploitative economic system. So serious were the riots at that time that 'one company of British troops had to be dispatched to Mirpur...' (Zutshi, 2004: 220). The communal basis of tension is linked with the class relations between the Hindus and Muslims of Mirpur. While Hindus were either the moneylenders or the holders of the land, the Muslims were mostly the impoverished peasantry or the class dependent upon menial labour or on service in the British army. Explaining the economic reasons behind the communal riots, many scholars have noted that the Hindu moneylenders and big landowners became the target of the rioters, who were mostly Muslims. However, to emphasise that it was mainly the economic unrest which got reflected in communal response, Rai (2004: 265) notes that 'in areas where some Muslims were known to be moneylenders, their houses too were looted so proving that the strained financial relations between agriculturalists and moneylenders was one of the main cause of the disturbances'. Rai (2004: 265) explains various other economic factors which led to the pressures on the cultivators in Mirpur and therefore the communal disturbances:

Many of them had relied heavily on supplementing their incomes with wages earned outside the state. Since 1931, owing to the suspension of large projects in British India, such as the canal works in neighbouring Punjab and general financial depression, these sources of income had shrunk considerably and increased the burden of the revenue demand of the state. Mirpur tehsil's villagers had also supplied a large quota of troops to the British Indian army during World War I, and many of them found themselves unemployed in the 1920s. At the same time, a keen land hunger had developed over the preceding decade in Mirpur specifically...owing to competition among Hindu 'capitalists' and from among retired soldiers for the acquisition of cultivable tracts. As a consequence the price of land was inflated out of proportion to any increase in agricultural prices that had in fact registered a fall since the onset of the Depression.

Though the communal riots were controlled in a short while, it formed the basis of communal polarisation. The decades of

the 1930s and 1940s were also the decades when much of the politicisation in the state of J&K had taken place. There were different forces at work. However, despite such politicisation, Mirpur remained calm till 1947. The situation changed with the tribal invasion. Referring to the developments before Mirpur town was captured by the tribal invaders, Manoj Joshi (2008: 67) thus notes:

... mid-October 1947, the raids from Pakistan had spread along the border between J&K State and Pakistan. 9,000 strong State Forces were thinly spread across the region. Over 35 per cent of the force was Muslim – most of them Satti and Sudhan, martial castes.... These forces were not only geographically spread out, with a brigade each in Jammu, Mirpur, Poonch and the Valley, but, beginning October, they had been plagued by defection of their personnel.

Despite the location of a brigade of armed forces in Mirpur, known as Mirpur Brigade, the district could not escape the attack of invaders. One of the reasons for the fall of Mirpur was that

hundreds of soldiers of state forces deserted from the battalions of Mirpur Brigade and joined the rebels and invaders under the command of Colonel Rehmattullah and Major Nasarullah Khan in the month of November. These deserters joined hands with invaders and Pakistani forces in the fort of Throchi, Sensa and then moved towards Mirpur. They started attacks on the remaining state forces in the whole Mirpur district and compelled them to withdraw towards Mirpur. On 22nd November 1947 these rebels, with the help of invaders and Suddans under the command of Pakistani forces assaulted on Mirpur town. In the initial stage, the state forces killed number of rebels and Pakistani forces. However on 24th November about ten thousand rebels and invaders assaulted on Mirpur town under the command of Pakistani officers. There was no other alternative for state forces except to withdraw from the town. The state force along with civilians belonging to minority community vacated the town and withdrew towards Jhangar and Nowshera... (Maini, 2010)

The accounts from Saraf's notes on the events of 1947 clearly reflect that Mirpur town was surrounded by the invaders and rebels. By the third week of November, the 'outer defences of Mirpur city crumbled and many houses were set on fire' (Hasan, 2007). The Hindus later were located in a refugee camp in Alibeg Gurudwara. Later, with the intervention of the International Committee of the Red Cross, these people were released and sent to Jammu.

What was the extent of violence that the Mirpuris had to face during the siege of Mirpur? How many of them were killed?

What kind of brutalities had they to face? There are not very clear answers. No record of the number of people killed or displaced from Mirpur is officially available. What is available, however, is the narrative of the displaced Mirpuris, which after the gap of time, has certainly undergone much exaggeration. As per the account of those people who wrote their memoirs, the number of those killed has been quoted between 10,000 and 20,000. While one of our respondents provided the figure of those killed at 18,000, there is an account of another Mirpuri in which the number is given at 10,000. This person, Gupta, cited by Khalid Hasan thus notes:

Around November 25, 1947, there were nearly 25,000 Hindus and Sikhs living in Mirpur. During the city's capture, close to 2,500 were killed in the infernos that erupted due to Pakistani artillery fire. Another 2,500 escaped with the retreating Jammu and Kashmir army. The remaining 20,000 were marched in a procession towards Alibeg. Along the way, Pakistani troops and Pathans killed about 10,000 of the captured Hindu and Sikh men and kidnapped over 5,000 women. The 5,000 Hindus and Sikhs who survived the 20-mile trek to Alibeg were imprisoned. In January 1948, the Red Cross rescued 1,600 of the survivors from Alibeg. Between 1948 and 1954, around 1,000 abducted Hindu and Sikh women were recovered from Pakistan and Azad Kashmir.

However, there is no way to find the authenticity of the numbers. The only point on which everyone seems to agree is that the population of Mirpur town, which was around 10,000, swelled to 25,000 because a lot of people from villages around the town had sought refuge in it when the disturbances started. Referring to such versions by the displaced persons, Puri (2007) clearly notes:

The numbers in all probability are exaggerated to show the scale of the tragedy. What follows are accounts that any partition affected person would tell you in different ways either side of the borders: the women left behind, raped and killed; old people dying on the way, heroic deeds in the face of danger; the loot; the homes and property left behind; the treachery of age old friends; and an inevitable saviour from the other community who rescued them from a potential violent and horrific death...

3.2 DISPLACEMENT AND REHABILITATION

3.2.1 The Process of Rehabilitation

Once forced out of Mirpur, most of the displaced Mirpuris were relocated in Jammu city. A few of them were relocated in

other parts of the Jammu region and a few were relocated in Delhi also. But whether in Delhi or in Jammu city, the Mirpuris continued to remain bound with the community bond. In Delhi they were all located in Amar Colony in Lajpat Nagar, while in Jammu they were located in the areas of Bakshi Nagar, Sarwal and New Plot – all adjunct to each other. Many of the Mirpuris, especially those coming from rural areas, were settled in the rural areas adjoining the city of Jammu.

What was the process of rehabilitation of the Mirpuris once they were relocated in Jammu? What was the role of the state and what facilities were provided by the government?

Most of the displaced from Mirpur are not very happy with the role of the state in their rehabilitation. Rajeev Chunni (chairman of SOS, an organisation of POK 'refugees' settled in J&K) in an interview with D. Suba Chandran (on 8 January 2007) has explained that the 'Central and the state government of J&K set upon different schemes to rehabilitate them temporarily at different places, in houses, in shops and other available places'; however, he notes that the local government was not very enthusiastic about settling the POK refugees in Jammu. Hence, many of these displaced were forced to go to other states. However, Virender Gupta (2005), another prominent leader of Jammu who is also a Mirpuri, notes that it was only in Jammu that the Mirpuris as well as other displaced from POK were allowed to settle. 'Jammu region has been the settling ground for refugees.' However, most of the respondents were not happy with the response of the state. Comparing their situation with those of Kashmiri Pundits who similarly faced forced displacement, they feel that the state has been much more sensitive to the issues of the displaced in the more recent period. But at the time when the Mirpuris and other communities were displaced in the wake of the division of the state in 1947, the state's response was quite lacking.

Mirpuris were asked to submit their claims for the property they had left behind but were not given land in lieu of that. They were provided with an option of settlements: a family of six was given a 60 × 30 plot consisting of one kitchen and one room. Families having more than six members were given two such pieces of land. The families which opted for rural agricultural land were given 4 acres (32 *kana*) irrigated land or 8 acres (64 *kana*) unirrigated land. The above plots of land were only given on allotment basis and no registry for the same was done. These families still have the same status in regard to the issue of possession of the same land. In addition to that, the respondents informed that they were given Rs 3,500 as cash compensation, out of which they had to pay Rs 1,300 as the cost of the constructed house.

The displaced community was offered land in urban localities of Jammu, namely Gurha, Bakshi Nagar, Sarwal, Company Bagh, Janipur and New Plot. In rural areas, they were settled in Simbal Camp, Bhour Camp, Suchetgarh (R. S. Pura), Hiranagar and Ramnagar. Besides the state, the respondents acknowledged the contribution of Rashtriya Swayamsevak Sangh (RSS) units and Arya Samaj in helping them rebuild their lives.

Though the narratives of the Mirpuris start from their state of destitution and poverty after they were displaced from Mirpur, the same narratives end up with the tales of the community doing very well, in fact, in their perception, much better than the local Dogras not only in the state services but also in trade and business. Puri (2007) notes that the claim of the Mirpuris is corroborated by their visibility in the society:

However it is also true that in the post-independence history of the state the Mirpuris have been a disproportionately visible face in many fields: Dina Nath Mahajan, a minister in the state cabinet in 1950s; Ram Lal Gupta, first Accountant General of the State; H L Bhagotra, a retired sessions judge; Mahatama Budh Singh, one of the founders of National Conference; Raja Jawwant Singh, a former Supreme Court judge; K D Sethi, a prominent name in the state's politics; R P Sethi, former Chief Justice, Karnataka High Court and a retired Supreme Court judge; and Sushma Chowdhary, an IAS officer.

The Mirpuris, however, give credit of their rehabilitation to the particular traits of their community. 'We, Mirpuri community members are courageous. We don't beg before others'. These kinds of statements are generally made with reference to the entire community rather than individual families or members. The most common adjectives used to describe the members of their community are courageous, determined, honest, hardworking, strong, with social empathy, polite, clear hearted, not bowing before others, not ditching others and hospitable.

It is with reference to these traits that they explain their gradual settlement. Many respondents narrated the sentiments like this:

I was young and came here in only two pairs of clothes and even those were tattered. After coming here we took up all kinds of jobs. My uncle worked in a canteen. He used to wash utensils and did other odd jobs like growing vegetables.

Another respondent stated:

We worked as daily wagers. The road was being constructed and we worked as menial labour at the wage of two rupees per day. That way we could just survive. We survived by honest labour and not by cheating or looting.

Some of them reported working in shops, carrying bags and engaging as daily wagers. Those who had some money/assets with them became hawkers and started selling some goods. Others who had relatives settled in Jammu or other places borrowed money from these relatives to start small business establishments. Overall, the respondents reported going through an extremely difficult phase, financially, physically and emotionally. One unanimous sentiment prevailing among all respondents was that they worked hard and were determined to build themselves up once again. They believed that education was a great saviour for them due to which they could think of ways and means of helping themselves.

The respondents stated that they were now well settled and had built up their lives once again due to their own hard work; still many respondents expected the government to provide them their dues and settle their claims of compensation. One of the demands in this regard was the permanent landholder status of their places of dwelling and land. In addition, many cite claims of refugees that were due to them which they were keen to receive.

3.2.2 Rehabilitation and Relation with Host Communities

Whenever people migrate from one place to another as a result of force, several issues confront them. To be away from a familiar habitat, into new, possibly hostile surroundings is in itself a challenging task. Coupled with this are the issues related to occupation, loss of identity, continuity of traditions and customs and many other related dilemmas.

In most cases after displacement, the displaced community has to struggle to adjust in a hostile or somewhat negative social climate since they are seen as outsiders and a threat to the already settled communities. However, the displaced respondents of this study, although explicitly mentioned that the local community, the Dogras, were warm and accepted them, yet they also made observations about their uneasiness about the new environment when they reached Jammu. One of the respondents said: 'The people of Jammu are large-hearted and they have protected us and given us a lot of love and affection. However, in their opinion, the people here were not as progressive and open-minded as they considered themselves to be. As Puri (2007) notes, the Mirpuris that she had met for her study keenly talked about their difference from the Dogras and ended up in referring to themselves as much more enlightened as compared to the Dogras. This is the way she notes that they would list their differences from the Dogras and see them as the 'other' of their own community:

We speak Mirpuri, a Potohari language, while they speak Dogri. We eat wheat they eat rice. We are so much more progressive than them. When we came here our women moved around freely, while their women covered their faces.... We treated our daughters-in-law with a lot of respect while the Dogra daughters-in-law ... pressed their mothers-in-law's legs at night.... We have always been much more educated than the Dogras. We were always more hardworking and that is why we did so well; the Dogras are jealous of us because of that...

Interaction with the Dogra culture not only made the Mirpuris aware of the different environment of this host society in which they had landed but also gave them consciousness about their own progressive values, especially vis-à-vis women. A casual conversation with the members of the community would bring out the point very clearly that Mirpuris treated their daughters-in-law with a lot of respect. Some elderly members informed us that this was mainly due to the reason that education for girls reached Mirpur quite early. As early as the 1920s, there were a few girls schools in that town. In advancing the education for girls and in introducing the progressive values, the Arya Samaj movement was particularly responsible. That is the reason that when they migrated to Jammu they found themselves more exposed to modern values as compared to the local society.

3.2.3 Issue of Compensation for Property

There is a general opinion among the Mirpuris that the state has not done much for their rehabilitation. Their major grouse is that their claims to property are still not settled. That rather than being compensated for the property left behind in Mirpur, they have been given a promise that they would be settled back in Mirpur; however, that has not happened so far, even after the passage of six and half decades. To quote Ramesh Gupta:

As for the Hindus and Sikhs displaced from Mirpur and surrounding areas in 1947, their fate is still unsettled, as the Government of India claims the POK areas as India's and has been befooling the displaced refugees of 1947 with a false promise of settling them in their respective localities of the mother land even after 65 years. (Daily Excelsior, 11 November, 2000)

The claims of the Mirpuri community could not be settled since the population got displaced from one part of J&K to another part of the same state in India. The displaced community did not cross any international border at the time of their movement. However, since then Mirpur has come under the control of

Pakistan and the Line of Control (LOC) as the dividing line between India and Pakistan has been drawn. It is because of this reason that the displaced Mirpuris ask for the status of refugees (those who move across international borders) and the legal aid as per United Nations High Commissioner for Refugees (UNHCR) regulations.

However, rather than being given refugee status, the Mirpuris were treated as a category of internal migrants since the government's stand is that the occupation of land by Pakistan will be vacated and India will again take administrative control of the area. However, the respondents are not happy with this status and they believe that drawing of the line and its definition (whether IB or LOC) is affecting their case of compensation and not much has been done till date.

The Mirpuri community, a primarily trading community, has managed to establish its hold in business owing to its determination, hard work and experience (that it had back in Mirpur). The respondents appeared to be satisfied with their progress in the sphere of economic activity but still hoped that their youngsters be provided reservation in jobs owing to the disadvantage their generations have faced. The respondents believed their children were getting education mainly because they had seen that knowledge helped them rebuild their lives after displacement. Most of the respondents emphasised educating girls as much as they did for boys.

3.2.4 Women as Double Victims

Women became double victims of the situation. Being women, they were the first victims of the raiders and there are many reports of women being forcefully taken away either at the time of siege or later on when the survivors were sent to the Alibeg camp or during their stay in the camp. Many respondents narrated personal stories about their female relatives being forcefully abducted. In some of the narratives, some of these women were later recovered as well. Along with these narratives of women being victimised by the invaders, there were also a lot of stories of women committing suicide or being killed by their own relatives when they feared that they might be abducted by the invaders. This fact has been reported by Sharma in his memoir while describing a situation when the Mirpuris were attacked by the invaders. He narrates: 'Soon poison was distributed to the women to end their lives and not to fall into the hands of enemy. Many who didn't get the poison were done to deaths with swords by their fathers and brothers' (Sharma, 2010).

The most common reason for the women to resort to suicide or killing by their own family members were to protect their honour.

3.2.5 Community Bonds

Being a very close-knit community, they came to be emotionally attached to each other – with almost everyone knowing everyone else. Finding themselves in a relatively alien culture and land, they felt the need for bonding as mutually beneficial and found ways and means to maintain it. At least during the first two generation, they were able to hold on to a strong sense of community by emphasising on three things: first, marriage within the biradari (community), second, the use of Mirpuri language and, third, invoking a strong sense of obligation to share the moments of grief and happiness of every member of the community by everyone else.

Upon their arrival in Jammu after 1947, most of the individual members of the families continued to maintain their language, food habits and dressing patterns. Later they also mixed with the local community and due to the acculturative pressures, many of them were forced to abandon their traditional habits. It is seen that usually the community which needs to adjust in the new environment has to part with some of their own unique patterns of living. The Mirpuri community tried hard to preserve some of their earlier practices but some members of the older generation did express regrets, especially with respect to their language, that the younger generation is not particularly concerned about speaking their language.

According to Rajeev Chunni, 'We will never be able to maintain our culture and language. The language bears the first brunt of displacement.' According to Dharamveer Gupta, 'Our language is sweet whereas the Dogri language is harsh. We regret that our youngsters, my grandchildren, cannot speak Mirpuri.'

The respondents felt that the younger generation of the Mirpur community has been speaking the local language partly because it needs to survive in this environment where the majority speaks the Dogra language, and to maintain social and economic ties with them, it is all the more necessary to do so. Marriage of their children in Dogra families, in some areas, has also resulted in the children speaking the Dogra language. Further, since in the present globalised world, most of the education takes place in Hindi or English, young children are learning to speak those languages more. There is a general decline in the number of parents speaking their native language with their young ones. Despite this fact, the respondents felt that they were able to keep many of their cultural patterns intact for some time but these are being lost with the passage of time and because older family members, that is, those who came from Mirpur surviving the partition carnage, are now few in number.

However, despite the discontinuity in spoken Mirpuri, there have been other ways in which the sense of community has been kept alive. All the respondents reported visiting their places of worship at least annually during the time of their (*Biradari's mel* means congregation of the clan). They visualised this as a means through which they could connect with their roots. They were glad that the younger members of their lineage also participated in these with enthusiasm and believed this would ensure cultural continuity to some extent.

Another tool that was adopted to measure cultural continuity was related to the maintenance of strong community ties. It was evident from the fact that the researchers had absolutely no problem in approaching the sample respondents for this study since each one of the respondents gave names of many members of their community who would be surprisingly so willing to participate in the study with great enthusiasm. The author had never witnessed such enthusiasm among the respondents earlier in her research career. The use of snowball sampling technique, thus, enabled me to reach the respondents with much ease. The social ties have been so strong that this community has a directory of all members of their community along with up-to-date information about their families and data relating to their residence, occupation and contact numbers. As mentioned earlier, this document also proved to be invaluable for sampling. This directory has been prepared by C. P. Gupta and has the unique distinction of being one of its kinds (*Daily Excelsior*, July 2012).

The respondents reported that earlier they preferred solemnising marriages of their children within the community but now, due to various reasons, marriages are being arranged with Dogra families also. They, however, believed that their cultural traits (customs and traditions) were different from the Dogras. The Dogras were seen as more conservative, being less in favour of women's education and employment. They felt that Dogra families accorded lower status to women (having veil, etc.) as compared to that accorded by Mirpuris.

Most of the respondents we interviewed were aware of the weekly programmes on radio in the Mirpuri language, which they found was playing an important role in making the members of the community, especially all the younger ones, aware about its cultural heritage.

The celebration of Balidan Diwas on 25 November every year was also highlighted in the media which helped the community gain its identity in society.

The ethos of the 'Mirpuri' life has been more or less sustained by maintaining the close-knit character of the community. Most of the Mirpuris resettled en bloc in one neighbourhood, whether

it was Delhi, Jammu or any other town of the state. In Delhi, it was in Amar Colony that most of the displaced from Mirpur got settled. In Jammu, it was in Rehari Colony and New Plot that they were relocated. Living together, they could not only provide emotional support to each other but also provide a sense of community to themselves. The other thing that helped them sustain their identity in the beginning was the continuity of Mirpuri as the spoken language of the displaced. However, what was the most crucial factor which kept them quite closed-knit community was the practice of marrying within the biradari. Even decades after being displaced from Mirpur and residing in Dogra-prevalent culture, when they have no problem in marrying their daughters with Dogras, they emphasise that even now their first preference in choosing a match for their children, remains Mirpuri, second preference is Punjabis and third Dogras.

The elderly generation of the Mirpuris who were located originally in Mirpur and faced the sufferings of dislocation find lot of comfort in the idea of community identity. For them in their moment of crisis, what helped them cope was the knowledge that they were not alone in that situation and that there were others like them and in the hours of their need, the whole community will be with them. As Virender Gupta (2005) says, 'They [Mirpuris] were left to the mercy of god to make both ends meet.' In that situation the community bonding was the most important support structure for them. The older generations of the community therefore used to take pride in the fact that their community is really well knit and unlike the other communities its members are always available for empathising with one another '(they are there to share each other's joys and sorrows).' 'This was actually the situation,' stated one Mirpuri respondent sharing her experience of growing up as a 'Mirpuri'. She continued: 'More than the marriage, it was during the sickness and death of a member of the community that brought all the members of the community together. Every member of the family felt obliged to visit the sick in the hospital or gather during the death ceremonies.' It is in this context that one can understand Gupta lamenting that this community bond is relatively weakening now. In his words, 'The main crisis before these refugees is loss of their identity and culture.' Like him, many elderly members of the Mirpuri community show anxiety over the gradual loss of Mirpuri identity, particularly, the language.

3.3 MOVING ON

3.3.1 Positive Orientation of Displaced Mirpuris

It came out clearly from our study that the displaced Mirpuris had overcome the initial trauma of displacement and had finally moved on – keeping the bitterness of the moment of their

displacement in their 'community memory' and yet 'moving on' in a positive manner. There are now only a few persons of that generation who had survived to narrate their oral tales of the period of their struggle – the period of their displacement and early efforts at rehabilitation. The 'fall of Mirpur' was directly experienced by 11 respondents of the study, all of whom were between 68 and 85 years of age. At the time of the tragedy, in 1947, some of the respondents were in their early preschool years while a few were adolescents.

Talking to them one can find that certain incidents, particularly those reflecting violence and other related trauma, now appear to be etched in the mirrors of their minds and come back frequently to haunt them, especially on certain days (like birthdays of their lost relatives or on 25 November, the day of the so called 'Fall of Mirpur'). This can be illustrated from the small details pointed out to us by the respondents while referring to the 'initial moments' of their distress. For illustrative purpose, the following part of Dinkar Raj Gupta's statement is important:

On that day, at nearly 2 p.m. after the attack, D. C. Rav Rattan Singh along with the army and treasury flew from Mirpur. At 4 p.m., the people also started moving out from there. Kabalis attacked the Hindu localities with the help of troops. In the meantime, the RSS [Rashtriya Swayamsevak Sangh] volunteers killed three Kabalis and their dead bodies were kept in the city in front of people which incensed the rest of the invaders and led to riots.

The journey of their migration from Mirpur and the subsequent stay in Alibeg camp have been vividly documented by one of the survivors of the tragedy, Bal Krishen Gupta, in his published book. *Forgotten Atrocities: Memories of a Survivor of the 1947 Partition of India* (2011). He has also recorded experiences of several other survivors now residing in Jammu and Delhi.

A majority of our respondents reported witnessing intense violence. They were personal witness to the killing, looting as well as abduction, mostly of women. Several respondents also reported separation and selective killing of their close family members. Some of them were later reunited with their relatives, while for others, whereabouts of their close kin are still unknown and their memories of those kin still keep on haunting them. One of the respondents, while narrating his experience, revealed that his sister was kidnapped by the Kabalis while his parents were killed in Alibeg camp. He said,

I was also in Alibeg camp and left all alone, crying. I was exchanged for Muslims on Suchaitgarh border on the order of Government of India. I was saved but there was no meaning in my life without my family. After a few days,

the Red Cross rescued some girls from Muslim families; my sister was also released and we got her back.

Another respondent (not an eyewitness) reported that his grandmother (maternal) told him that his grandfather was shot dead by his maternal uncle, as the former was not able to run owing to a handicap and he did not want to be killed by the raiders. He told his own son to kill him. Yet another respondent narrated the story of his grandmother who insisted on waiting for her son even though other family members urged her to leave as the raiders were nearby. The family members had to leave her alone at the mercy of raiders while they ran for safety.

Most of our respondents stated that these kinds of events stirred up great anxiety in their minds at that time and even now disturb them. They said that they had become more anxiety prone although time has acted as healer in this context. However, they also expressed overt enthusiasm in narrating the experiences owing to the feeling of catharsis which speaking up about their sordid experiences produced in them.

However, despite these memories, most of them seem to have moved on. As soon as their accounts of their suffering during the time of displacement were over, they would shift to more positive stories of their rehabilitation. It was very clear that they were not either individually or as a community stuck with the moment of their anguish. With a very positive outcome of their struggles, they were more enthused about their sense of achievement in having successfully rehabilitated themselves.

There were many other ways one could see how they had moved on. The next section is focused on this process of their moving on.

3.3.2 Attitude towards Mirpur Muslims

One factor which clearly reflects that the Mirpuri community has moved on positively after their displacement is their perception of Muslims. Despite their sufferings and painful memories of 1947, the respondents did not show a sense of resentment towards the Muslims. Mirpur was originally inhabited by 80 per cent Muslims. The rest 20 per cent were Hindus including Sikhs. Most of our respondents informed us that the Muslim community existed in harmony with other religious communities and had friendly relations with Hindus. In the words of one respondent, Ajay Kumar Gupta, 'Those people [Muslims] were showing utmost affection for us.' 'We had socio-economic relations with them. We were doing business with them,' he continued. 'We became victims of administrative tussles. We used to live like brothers and used to cooperate with Muslims in all spheres of life,' said Bimla Gupta.

The respondents of this study clearly stated that there were no frictions between communities before the moment of communal violence in 1947. Dinkar Raj Gupta said, 'Muslims used to work at our home till 1947. Everything was alright till the time they assaulted our dear ones. They burnt my maternal grandfather alive.' The respondents believed that the wave of hatred that spread between Hindus and Muslims specifically during partition was responsible for disturbing the good relations between communities. The communities (both) were perceived as being innocent. According to one of the respondent namely Sh. B. K. Gupta,

Majority of Muslims in POK became the victims of the situation. They have nothing to do with border and politics. Otherwise, they were quite sensitive towards the Hindus. In Mirpur district, there is a temple of Lord Shiva which is still preserved by Muslims.

However, we came across a few respondents who were entirely disturbed by the events and had become bitter. Joginder Gupta who was personal witness to violence thus stated:

Hindus and Muslims used to live like brothers. I still remember I had many Muslim friends in school and we used to visit each other's houses. The scenario changed after 1947, when roles reversed, although we did get some help from them. I don't want to visit Pakistan because my entire family, my loved ones died in front of my eyes. I don't want to see those people again.

But not everyone is so bitter. Most of the respondents showed the understanding about the compulsions of the other community. K. D. Sethi (n.d.) said:

Local Muslim people, like Hindus, were culprits for these riots. Their mind was poisoned by invaders. People have nothing to do with border. They are poor people striving for their lives. These are all political issues. Common people just want to live in peace.

Dharamveer Gupta stated, 'We had good relations with Muslims but these religious riots finished all relations.'

Overall, the responses revealed that respondents believed in the goodness of the members of the other community and blamed the circumstances and the prevailing political ideology for the happenings. The common masses suffered due to the political decisions of that time, but as we could judge from the prevailing opinion of our respondents now, people were not the passive recipients of circumstances but they constructed their own meaning of the situations (active cognitive structuring) and their naïve theories about the events led them to draw interpretations which affected their future life course.

3.3.3 Divided Families and Moving On

Generally speaking, the Mirpuris do not claim to be part of the divided families across the LOC. But during our field research we heard many stories about their relatives being left back while they moved out of Mirpur. They informed that it was an utterly chaotic situation when the disturbances started. Hence, many of them were dispersed in different directions. There were many people whose whereabouts were not known even to close family members. Many of the respondents reported meeting their family members in camps in India but a few reported that they have still not been able to trace their loved ones.

There were also a few examples of separation and meeting of a few individuals after long periods of time. Verbal narratives of these heart-moving scenes of reunion of close relatives are etched in the memory of the elder members of the community and are passed on from generation to generation. These narratives, as our research team found out, had also become ingrained in the cultural repertoire of the community.

The following are some of the narratives that we recorded during our field study:

- Ved Prakash Gupta had four sisters, all of whom were left in Pakistan. After a gap of a few years, he started living in Delhi. Meanwhile, one of his sisters solemnized her marriage with a Major in Pakistan army and they came to stay in the UK. After some time, both Mr. Gupta and his sister came to know about each other and after few months they were able to meet. His sister's two children were very happy to have discovered their maternal uncle.
- One Sikh person (now living in Digiana) was left behind at Alibeg camp and he could not immediately join his family in Jammu. While stuck in Pakistan, he was pressurised by invaders to change his religion but he refused to do that. In order to be accepted by the local people, he offered to teach Muslim children. By some means that Sikh fellow escaped the camp and reached the Indian side. However, after reaching this side, he could not trace his family. He later came to know that his wife and children were left behind. After some years, he learnt that his wife had converted and had solemnised marriage with a local Muslim and was working as a nurse there.

What was most interesting about these narratives was that these were told to us without any bitterness or remorse. The respondents who narrated these stories were quite full of empathy both for those who came to the Indian side and lost relatives on the other side as well as those who were left behind and had now become part of another country or

another religion. They referred to these stories as part of the situation and human beings caught up in that situation. The way they narrated these stories was a clear reflection that they had moved on and were no more stuck in that situation.

3.3.4 Response towards Peace Process

Another factor that reflects the fact that the displaced Mirpuris have moved on is their response towards the peace process. There are two factors which are linked with their response towards the peace process. Of these one relates to the disillusionment with the idea that POK would be reclaimed by India and they will be able to go back and reclaim their land and property, at least during their lifetime. Most of them feel that since this has not happened in the last six and a half decades, it is no good to keep on waiting for it to happen in the near future as well. On the contrary, they see much happening in the ongoing peace process. In fact, the peace process has given them a sense of hope that something would come out of it for closing their unresolved problem of resettlement and rehabilitation. They may not be able to go back and reclaim their property, but they may get some settlement once the peace is negotiated. That is the reason that they stake their claim in the peace negotiations. Our respondents stated that they were keenly observing the peace process and wanted to know through their leaders if they are being made party to the negotiation or not.

Peace process, therefore, was a very positive development for Mirpuris because in this process they see a dynamism out of the status quo in which they have been stuck. Throughout our study, we found that the Mirpuris were frustrated with the whole issue of the settlement of their claims of property and they found that they had become unwittingly the victims of the conflict between India and Pakistan. They could not claim their rights because of the maximalist position being taken by both the countries. However, with the peace process, they have become hopeful that they can come out of this stalemate, and in the process of resolution of conflict, their issue would also be resolved.

In another way, the displaced Mirpuris are positively oriented towards the peace process. It is linked with their desire to trace back their roots and visit their homeland. It is in their nostalgia for homeland that one can understand their orientation towards the peace process.

3.3.5 Nostalgia for Homeland

The homeland, the native place where a person has spent initial years of his/her life, continues to hold attraction to everyone. The attraction increases manifold in this context when one

has been forced to move out of the native land involuntarily. According to the famous Lewin's field theory, the positive value of a positive field increases as we move away from it while the positive value of a negative field decreases. The remarks of respondents of this study revealed that the original city of Mirpur was still held in good light in the cherished memories of that place. Rajeev Chunnai while describing the conditions of his parents who had survived the Mirpur tragedy and were settled in Jammu said:

My parents suffered mental trauma on this account. They used to wonder whether they would ever be able to go back to the places where they had spent their childhood in play and from where they came.

He further stated, 'My parents died dreaming about their land and home and people lost. My father, even on his deathbed kept saying that he could visualise Mirpur. He said, "I want to go back to Mirpur."' Another respondent, Bimla Gupta, stated that she planned to visit Pakistan as well as POK so that she could bring some mitti (soil) of Mirpur here.

The respondents (direct witnesses) described Mirpur in exquisite details to the research team as if by verbalising the place, they would be able to relive the experiences of being there. There were, however, also a few respondents who did not wish to go back and remember Mirpur for the negative experiences (loss of loved ones, property, etc.) that they had suffered at that time. One respondent wanted to visit POK only as a tourist but without any emotional attachment. But on the whole there were positive memories of the place and most of them wanted to revisit it.

This feeling of nostalgia for the place has been intensified in the more recent period. More specifically, since the opening of roads on the LOC and the starting of the weekly bus service between Poonch and Rawlakot (and Uri and Muzaffarabad), there has been an increased urge to visit Mirpur. However, such an urge is also associated with a feeling of disappointment that they would actually never be able to see their 'own' Mirpur, for the reason that this town has been submerged in the Mangla Dam and a new town of Mirpur has been constructed instead. However, despite this knowledge that the town that they had left behind is no more there, the desire to go back and visit it continues to remain strong among the Mirpuris.

Despite the strong urge to visit Mirpur, very few Mirpuris have been able to do that. The main reason for this has been the practice of allowing only those people to go across the LOC who are part of divided families. Since the reason of most of the Hindu Mirpuris wanting to visit the place is that they want to trace their roots rather than meet members of their divided

families like their Muslim counterparts, they are not able to get the required permission for that. But many of our respondents stated that given the permission they would certainly like to avail the opportunity.

3.4 CONCLUSIONS, RECOMMENDATIONS AND SUGGESTIONS

3.4.1 Concluding Remarks

Based on the discussion, the following concluding comments can be made:

In human beings, unlike animals and birds, migration does not merely imply physical movement of people. The moving people also carry with them a socio-cultural baggage containing their identity, values, beliefs, food habits and language, apart from their customs and traditions (Jayaram, 2004: 16). Emotionally too, these migrants may carry with them 'the myth of return' (that is, physical and mental contact with their homeland). The factor responsible for migration (voluntary and involuntary) influences the future course of adaptations of the migrating community.

Displacement and relocation have been significant independent variables affecting the life course of the community studied in the present research. The experiences of the Mirpur tragedy narrated by the witnesses of the event revealed its deep-rooted effects on their personality and psycho-social well-being.

At the social level, the respondents seemed to have gone through a difficult phase of accommodation to a new set of social and cultural values and their experiences of the acculturative mechanisms revealed that the community, while trying hard to remain rooted and maintain its identity (a perspective on identity has been presented in Annexure 3A.2), also adopted the cultural patterns of the dominant community (Dogras) to be able to live peacefully in the new environment. It still tries hard to maintain the delicate balance. The elders seemed to be more concerned about maintenance of their original cultural traditions while the younger generations appeared to have lost that concern to a large extent, given the background of universal globalisation and changes in the attitudinal set of values of the youth.

This difficult process of adaptation, though found to be stressful, also led to certain positive developments according to the respondents of this study. This included increased beliefs in values related to hard work, ability to survive in adverse circumstances, courage, hope and increased self-esteem. The community members felt that this experience also helped their community to grow even closer bonds and interact at a

different social plane. It gave rise to a 'we' feeling among the members which the research team noted to be quite peculiar. The elders of the community also felt it gave rise to a feeling in them that they should give back something based on their experiences to their community

The respondents (several being community leaders among them,) revealed a perception of lack of administrative support for rehabilitation and settlement of their claims. They were quite disappointed with the treatment they had received in their new place of settlement from the authorities. The major problem, it was revealed, was lack of a defined category about their displacement status. For all practical purposes and in all possibilities, they were sure that India would never be able to get back the lost land, so they wanted their group to be considered as 'refugee' and given all rights due to this group. They claimed to have submitted the papers for compensation of land and money (though we could not get copies of those documents) and they looked forward to financial compensation in addition to political and vocational rights. The border dispute among two countries has affected the lives of this community for the last 65 years. They have not been very vocal about the issue of their displacement, but due to the recent attention being paid on the issue of displacement in the wake of displacement of Kashmiri Pundits, they seem to have become conscious about the role and responsibility of the state.

3.4.2 Demands

The respondents of the study were asked to enumerate the major demands that they considered important so that these could be highlighted in this report. As per a respondent:

The central and the state government of J&K set upon different schemes to rehabilitate Mirpuris temporarily at different places. The POK refugees have not been compensated for their properties left behind in POK territory in 1947 even after a long time period of 65 years. They were and are still told that the POK territory will be retrieved and POK refugees will be sent back to their places.

'Due to displacement, we suffered a lot' is the most common refrain among the Mirpuris. They are not satisfied with the response of the state towards their rehabilitation. Their sense of discontent has been augmented during last few decades, especially after the migration of Kashmiri Pundits. The issue of exodus of the Kashmiri Pundit community from the Valley of Kashmir in the context of militancy attained a lot of political visibility. Both the Central and the state governments came forward to help the community in the process of its rehabilitation. The Central government, particularly, has

been consistently intervening and offering its help through financial as well as other packages for this community. It is with reference to the attention paid to the displaced Kashmiri Pundits that the Mirpuri community along with other displaced groups from POK has been bemoaning the negligible role of the state towards their rehabilitation. Comparing the two kinds of forced migrations, both due to the conflict situation, they blame the government for discriminating against them. They state that they have been facing neglect for the past 65 years and they were not given attention by the Central or the state government. Hence, one of their demands is that they should be given relief at par with the Kashmiri Pundit migrants.

In the perception of the respondents, the state government had not made any clear policy for their rehabilitation. In lieu of their rehabilitation, they argue, they have been given some token relief. Hence, other than some relief measures and small ex-gratia grant, they were not provided any serious measure of rehabilitation. No effort was made to compensate them for their properties, movable and immovable, left behind in POK.

Following are the specific grouses of the Mirpuris against the Government of J&K:

1. The Government of J&K created an authority titled Custodian of Evacuee Property to safeguard properties of those people who migrated to Pakistan in 1947 and were settled there permanently as citizens of Pakistan. While safeguarding their properties, the state government at the same time should have thought something about the people who left behind their properties in the territory under the occupation of Pakistan. They argue that the minimum which was required of the state government was that they should have created an authority to assess the properties of POK refugees left behind by them in the 1947 upheavals. This would have helped the government and the refugees in the valuation of the properties left in POK territory. The grievance of the respondents was that some of the records were generated by the refugees themselves and were submitted to the government, but nothing was done of these records either.
2. In 1982, the Government of J&K passed an Act in the Assembly titled Resettlement Act, 1982, by virtue of which people who had migrated to Pakistan and settled there as permanent citizens of Pakistan can come back and claim their properties. This was yet another blow to the process of resettlement of POK refugees, especially those who were allotted evacuated property. While ensuring the rights of those who migrated to the other side, the rights and claims of the POK refugees have not been protected.
3. On 13 June 2002, the Government of J&K brought out an official order SRO-215 by virtue of which the occupants (POK refugees who are temporarily occupying these petty lands for agricultural production) of the agriculture land shall pay 40 per cent of the produce to the custodian department to be calculated/assessed by an officer of the Agriculture department not below the rank of District Agriculture Officer and the refugees living in the custodian property houses as tenants for the last six decades shall pay 15 per cent hike above the original rent every year. This is considered as unjust by the respondents.
4. Most of our respondents felt that it is because of lack of their political representation that their genuine demands are not being met by the policy makers and the administrators. They argue that they along with other POK refugees are in a peculiar situation, being forced out of POK and not properly rehabilitated in this part of the state. This they argue is due to the fact that they do not form any political constituency of their own. They therefore demand special political representation. Their argument is that since there are 24 seats reserved for the POK in the state's Legislative Assembly, 8 of these seats should be reserved for them since they represent that part of the state. They also demand reservation for refugees in the Upper House. They point to the paradox of the politics of the state that while 24 Assembly seats are kept reserved for the POK area in the J&K Assembly, they (who are actually the residents of the area and present in the state) are not given any representation. 'What for are these reserved seats are?' they ask. They count their population out of the total population of POK as one-third and therefore demand a share of one-third of these reserved seats. Their demands thus include the demand for creating 'floating constituencies' or 'constituencies in exile' on the analogy of similar constituencies for Kashmiri Pundits. In the case of Kashmiri Pundits, even after their migration, they are treated as the residents of Kashmir and are allowed to vote in the constituencies of which they were residents before their migration. On similar lines, the POK refugees are also demanding that they being the original residents of Muzaffarabad, Mirpur, Kotli, Bhimber and Poonch, they should be allowed to vote for their original constituencies, provided the same are reserved for them.

However, the resentment of the respondents is not only towards the state government but also towards the Government of India. For the loss of human life, whether at the hands of Pakistanis or in camps under sub-human conditions, the Mirpuris hold the Government of India responsible. It failed to discharge its sacred duties towards its citizens. It failed to

protect them and their properties. They also hold the Central government responsible for not compensating them for the properties left behind by them in POK territory in 1947. Whenever this issue was raised with the Government of India, they were told that the POK territory will be retrieved and POK refugees will be sent back to their places to live in their own homes and hearths. These refugees were further told that payment of compensation at this junction would jeopardise India's case at the UN. The respondents questioned: 'Can we say with any stretch of imagination that Government of India will ever retrieve POK territory? Has our government enough capacity to achieve that goal?' Most of them were not happy that this argument of the Government of India has become the basis for delaying the most vital issue of compensation for 65 years now.

The grouse of the Mirpuris is that their status as displaced persons is not resolved. They are confused as to which category they belong – whether they are refugees, migrants, displaced persons or internally displaced persons? There are specific benefits for each category and only if their status is clearly defined can they claim the benefits entitled for that category. According to the respondents, Government of India is under an obligation to give them all such benefits not only on humanitarian basis but also on the basis of their being citizens of India.

Many of the respondents told us that they demanded one-time settlement package/compensation package. The state government even agreed to it and forwarded the case to the Central government but the Centre failed to approve it.

3.4.3 Recommendations and Suggestions

The following recommendations emerge out of the preceding discussion:

1. It emerged that the displaced community has suffered at various levels (economical, vocational, social and psychological) due to displacement. Although this study aimed at examining the setbacks at the latter two levels, since all aspects of life are interrelated, we found effects on other aspects as well.
2. The community has also suffered on account of its uncertain status – IDP or refugee. It is therefore in the fitness of things to devise measures to resolve this issue as an urgent measure.
3. Many of the demands of the displaced community (including that of compensation for land and money) are being actively considered by the government. Redressal of

their demands should be taken up as a priority measure. Advocacy in this regard can be undertaken by voluntary organisations.

4. The most important requirement related to these displaced people is about closing the case of their claims of property. Unlike the rest of the partition displaced, the POK displaced have not been duly compensated for the loss of their property.
5. This is one of the few studies undertaken to analyse the issues related to the displaced people of J&K. More indepth research studies are needed to document the effects of displacement on this community as well as other displaced communities due to the division of the state and establishment of the LOC.

ANNEXURE 3A.1: A NOTE ON METHODOLOGY

The present research exercise was based on qualitative phenomenological research design. The goal of qualitative phenomenological research is to describe the 'lived experience of a phenomenon'.

Context of the Study

The locale for the present research study was Jammu district in the state of J&K of India. Mirpuri families who had faced the 'fall of Mirpur' were identified from certain areas in Jammu city where they were allocated land as a rehabilitative measure by the Government of J&K way back in 1948. The areas from where the sample was drawn included Bakshinagar, Sarwal Colony and Janipur. These are the urban areas in the heart of Jammu city under the Jammu West assembly constituency.

Sample Group

Two sources of data (primary and secondary) were used for the study. The primary source included the Mirpuri respondents from the various groups. The core group for the study included the individuals in the age range of 40–100, the majority of whom were born in Mirpur (now in POK) and had survived the Mirpur holocaust. Most of them had suffered the loss of their loved ones, property, etc., during this unfortunate happening. This group also included members of the first generation as direct witnesses.

The second group comprised the descendants of the core group respondents (present generation) between the ages of 10 and 30 (adolescents and young adults) who had no direct experience of the Mirpur tragedy and had only learnt about it from their elders and through sources such as media.

Details about the respondents are presented in figures below (Figs 3A.1.1–3A.1.6):

In addition to the above, community leaders and opinion makers were also interviewed in order to form the framework

for the research and to delineate important information relating to the event. Secondary sources included the print material available as published research studies, books and articles on the internet.

Fig. 3A.1.1 Age group of eyewitnesses and first generation

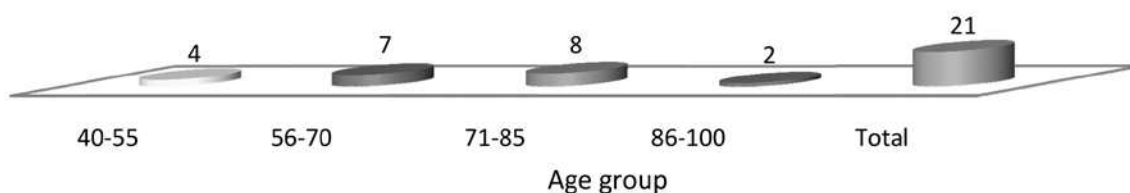


Fig. 3A.1.2 Sex of eyewitnesses and first generation

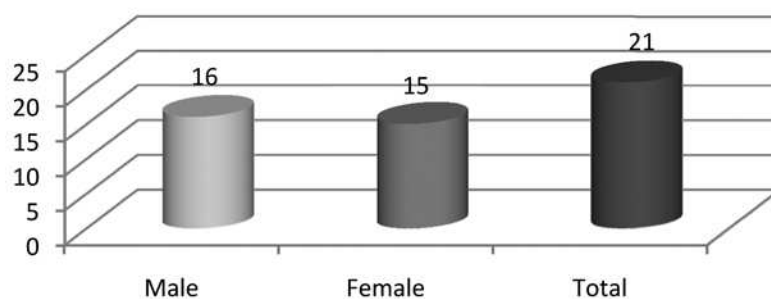


Fig. 3A.1.3 Respondents who witnessed partition

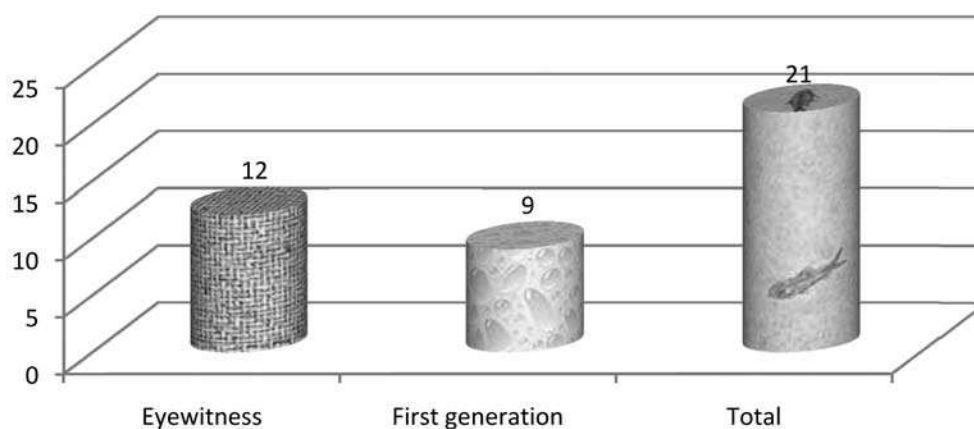


Fig. 3A.1.4 Age group of the present generation

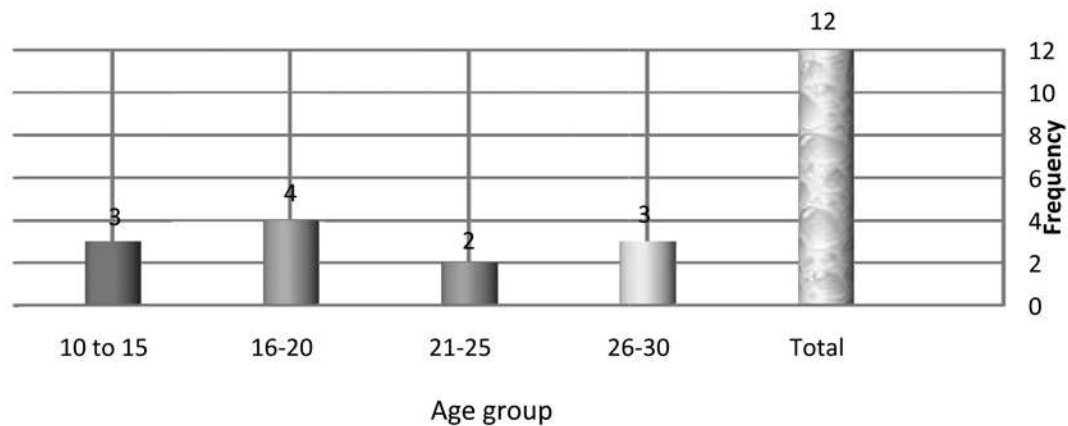


Fig. 3A.1.5 Sex of the present generation

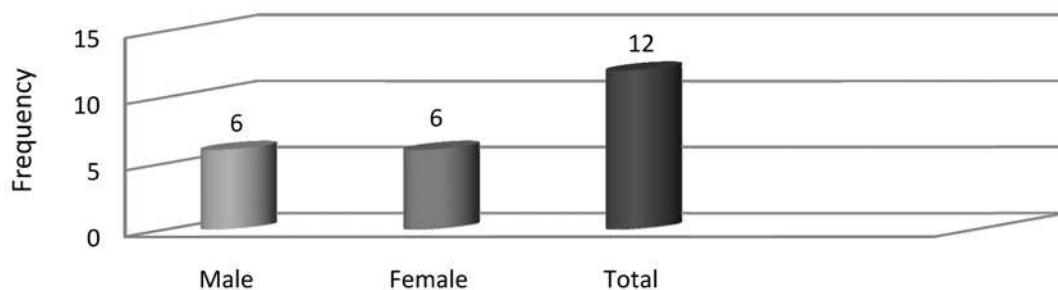
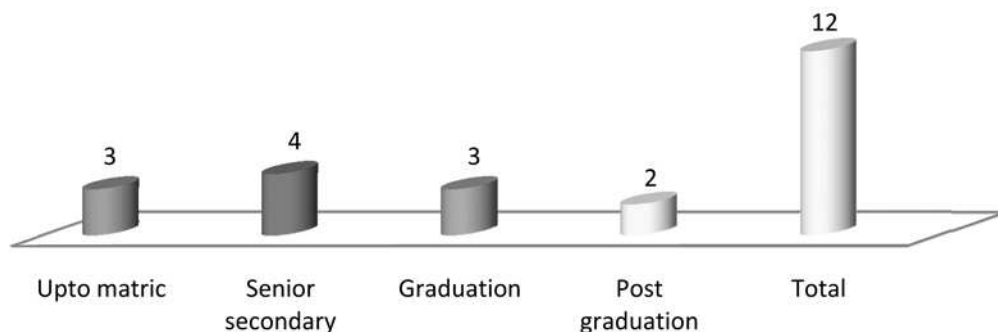


Fig. 3A.1.6 Educational status of present generation



Sampling Procedure

The core group respondents were selected through snowball sampling from the above-mentioned areas. Since the community of Mirpuris is very closely knit, it was very easy to get the reference

of other Mirpuris in the locality from those who were approached for their consent. A directory containing names of members of the Mirpuri community also came in handy since many respondents were identified through that directory. Purposive sampling was done for other two groups since the families of the present

generations of the core group were chosen depending on their availability and consent to participate in the study.

Data Collection

At the time of data collection, extra efforts were made to encourage the participants describe their lived phenomenal experiences. The researchers tried to be as non-directive as possible in conversations. However, the participants were encouraged to give a full description of their experiences including their memories about the events, subjective feelings associated with the happenings, their thoughts, sensations and images.

It was seen that the elderly respondents, especially those who had migrated from POK in 1947, really looked forward to sharing their experiences with the investigators. It was as if they wanted to open up, speak about their repressed memories and get some emotional relief. Clarifications were sought for certain issues, wherever the need was felt. The researchers visited individual homes for recording the interviews several times after the initial period of rapport formation. The interviews were recorded verbatim by a research team member when another was in the process of conversation with respondents. The data was collected during April–June 2012. The interview method was used for the respondents in the age group of 40–100 years, while for the present generation of respondents (10–30 year old), it was seen that interview was not a very convenient method of getting information from them owing to their unavailability due to studies. For them the questionnaire method was used in which they were given a structured questionnaire personally which was collected at a later date as per their convenience.

The borders dividing these countries are markers of past bitter history, current separate, distinct and independent existence, and the sign of the territorial integrity/disintegration of these states. The bitterness of the past, the lack of mutual confidence at present, the security concerns of all these states, while at the same time the existence of a thousand and one linkages make the South Asian borders unique, both spatially and metaphorically, and it also makes this space or borderlands more complex. These spaces bear within lines of hatred, disunity, informal connections and voluminous informal trade, securitised and militarised lines and heavy paramilitary presence (Banarjee and Chaudhary, 2011).

ANNEXURE 3A.2 A NOTE ON PERSPECTIVES ON IDENTITY FORMATION

Identity formation, also called individuation, is the development of the distinct personality of an individual regarded as a

persisting entity. This process defines individuals to others and themselves (www.wikipedia.com). Identity may include a sense of personal continuity, distinctness from others and a sense of affiliation. Identity encompasses many different facets in one general term, including gender, social, ethnic, cultural, religious and political aspects. Identity formation or answer to the question “who am I?” is especially pertinent during adolescence (www.actforyouth.net). Erikson acknowledged that identity issues could arise throughout the course of life but saw this process of identity formation as the critical developmental task of adolescence (Erikson, 1968).

The term ‘collective identity’ is a sense of belonging to a group (the collective). It provides a sense of security and satisfies the belongingness needs of the individual. Both individual and collective identity are developed in interaction with significant persons in the environment, including parents, family members and members from settings such as school, neighbourhood and other social settings. Erikson and other psychologists (Sudhir Kakkar, James Marcia) described in detail the various processes that affect the formation of identity during the course of life.

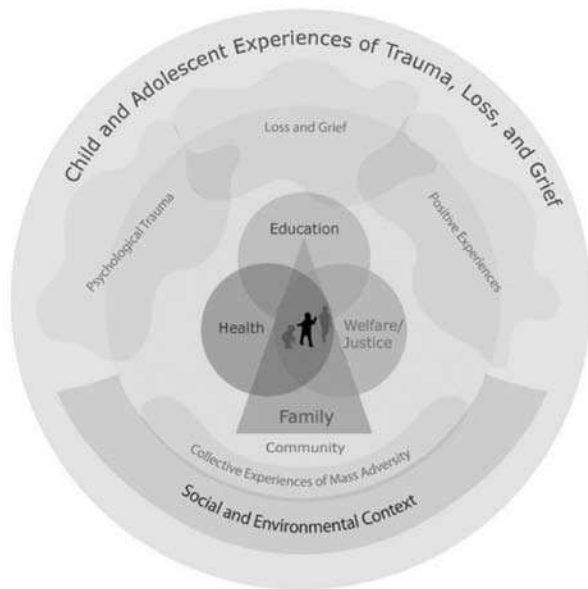
Erikson described adolescent identity exploration as a crisis of identity versus identity diffusion when faced with situations having conflicting features. Research indicates four mechanisms to integrate one’s ethnicity into their larger sense of self in a multicultural context. These include assimilation, marginalisation, separation and biculturalism (Phinney, 1990). The last one is typically an adaptive approach used by many young people whereby they adopt traits from different cultural groups to integrate those in their personality.

Ecological system theory, also called ‘development in context’ or human ecology theory, specifically postulates the role of environment in shaping the life of an individual. According to Urie Bronfenbrenner (1979), the Russian psychologist, who proposed this theory, there are five types of nested environmental systems with bi-directional influences within and between the systems. These systems are illustrated in Figure 2AII.1). From this approach, then, the aim of this research study is to examine the specific contextual forces in the environment of the selected group which have shaped their lives in a developmental perspective.

From a social-psychological perspective, it is well documented that traumatic experiences lead to a feeling of loss and other associated emotions. Loss can be defined as the most fundamental human experience that underlies many emotions which could range from negative to positive. Loss is generally associated with stress and anxiety and is even known to affect the mental health of victims. Such effects result from

major losses such as loss of home, employment, loved ones, possessions or loss of one's identity.

Fig. 3A.2.1 Ecological System Theory



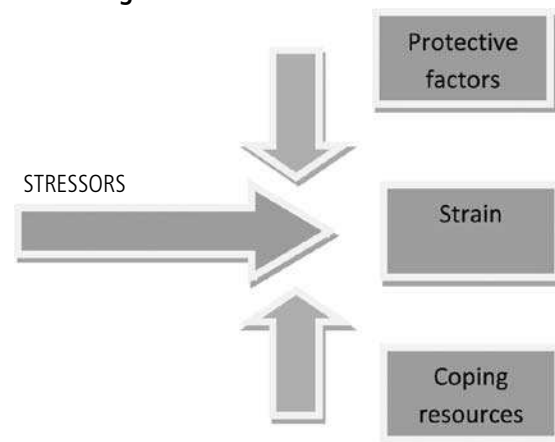
Source: http://www.earlytraumagrief.anu.edu.au/sites/default/files/L500_20.jpg

According to Harvey (1996), such losses can lead to unresolved degrees of grief throughout adult lives and several events or days bring reminders of those traumatic losses which lead to a sense of anguish. Many research studies have documented the impact of forced migration on the mental health of individuals. In one such instance, it was seen that among internally displaced Kurdish women in Turkey, forced migration significantly affected their mental health status (Gilsen et al., 2010).

There is a broad range of stressors which can impact during the phases of experiences of forced migration. Stressors (the experiences of events such as violence, separation, displacement) lead directly to strain (conceived of in psychological or broader psychosocial terms). There is some evidence in support of this very simple conceptualisation (www.forcedmigration.org). However, the relationship is very complex and can be seen in model below (Fig. 3A.2.2):

The above figure suggests that the relationship between events and well-being is affected by the operation of protective factors (such as social support, financial status and education level in case of forced displacement) and coping resources (assets, positive self-esteem, motivation, etc.) Evidence for this theoretical model has been made available by Punamaki's

Figure 3A.2.2 Relationship between Events and Well-being



work (1990) on Palestinian women. Having access to a shared framework of understanding oppression and violence – be it political, religious, social or ethnic – appears to have a powerful protective influence in many settings (Bettelheim, 1983).

Another expanded model illustrates the role of psycho-social factors which serve to protect individuals from the full potential impact of stressors and serve to restore and strengthen the individuals wherever possible (Fig. 3A.2.3).

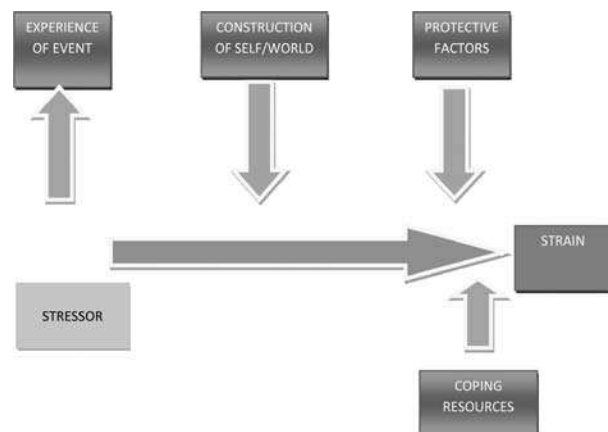


Figure 3A.2.3 Stressor– Strain Model

Source: Agar (1993).

Drawing from the above, the present research has been conceptualised on the premise that people are not just passive recipients of the contextual forces. They actively interact with the psycho-social environmental forces to draw the meaning of their lives. Incorporating the Piagetian perspective (Elkind, 1976) in this model, it may be inferred that the individuals affected by border disputes similarly have been cognitively restructuring their context to make a living and they ought to be seen as equal partners in making sense of the issues concerning their lives.

References

- Ballard, R. 1991. 'The Kashmir Crisis: A View from Mirpur', *Economic and Political Weekly*, 26 (9/10): 513–517.
- Banarjee, Paula and Anusua Basu Ray Chaudhury. 2011. 'Introduction: Resistance in the Borderlands' in Paula Banarjee and Anusua Basu Ray Chaudhury (eds), *Women in Indian Borderlands*, pp. xv-xxv, New Delhi: SAGE.
- Bettelheim, B. 1983. *Freud and Man's soul*, New York: Alfred Knopf.
- Bose, Sumantra. 2005. *Kashmir: Roots of Conflict Paths to Peace*. Harvard University Press, Massachusetts, UK
- Castles, F.G. 2003. 'The World Turned Upside Down: Below Replacement Fertility, Changing Preferences and Family-friendly Public Policy in 21 OECD Countries', *Journal of European Social Policy*, Vol. 13, pp. 209. Available online at <http://esp.sagepub.com/cgi/content/abstract/13/3/209>.
- Chandran, D. S. 2007. 'The Forgotten People of Jammu and Kashmir: "Refugees" from POK'. Institute of Peace and Conflict Studies. Available online at <http://www.ipcs.org/article/india/the-forgotten-people-of-jammu-and-kashmir-refugees-from-pok-2182.html> (accessed on 16 February 2013).
- Cohen, R. and Deng, F.D. 1998. *Masses in Flight: the Global Crisis of Internal Displacement*. Washington, D.C.: Brookings Institute Press.
- DasGupta, S. 2011. 'Renegotiating Internal Boundries by Women of Jammu and Kashmir'. In P. Banarjee and Anusua B. R. Chaudhary (eds), *Women in Indian Borderlines*. New Delhi: SAGE.
- Erikson, E. 1968. *Identity: Youth and Crisis*. New York: Norton.
- Elkind, David. 1976. *Child Development and Education: A Piagetian Perspective*. Oxford: OUP.
- Giilsen, C., J. Knipscheer and R. Kleber. 2010. 'The Impact of Forced Migration on Mental Health: A Comparative Study on Posttraumatic Stress among Internally Displaced and Externally Migrated Kurdish Women', 16 (4): 109–116. SAGE Publications.
- Gupta, B. K. 2011. *Forgotten Atrocities: Memoirs of a Survivor of the 1947 Partition of India*. North Carolina, U.S.A.: Lulu Enterprises, Inc.
- Gupta, C. P. 2012. 'A Social Document of Mirpur Mahajan Families.' *The Daily Excelsior*, Sunday, 15 July, p. 4.
- Gupta, V. 2005. 'Refugee in J&K: A Hapless Lot' *The Daily Excelsior*, 11 September.
- Karim, Afsir. 1994. *Kashmir: The Troubled Waters*. Lancer Publisher, Gautam Nagar, New Delhi.
- Hasan, K. 2009. 'Mirpur 1947 – The Untold Story'. Available online at <http://www.khalidhasan.net/2007/03/16/mirpur-1947-%E2%80%93-the-untold-story/> (accessed on 16 February 2013).
- Hassan, Khalid and Rehmatullah Rad. 2004. *Memory Lane to Jammu*. Lahore: Sang-e-Meel Publications.
- Harvey, J.H. (1996). *Embracing Their Memory: Loss and the Social Psychology of Story-telling*. Needham Heights, MA: Allyn & Bacon.
- Inter-agency Standing Committee. June, 2010. Handbook for the Protection of Internally Displaced Persons. Available online at <http://www.unhcr.org/refworld/docid/4790cbc02.html> (accessed on 11 February 2013).
- Jayaram, N. 2004. 'Introduction: The study of Indian Diaspora'. In N. Jayaram (ed.) *The Indian Diaspora Dynamics of Migration*. New Delhi: SAGE.
- Joshi, Manoj. 2008. *Kashmir 1947–1965: A Story Retold*. New Delhi: India Research Press.
- Maini, K. D. 2010. 'A Town Not Now on Earth', *Daily Excelsior*, March 14.
- Mehta, Krishna. 2006. *Kashmir 1947: A Survivor's Story*. New Delhi: Penguin Global. ISBN0-14-400017-2.
- Phinney, J. S. (1990). 'Ethnic Identity in Adolescents and Adults: Review of Research', *Psychological Bulletin*, 108: 499–514.
- Punamaki, R. 1990. 'Impact of Political Change on the Psychological Stress Process among West Bank Palestinian Women', *Medicine and War*, 6: 169–181.
- Puri, E. 2007. 'Community Identity and Its Paradoxes—Mirpuris in Jammu City', *The Human Rights Journal of Jammu and Kashmir*. Available online at <http://www.humanrightsjournal.com>.
- Rai, Mridu. 2004. *Hindu Rulers, Muslim Subjects: Islam, Rights, and the History of Kashmir*. United Kingdom: C. Hurst & Co Publishers.
- Rao, K. V. Krishna. 1991. *Prepare or Perish: A Study of National Security*. Delhi: Lancer.
- Sethi, K. D. n.d.. 'Kashmiriat and the Illusion of Kashmiri Independence'. Available online at www.hardnewsmedia.com/2006/09/580.
- Sharma, R. C. 2010. 'Mirpur Massacre of 1947', *The Daily Excelsior*. Available online at <http://www.dailyexcelsior.com/web1/10nov25/edit.htm#3> (accessed on 16 February 2013).

Urie Bronfenbrennis. 1979. *The Ecology of Human Development: Experiments by Nature and Design*. Cambridge, MA: Havard University Press. ISBN 0- 674- 22457- 4.

UNHCR. 2008. *Handbook for the Protection of Internally Displaced Persons*. Available online at <http://www.unhcr.org/4c2355229.pdf>.

UNHCR. 1997. *'The State of World's Refugees 1997-1998: A Humanitarian Agenda. Oxford'*. Oxford University Press for United Nations High Comissioner for Refugees.

Zutshi, Chitralkha. 2004. *Languages of Belonging: Islam, Regional Identity, and the Making of Kashmir*. C. Hurst & Co. Publishers, United Kingdom.

CHAPTER 4

A Study of West Pakistan Refugees in the State of Jammu and Kashmir

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4.1 WEST PAKISTAN REFUGEES IN J&K – INTRODUCTION

4.1.1 Background

West Pakistan ‘refugees’, as they call themselves, are the victims of the partition holocaust of 1947, who came during partition from various districts of pre-partition West Punjab bordering the State of Jammu and Kashmir (J&K) and settled in the border districts of Jammu, Samba and Kathua. Numbering over 1.5 lakh, they are living in the State of J&K for the past 65 years. Why they are actually not refugees has been analysed in the later part of the study; however, for the sake of convenience, they are referred to as refugees in the present study as they are popularly known through this terminology. Officially, due to disputative status leading to ambiguities of border demarcation of the State of J&K, they along with those who migrated in 1965 and 1971 are called displaced persons (DPs).

In 1947, Maharaja Hari Singh, the ruler of the State of J&K, relinquished power in favour of Sheikh Mohammed Abdullah after he signed the Instrument of Accession to the Union of India. It was the peak time of migration from Pakistan-occupied Kashmir (POK) and West Pakistan towards the State of J&K. However, the government of J&K considered it its responsibility to rehabilitate the refugees from POK and took some concrete measures in this respect, but the refugees from West Pakistan (Punjab) have felt ignored by the State mainly due to the reason that unlike the POK refugees, the West Pakistan refugees were not the original residents of the erstwhile State of J&K. The main grievances of these refugees are that they are denied the basic citizenship and political rights in J&K. To justify its stand, the State of J&K refers to its special status under Article 370

of the Constitution of J&K and the special provisions of the Constitution of J&K under which a distinction can be made between the rights of the permanent residents of the state and those who are not the permanent residents.

The present study analyses the factors which caused the forced migration of the West Pakistan refugees towards India, their key issues and problems as well as the denial of their basic citizenship rights that they have been subjected to for the last more than six decades.

In the absence of any official record on these refugees, the study has been based on the information gathered from the field. As we were informed by the leaders of the key organisations of these refugees that a large number of them are concentrated in Jammu district, the study has been located in this district only. Two localities within this district, one rural and one urban, where these refugees are most densely populated, have been selected for the study. While Chak Jaffar village in Marh block was chosen as the rural area, Bhagwati Nagar area in Jammu city was chosen as the urban area. Besides these, the author also attended a number of gatherings and meetings of these refugees where she had the opportunity of meeting refugees from other parts of the Jammu region. An attempt was made not only to record the proceedings of such meetings but also to talk intensively to a number of people gathered there. The study therefore has incorporated responses of people living in other areas as well. The study has also been based on various other primary sources including the Constitution of India, Constitution of J&K, various legislations, United Nations documents and case laws. Secondary sources included various books and journals. Descriptive, informative, analytical and evaluative methods have been applied to draw conclusions and inferences.

Chak Jaffar village houses about 176 families of West Pakistan refugees. They have migrated from different villages of Sialkot like Buur, Beli Ghagwal, Pul Bajua, Sandle Chak, Khoje Chak, Seed Mial (near Khoje Chak). In Bhagwati Nagar there are 36 families of these refugees. They have migrated from Bahadurpur, Sagripur, Jagal, Chaprar, Toranwala villages of Sialkot.

4.1.2 Socio-economic Background

These refugees predominantly are Hindus and Sikhs. There is only a negligible number of Muslims who moved on to India along with their Hindu friends.

There are very significant facts about caste distribution of West Pakistan refugees in the urban and rural areas. While the urban refugees are predominantly from the upper strata of society, the rural refugees are mostly from the lower strata. Most of the refugees settled in Chak Jaffar village are from the lower castes, particularly the Dalits. When in Pakistan, they worked as labourers, potters and load carriers (pandi). However, in Bhagwati Nagar, most of the refugees belong to higher castes and were the holders of big landholdings in Pakistan

In Chak Jaffar, 75 per cent are West Pakistan refugees and 25 per cent local allottees who are of Harijan, Batwal and Megh castes. Predominantly, the refugees in Marh belong to Bhagat and Barwal castes. There are 18–20 houses of Sikhs who came from Muzaffarabad and 15–20 houses of Chib Rajputs who came from Deo Batala.

In Bhagwati Nagar, 50 per cent of the families are Rajput, 4 families are Brahmin and the rest are constituted of lower castes like Jheer, Nai and Jogi.

The lower socio-economic background of refugees in Chak Jaffar continues to define them even at present. They predominantly belong to the labour class. They earn their livelihood by *badiyan* (harvesting), *godiyen* (digging), construction work of houses or government's road construction projects. So they do not have any regular source of income. Only a negligible number of them are retired army personnels who are now pension-holders and seem to be somewhat better off.

Despite their better social background, the refugees in Bhagwati Nagar also have worked and many are continuing to be engaged as menial labour or are holding petty jobs. They are working as helpers in sweet shops, medical stores, departmental stores, government departments, etc.

4.1.3 Reasons for Migration of West Pakistan Refugees in 1947

To understand the scale of the miseries, neglect and agony of these Hindus refugees belonging to West Punjab of Pakistan, it

is significant to have a brief look at the events that led to the forced migration of Hindus of West Pakistan.

4.1.3.1 Developments in Punjab at the time of Partition

The paradoxical nature of the reality of 15 August 1947 continues to intrigue historians and torment people on both sides of the border to this day. A hard-earned, prized freedom was won after long, glorious years of struggle but a bloody, tragic partition rent asunder the fabric of the emerging free nations. (Chandra, 1989: 487) On 3 June 1947, the British Government published a plan for the partition of the subcontinent. After the acceptance of the plan for partition, Lord Mountbatten declared that the scheme should be brought into effect at the earliest. On 18 July, the Indian Independence Act was passed, stating that Independence would be affected on an earlier date than previously anticipated: 15 August 1947 (the earlier date proposed was June 1948). The sense of urgency was heightened by civil disturbances and riots between the communities, which were to reach frightening proportions in several areas, particularly in Punjab, which bordered the State of J&K. (Schofield, 2004: 28)

As a result of the partition of Punjab, 16 districts comprising 55 per cent of the population and 62 per cent of the area were allotted to West Punjab or the Pakistani side of Punjab. In comparison to it, East Punjab obtained 13 districts, 5 princely states, 45 per cent of the population, 33 per cent of the area and 31 per cent of the income of the united former provinces. After the announcement of the Radcliffe Award on 17 August, there were serious disturbances in Lahore, Shekhupura, Sialkot and Gujranwala districts. Both the Hindus and Sikhs in West Pakistan started migrating to the Indian border by every conceivable means of transport, namely by air, train, car, bus and even on foot. This unprecedented migration had its repercussions on the other side of the border too. The spirit of revenge let loose a reign of terror and a wholesale attack on the Muslims was launched. The trouble spread to Patiala and the East Punjab States and also to Delhi. (Arora, 1990: 24)

The Punjab during this very period was undergoing a bloody change. The Muslims and non-Muslims were running for their lives from eastern and western Punjab. The evacuation of the unprotected masses of people required the immediate intention of the authorities, both civil and military. The exchange of population had not been envisaged seriously at any stage by either government. The Government of India thought it inconceivable that people would be prepared to

leave their lands, property and their ancestral homes.²⁸ It is a fact that millions of people on both sides of the new border refused to accept the finality of partition even long after it was announced, and that is one major reason why the transfer of population became such a frenzied, last-minute affair (Chandra, 1989: 502).

The Congress leaders kept on appealing to the people to stay where they were. Nehru expressed his definite opinion against mass migration on 19 August 1947. The communal holocaust could not be avoided because the attackers were not the common citizens but the tools of fanatical groups who organised heinous crimes for political reasons. In view of the deteriorating situation and failure of the leadership and the government to check the exodus, both the dominions finally considered it necessary to set up a machinery to evacuate the unfortunate people called 'refugees' (Ghai, 1986: 139). The evacuation movement plan accompanied by the task of relief and rehabilitation of refugees was organised at central and provincial levels.

The period was one of trials and tribulations. The problem assumed terrific dimensions as millions of bewildered men and women crossed the borders on both sides. The horrible communal riots left their indelible marks on the whole social set-up of the Punjab and gave rise to acute communal tensions. The people had to undergo innumerable hardships in the process of migration and avenged themselves on the members of the other religious community. Communal tensions were further intensified as a result of the retaliation policy of the incoming refugees (Ghai, 1986:142). The moral fabric of society was torn to pieces. Murder of men and women of the other community were considered heroic feats. The lawless element had intensified its activities considerably. A good number of juveniles had been left orphans and uncared for and were tempted to go astray. A large number of displaced persons who had migrated to East Punjab had been deprived of the means of livelihood. Many of them had exhausted all their savings in the process of migration from West Punjab to East Punjab. A large number of displaced persons were forced into a life of crime, resulting in the emergence of a new class of 'Criminals'.

The abduction of women and children was a part of a programme of planned retaliation. There were cases of forcible

conversions after the first round of riots in March 1947. There were reports of abducted women in possession of influential Pathans, politicians, bureaucrats and some sent to the Azad Kashmir territory where the West Punjab government disclaimed jurisdiction. Non-muslims in East Punjab were as much guilty of the crime of abducting innocent women as Muslims in West Punjab were. All means of transport – trains, transport planes, civilian aircrafts and motor trucks were mobilised to speed up their immediate evacuation.²⁹ In the nine months between August 1947 and the spring of the following year, between 14 and 16 million Hindus, Sikhs and Muslims were forced to leave their homes and flee to safety from blood-crazy mobs. Punjab was 'most brutally sliced into two parts in 1947 and was the bloody battlefield of partition where by far the greatest number of massacres of Hindus, Sikhs and Muslims occurred (Khan, 2007: 7).

This was a heavy price and the memory of this painful and costly transaction will linger for years and continue to embitter and enrage the refugees (Ghai, 1986: 151).

4.1.3.2 Developments in J&K at the Time of Partition

When the subcontinent became independent from British rule on 14–15 August, the State of J&K was independent.³⁰ The State had unique features not shared by other princely states. Ruled by a Hindu with its large Muslim majority, it was geographically contiguous to both India and the future Pakistan (Schofield, 2004: 28). Lobbying thus began on the part of both India and Pakistan for the accession of the State. The population here was divided between Muslims, Hindus, Sikhs and Buddhists. Muslims formed the majority (77 per cent) and the Hindus, Sikhs and Buddhists together formed the rest (23 per cent) (Bose, 2003: 31–32). On 15 August 1947 the subcontinent was making grand preparations for the Day of Indian Independence but Kashmir was heading for a catastrophe. In accordance with the Cabinet Mission Plan of May 1946, following partition, Kashmir bordering both India and Pakistan, had, like any other state, three alternatives – to assert complete independence, to accede to Pakistan, or to accede to India. The power to take decision vested in the Ruler according to the British Government's declared policy. The state did not accede to either dominion by 15 August (Anand, 2004: 25).

²⁸ To the Congress leaders, the exchange of population appeared a complete negative of their ideology which they had advocated throughout their political life. Mahatma Gandhi, according to a press report (2 December 1945) rejected the idea in the following words: 'It is unthinkable and impracticable. For me any such thing will spell bankruptcy of Indian wisdom or statesmanship, or both. Is it not bad enough that India should be artificially divided into so many religious zones?' M. K. Gandhi, *To the Protagonists of Pakistan*, Allahabad, 1947, p. 214 cited in Ghai, 1986:138.

²⁹ The Prime Ministers of India and Pakistan, after one of their joint tours of affected areas of both the countries on 3 September 1947, declared that forced marriages and conversions would not be recognised. Miss Mridula Sarabhai was appointed the Chief Social Worker in charge of the rescue work of the abducted women (see Ghai, 1986: 139–40).

³⁰ The situation regarding the states was not fully resolved at independence. Hyderabad, Junagarh, Indore, Travancore, Jodhpur, Bhopal and Kashmir stood independent. All others except Kashmir later acceded to the Indian Union by September 1947.

Pakistan claimed J&K due to the Muslim majority status of the state. But the reality was complicated because of two factors specific to J&K: first, predominance of the National Conference and second, the unique situation of a Hindu King who ruled a Muslim-majority population (see Bose, 2003: 31–32). Maharaja Hari Singh made a 'Standstill Agreement' with the Government of Pakistan on 12 August 1947 in an exchange of telegrams. The objective was to ensure that those services which existed for trade, travel and communication would carry on in the same way as they had with British India. Pakistan therefore retained control of the rail and river links, which were used to float timber down the Jhelum river to the plains. India did not, however, sign a standstill agreement. This was looked upon with suspicion by the Pakistanis that the Indian government was already engaged in making its own arrangements for Kashmir's future (Schofield, 2004: 40). Earlier in the spring of 1947, unrest had begun in Poonch which turned into an organised revolt against the Dogras. The Maharaja's government attributed the trouble in Poonch to infiltration from Pakistan. A blockade of the essential supplies at Sialkot and Rawalpindi was viewed by the Kashmiris as a non-honouring of the standstill agreement by Pakistan. From the Indian perspective, the allegations of blockade were evidence of Pakistan's intended 'aggression' towards Kashmir and added fuel to the argument that an invasion was imminent (Schofield, 2004: 45).

In October 1947, Pashtun tribesmen from North Western Frontier Province (NWFP) invaded the state. This invasion was supported by the Pakistani military.³¹ During the above-said period, intelligence reports from the frontier areas of Poonch and Mirpur as well as the Sialkot sector started coming in which spoke of large-scale massacre, loot and rape of villagers by aggressive hordes from across the borders. Whereas the valley of Kashmir was protected by its mountain ranges from the communal massacres which devastated so many families in the weeks following partition, Jammu had immediate contact with the plains of India and, as a result, was subject to the same communalist hatred which swept throughout the Punjab and Bengal (Schofield, 2004: 42). Jammu witnessed the worst kind of communal violence. A large number of Muslims were forced to migrate from here while many of them were killed as well. Wherever the Hindus were in minority, they were faced with similar violence.

³¹ According to Navnita Chadha Behera, the conflict developed further as follows, 'A revolt then broke out in Poonch against Dogra forces, and armed irregulars from Pakistan gradually infiltrated Poonch, as well as Mirpur and Muzaffarabad. Next, Pakistan cut off their all essential supplies entering Kashmir by road and rail, and on October 22, 1947, armed tribesmen and irregular soldiers of its army invaded Kashmir' (Behera, 2007: 26).

Unable to prevent the raiders' brutal advance, which was marked by large-scale killings, loot and arson, the Maharaja, on 24 October 1947, appealed for military assistance from the Government of India. Since there was no constitution agreement between India and J&K, the Indian army could not be deployed in the state. The Maharaja then decided to accede to India and on 26 October 1947, sent the Instrument of Accession to Lord Mountbatten, the Governor General of India, along with a letter giving the circumstances (Kaul, 1962: 102). Lord Mountbatten accepted the accession by his letter dated 27 October 1947. The Instrument of Accession was signed at Amar Singh Palace, Jammu, in presence of V. P. Menon, special messenger of then Home Minister of India. Simultaneously, Indian forces were airlifted to Srinagar (Singh, 1998: 217).

The tribal raiders continued their assault on Kashmir throughout October 1947. On 8 November, the Indian forces liberated Baramulla. Indian forces regained control of Kashmir valley after that (Singh, 1995: 10). However, the tribal invasion and commission of the most ghastly atrocities by the tribesmen continued even thereafter. On 31 December 1947, Nehru wrote to the UN Secretary-General to clarify the stand of the Indian government to decide the future of the people of Kashmir through democratic means after the raiders are driven out. In January 1948, the Kashmir issue was debated in the Security Council of the United Nations, at Lake Success, New York, with representations from the Indian and Pakistani delegates. On 20 January, the Security Council passed a resolution which established a Commission to be known as the United Nations Commission for India and Pakistan (UNCIP) to investigate the facts of the dispute and carry out 'any mediatory influence likely to smooth away difficulties' (Schofield, 2004: 68).

By a resolution of 21 April 1948, the Government of Pakistan was called on to withdraw the tribesmen and Pakistani nationals in the state for fighting purpose and the Government of India to reduce its troops to the minimum strength. On 13 August 1948, the UNCIP adopted unanimously a resolution outlining the arrangements for the cessation of the hostilities. The ceasefire was finally imposed on 1 January 1949, signed by General Gracey on behalf of Pakistan and General Roy Bucher on behalf of India (Schofield, 2004: 68–69).

As a result of the intervention of UN, India and Pakistan signed an agreement in Karachi on 29 July for defining the ceasefire line in the state of Jammu and Kashmir. (International Crisis Group, 2007) The term Line of Control (LOC) refers to the military control line between the India- and Pakistan-controlled parts of the former princely state of J&K – a line which, to this day, does not constitute a legally recognized international boundary but is a de facto border. Originally known as the 'Cease-fire Line', it was redesignated as the LOC following

the Simla Agreement, which was signed on 3 July 1972. (Lyon, 2008: 243) The result of the ceasefire was that the State of J&K was divided into two regions. First, Pakistan held the Gilgit Agency, Baltistan, a narrow portion of Kashmir province, Poonch and Mirpur in Jammu. Second, India controlled Ladakh, a portion of Poonch and a portion of Kashmir province and Jammu (International Crisis Group, 2007).

The developments in Punjab as well as in the State of J&K during the partition of India caused displacements of people at the borders of these states in 1947. Consequently, two kinds of groups of displaced people emerged in the State of J&K in 1947 which included, first, the West Pakistan refugees of 1947, who were comprised of Hindus and Sikhs who migrated from West Punjab of Pakistan to East Punjab of the India and also to Jammu, and, second, the POK refugees who included Hindus and Sikhs of the princely state of J&K residing in the portion of the state which came into the possession of Pakistan known as Pakistan-occupied Kashmir (POK). Because of the tribal attack in the princely state they started migrating from POK to the Indian-occupied part of J&K. Later on, there were many other migrant groups like refugees of 1965 and 1971 as a result of the Indo-Pak wars of 1965 and 1971.

4.1.4 West Pakistan Refugees, 1947

As discussed above, as per the population exchange programme between India and Pakistan to give effect to partition, most of the Hindu refugees of West Pakistan migrated to East Punjab of India. During the partition riots, a chunk of the population migrated from the West Punjab province of Pakistan to J&K.³² The State of J&K shared borders with both India and West Pakistan. There were many reasons of the refugees from Punjab entering the State of J&K:

1. The nearness of Jammu from their place of displacement. The refugees chose to take refuge in Jammu as it was the closest town across the line of partition from Sialkot. Gurdaspur and Amritsar in Punjab were 92 kilometres and 98 kilometres from Sialkot respectively, while Jammu was only 38 kilometres away. (<http://www.timeanddate.com/worldclock/distances.html?n=1237>).
2. One of the reasons that many Hindu refugees sought entry in J&K from Punjab was because of the perception that the state was being ruled by a Hindu king and they will be protected in this state. As narrated by one of the respondents, 'In 1947, Maharaja first directed the Army (State forces) to seal the border and not to allow entry to

anybody. People were moving from Sialkot to India. On coming to know that Hindus were being massacred, the Maharaja directed the Army to allow them to cross the border.'

3. Many refugees came here because of the uncertain circumstances and the confusion created by the situation. As a respondent told the story of his parents' arrival in Jammu:

They first ran towards Punjab borders to escape. But they came to know that there were plunderers on way to Punjab waiting near the Ravi river. That was the month of Bhadon (Aug.–Sept.). Ravi river was full of water (*ravi thhathhan maar rahi thi*). The plunderers after robbing people of their belongings were drowning them in the river. To escape them, they fled towards Jammu and through shortcut reached their relatives' place in Khour Deonia near R.S. Pura in Jammu.

4. A number of West Pakistan refugees preferred the State of J&K because they had their relatives in the State. It was a situation where people were uprooted from their homes and were looking for refuge. Refuge with relatives was the most natural option for many of them.

However, the entry into the territory of the State of J&K proved to be a blunder for the refugees from West Pakistan. The situation of the border became the basis of their later sufferings. Those displaced from various parts of the erstwhile State of J&K (POK), due to ambiguous and disputative status of the border of J&K with Pakistan, had no difficulty in their being accepted as the inhabitants of the State. However, as the West Pakistan people belonged to another state before partition, the State of J&K considered them outsiders. Pressed hard by their circumstances and lack of sympathy from the J&K government, all these refugees then decided to go to Punjab. But as many respondents informed us, Sheikh Abdullah, the then Prime Minister of J&K, stopped them at Lakhnampur and assured them to take care of their rights. But nothing has been done till date. These refugees regret that had they moved to Punjab at that time, they could be given the similar treatment as many other refugees from West Pakistan were given and they would have enjoyed the same kind of rights as these refugees are enjoying in Punjab and other parts of India. Many of them quote the examples of Prime Minister Manmohan Singh who was also among the refugees from West Pakistan and settled in Punjab.

It is difficult to get official data about the West Pakistan refugees. Till date, no such data about the number and condition of these refugees is officially maintained by the state government. It

³² All these refugees unanimously stated that they or their ancestors left West Pakistan due to *bad-tuk/katle-aam* (massacre) there.

is the West Pakistani Refugees Action Committee Cell–1947 (WPRAC), an organisation of these refugees, which itself has carried out an exercise of enumerating the families of West Pakistan refugees living in seven *tehsils* of Jammu. A total of 18,428 families of these refugees have been identified by the association in the year 2012.³³

4.2 'STATELESSNESS' AND THE ISSUE OF PERMANENT RESIDENT STATUS'

4.2.1 Issue of Permanent Resident Status – Legal and Constitutional Provisions

The main issue for the West Pakistan refugees is the grant of Permanent Resident Status (PRS) to them by the State of J&K. They are accepted as the citizens of India by being covered under Section 6 of the Constitution of India but they have not been granted the status of the permanent residents of the State of J&K. This has generated a sense of statelessness among these refugees. The PRS of the State of J&K bestows the holders of such status with certain special advantages. Besides being entitled to rights guaranteed by the Constitution of India, particularly under Part III³⁴ thereof, the permanent residents have the additional rights and privileges to the exclusion of the non-permanent residents. Only those with PRS can buy property in the State, seek education, get employment, enjoy the right of suffrage to the State Legislature, local bodies and other institutions. Only those with PRS have preferential claim to the services and the scholarships and, above all, to the exclusive rights for the acquisition and possession of immovable property in the State. Only a permanent resident can become the Chief Minister or a Minister or a Member of the Legislature in the State of J&K.

The permanent residents of the State of J&K enjoy the status as such due to certain historical reasons. Before the Independence Act, 1947, the (British) Indian Government directly administered British India but the Indian States governed by native princes were independent States subject, however, to the paramountcy of the Crown. The residents of British India were British subjects. But the subjects of the Princely States, though vis-à-vis foreign states were British subjects but within India, they were not British subjects but citizens of their States known as State Subjects. This citizenship of British India and of the Indian

States remained in operation in India till the partition of British India in 1947. A person could acquire the citizenship either of British India or of an Indian State, but not both as regards the matters in India. By the Independence Act, 1947, dominion status was conferred on India and Pakistan. At the same time paramountcy lapsed and the States became independent. Most of the States acceded to one or the other dominion by signing an Instrument of Accession. No Instrument of Accession contained any provision regarding the status of the inhabitants of the acceding State. The subjects of these States retained the citizenship of the State, notwithstanding the accession of their States to India and Pakistan. The accession of the States was followed by the merger of most of the States with the Indian Union towards the end of 1949, when the Constitution of India was framed. The States agreed that there should be single citizenship for the whole of India and accordingly when the States merged, their inhabitants became Indian citizens and lost their State citizenship as from the commencement of the Constitution of India. (See. Anand, 2004:189–90). The State of J&K did not merge in the Indian union and it reserved the right to frame its own Constitution. Special provisions were made in the Constitution of India under Articles 35-A and 370 to cover the case of Kashmir. The State did not accept the citizenship laws of India and the status of its inhabitants did not change.³⁵

Article 370 confers a special status on the State of J&K. Under Article 370, except for matters specified in the Instrument of Accession (defence, foreign affairs and communication), the Indian Parliament needs the concurrence of the State Government for making laws for the State. For applying the Constitution of India to the State, a Presidential order with the concurrence of the State was required.³⁶

³⁵ So the status of State Subjects of State continued to be determined by the Maharaja's Notifications of 1927 and 1932. (See Anand, 2004: 191).

³⁶ Article 370 of the Constitution of India reads thus:

Notwithstanding anything in this Constitution,—

(a) the provisions of Article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the instrument of accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation.—For the purposes of this Article, the Government of the State means the person for the time being recognized by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) the provisions of Article 1 and of this Article shall apply in relation to that State;

³³ The *tehsil*-wise split as recorded by WPRAC is Akhnoor-1,970 families, Jammu-5,007 families, R.S. Pura-3,100 families, Bishnah-2,116 families, Samba-1,612 families, Hiranagar-1,419 families and Kathua-3,204 families.

³⁴ Part III of the Constitution of India deals with the Fundamental Rights.

By virtue of the powers conferred by Article 370, the President of India, in concurrence of the Government of Jammu and Kashmir, issued an order, the Constitution (Application to Jammu and Kashmir) Order, 1950, on 26 January 1950 which enumerated the provisions of the Constitution of India to be applicable to the State of J&K in addition to Article 370 and Article 1. Part II of the Constitution of India dealing with citizenship was not made applicable to the State of J&K. Entry 17 of the Union List was modified to omit 'citizenship' which meant that the Union Parliament had no power to make laws for the State on citizenship and that in the state the old State citizenship law prevailed. Thus the law of the State dealing with State Subjects was not to be interfered with.

In 1954, the Constituent Assembly of Jammu and Kashmir ratified the State's accession to India and set the controversy regarding the future affiliations of the state at rest. With the settlement of this issue, it was felt imperative to abolish the separate citizenship of the State as the Constitution of India provided for only one type of citizenship for the whole of India. The matter was debated between the Government of India and the State and finally an agreement was reached between them that the permanent residents of the state could have special rights but they were to have the common Indian citizenship and that the term 'State Subjects' be substituted by 'Permanent

Residents'. Thus, the President of India, in consultation with the State Government, issued the Constitution (Application to Jammu and Kashmir) Order, 1954, on 14 May 1954 by which Part II of the Constitution of India dealing with citizenship was made applicable to the State.³⁷ The people of J&K were to be regarded as citizens of India from the date of commencement of the Constitution.

To give effect to the agreement between the Government of India and the State of J&K that the State Legislature would have the power to make special provisions for the permanent residents, Article 35-A was inserted by the Order of 1954.³⁸ The legislature of the State of J&K made provisions regarding the 'permanent residents' by inserting Section 5A to 5F in the Constitution Act, 1939, in 1954. These regulations were to remain in force till the State Legislature repealed, altered or amended them. These remained in force till the coming into force of the Constitution of Jammu and Kashmir in 1957. It came into force on the 26 January 1957. Part III (comprising Sections 6–10) of the Constitution of Jammu and Kashmir deals with the permanent residents. The general effect of these provisions is that the laws of Indian citizenship extend to the State. The legislature can, however, confer special rights and privileges on permanent residents of the State. (See Anand, 2004: 187–89.)

Section 6 of the Constitution of Jammu and Kashmir dealing with the definition of 'permanent residents' of the State runs as under:

'6. *Permanent residents*.—(1) Every person who is, or is deemed to be a citizen of India under the provisions of the Constitution of India shall be permanent resident of the State, if on the fourteenth day of May, 1954—

- (a) he was a State subject of Class I or 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 that 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 of Class II' shall have the same meaning as in State Notification

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

In exercise of the powers conferred by this article the President, on the recommendation of the Constituent Assembly of the State of Jammu and Kashmir, declared that, as from the 17th day of November, 1952, the said art. 370 shall be operative with the modification that for the Explanation in cl. (1) thereof, the following Explanation is substituted, namely:—

"Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the *Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office." (Ministry of Law, Order No. C.O. 44, dated the 15th November, 1952).

*Now "Governor"

³⁷ Section 2(3) of the Order of 1954.

³⁸ Section 2(4) (j) of the Order of 1954.

No. 1-L/84 dated 20 April 1927,³⁹ read with State Notification No. 13/L dated 27 June 1932.⁴⁰

³⁹ Notification dated 20th April, 1927 No. 1-L/84.—The following definition of the term 'State subject' has been sanctioned by His Highness the Maharaja Bahadur (vide Private Secretary's Letter No. 2354 dated 31st January, 1927 to the Revenue Member of the Council) and is hereby promulgated for general information.

The term 'State subject' means and includes—

Class I.—All persons born and residing within the State before the commencement of the reign of His Highness the late Maharaja Gulab Singh Sahib Bahadur, and also person who settled therein before the commencement of samvat year 1942 and have since been permanently residing therein.

Class II.—All persons other than those belonging to Class I who settled within the State before the close of samvat year 1968 and have since permanently resided and acquired immovable property therein.

Class III.—All persons other than those belonging to Class I and Class II permanently residing within the State, who have acquired under 'rayatnama' any immovable property therein or who may hereafter acquire such property under an 'ijazatnama' and may execute 'rayatnama' after ten years' continuous residence therein.

Class IV.—Companies which have been registered as such within the State and which being companies in which the Government are financially interested or as to economic benefit to the State or to the financial stability of which the Government are satisfied, have by a special order of His Highness been declared to be State subjects.

Note I.—In matters of grant of State scholarship, State lands, for agricultural and house building purposes and recruitment to State service, State subject of Class I should receive preference over other classes and those of Class II, over Class III, subject however, to the order dated 31st January, 1927 of His Highness the Maharaja Bahadur regarding employment of hereditary State subjects in government service.

Note II.—The descendants of the persons who have secured the status of any class of the State subject will be entitled to become the State subjects of the same class. For example, if A is declared a State subject of Class II, his sons and grandsons will ipso facto acquire the status of the same Class II and not of Class I.

Note III.—The wife or a widow of the State subject of any class shall acquire the status of the husband as State subject of the same class as her Husband, so long as she resides in the State and does not leave the State for permanent residence outside the State.

Note IV.—For the purpose of the interpretation of the term 'State subject' either with reference to any law for the time being in force or otherwise, the definition given in this notification as amended up to date shall be read as if such amended definition existed in this notification as originally issued.

⁴⁰ (Issued by the order of His Highness the Maharaja Bahadur dated Srinagar, the 27th June, 1932, 14th March, 1939, published in the Government Gazette dated 24th March, 1989.)

No. 13-L/1989 — Whereas it is necessary to determine the status of J&K State subjects in foreign State as to the position of their nationals in the State, it is hereby commanded and notified for the public information as follows:

1. That all emigrants from J&K State to foreign territories shall be considered State subjects and also the descendants of these emigrants born abroad for two generations:
Provided that, these nationals of Jammu and Kashmir State shall not be entitled to claim the internal rights granted to subjects of this State by laws, unless they fulfil the conditions laid down by those laws and rules for the specific purposes mentioned therein.
2. The foreign nationals residing in the State of Jammu and Kashmir shall not acquire the nationality of Jammu and Kashmir State until after the age of 18 on purchasing immovable property under permission of an 'ijazatnama' after ten years' continuous residence in J&K State as laid down in Notification No. 1-L of 1984 dated 20th April, 1927.

The Constitution of the State of J&K empowers the State Legislature to define permanent residents.⁴¹ Any Bill defining or altering the definition of permanent residents, conferring any special rights or privileges on them or regulating/modifying such rights or privileges is to be passed by a majority of not less than two-thirds of the total membership of each House.⁴² The permanent residents of the State enjoy all the rights guaranteed to them under the Constitution of India.⁴³

4.2.2 Legal Disabilities

There is no dispute that the West Pakistan refugees are not the permanent residents of the state of J&K within the meaning of Section 6 of the Constitution of Jammu and Kashmir. On account of the provisions of State Notification No. L/84 dated 20 April 1927 and the State Notification No. 13/L dated 27 June 1932 issued by the then Maharaja of the State of J&K, which were subsequently incorporated in Section 6 of the Constitution of J&K, the West Pakistan refugees are not covered under any of the categories of the permanent residents provided for by Section 6 of the Constitution of J&K. So they have not been conferred the status of permanent residents of the State of J&K by the Government of J&K. As such, the West Pakistan refugees do not have the right to acquire any immovable property in the State, the right to employment under the State, the right to start an industry, the right to purchase transport vehicles, the right to higher technical education, the right to be elected to the State Assembly or a local body, etc. Provisions to this effect have been incorporated in various laws enacted by the State of J&K, namely

- Section 12(b) of the J&K Representation of the People Act, 1957, provides that a person shall be disqualified for registration in an electoral roll if he is not a permanent resident of the State.
- Section 6 (1) (a) of the J&K Panchayati Raj Act, 1989,⁴⁴ disqualifies a person for being chosen as or for being a member of a panchayat if he is not a permanent resident of the State.
- Section 4 of the J&K Land Alienation Act, Svt. 1995 (1938 A.D.), Section 20-A of the J&K Big Landed Estates Abolition Act, Svt. 2007 (1950 A.D.), Section 4 of the J&K

3. Certificates of nationality of J&K State may, on application, be granted by Minister-in-charge of the Political Department in accordance with the provisions of Section 1 of this notification.

⁴¹ Section 8, *The Constitution of Jammu and Kashmir, 1957*. It vests an overriding power in the state legislature to make any law defining the classes of persons who are, or shall be, permanent residents of the state.

⁴² Ibid. Section 9.

⁴³ Ibid. Section 10.

⁴⁴ Same provision existed in earlier panchayat legislations of J&K State.

Land Grants Act, 1960, Section 95 of the J&K Co-operative Societies Act, 1960, and Section 17 of the J&K Agrarian Reforms Act, 1976, impose prohibition on transfer of land in favour of a person who is not a permanent resident of the state.

- Rule 17(a) of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, provides that no person shall be eligible for appointment to any service by direct recruitment unless he is a Hereditary State Subject (to be known hereafter as a permanent resident).
- The J&K Displaced Persons (Permanent Settlement) Act, 1971, empowers the State government to transfer property (Section 3) and to acquire evacuee land for permanent settlement of displaced persons by paying to the custodian authorities the compensation determined under Sections 23 and 24 of the Land Acquisition Act, 1934 (Sections 4 and 5). For the purposes of this Act, 'displaced person' means any person who is a permanent resident of the State displaced after 1 March 1947 from any area of the State occupied by Pakistan on account of the setting up of Dominions of India and Pakistan or on account of civil disturbances or fear of such disturbances in such area.
- The J&K Lands (Vesting of Ownership to the Occupants) Act, 2001, enacted to provide for vesting of ownership rights to occupants of State land for purposes of generating funds to finance power projects in the State, under 8 (1) (a), provides for the vesting of all rights, title and interest in any State land in an occupant who is a permanent resident of the State. However, these provisions remain beyond challenge as inconsistent with the Fundamental Rights guaranteed by Part III of the Constitution of India because of the umbrella of Article 35-A of the Constitution of India.⁴⁵ This Article, which is usually offered as a justification by the State of J&K for such exclusions, states:

'35-A. Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the legislature of the State—

- (a) defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or
- (b) conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects—

- (i) employment under the State Government;
- (ii) acquisition of immovable property in the State;
- (iii) settlement in the State, or
- (iv) right to scholarships and such other forms of aid as the State Government may provide,

shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part.'

The consequence is that the West Pakistan refugees, though citizens of India and entitled to the various Fundamental Rights guaranteed by the Constitution of India, are not in a position to enjoy many of those rights within the State of J&K even though they are domiciled in the State since 1947. Till date in the State of J&K, they do not have the right to acquire any immovable property in the State, the right to employment under the State, the right to start an industry, the right to purchase transport vehicles, the right to higher technical education, the right to be elected to the State Assembly or a local body, etc.

The West Pakistan refugees have been struggling due to the denial of their rights and adopting political and legal methods for the extension of these rights to them. Their struggle became more vocal after the government of the state decided to legislate a bill for re-settling those state subjects in the state who had migrated to Pakistan-administered Kashmir after 1947. It was in the year 1980 that the Resettlement Bill was introduced in the State Legislature. The Bill made the provision for the return of all those persons 'who were Class I and Class II State subjects before May 14, 1954 and had migrated to the territory now included in Pakistan after March 1, 1947 or for widows, wives or descendants of such State Subjects' to the State. The then Governor referred the Bill to the Attorney General for legal opinion on receipt of which he sent the Bill back to the State Legislature for reconsideration on the ground of constitutional deficiencies in the same. On 30 September 1982, the President of India made a reference to the Supreme Court of India⁴⁶ seeking its advisory opinion under Article 143 of the Constitution of India on the constitutional validity of the Bill. While the reference was pending, the J&K legislature reconsidered the Bill and after a heated debate, re-passed it as an Act on 4 October 1982 in its original form.⁴⁷ The reference

⁴⁶ *Special Reference No.1 of 1982.*

⁴⁷ *The Grant of Permit for Re-settlement in (or Permanent Return to) the State Act, 1982.* It was passed by the J&K State Legislature in exercise of the power under Section 6(2) of the J&K Constitution and Article 7 of the Constitution of India, as applicable to the State of J&K to allow those permanent residents of the State who have migrated after March 1947 to the territory now included in Pakistan to return to the State under a permit for re-settlement in the State or of permanent return to the State. A person

⁴⁵ Article 35-A was added to the Constitution of India in relation to the State of Jammu and Kashmir by the Constitution (Application to Jammu and Kashmir), Order, 1954, issued by the President of India under Article 370(1) (d) of the Constitution of India.

was returned unanswered on 6 November 2001 when a Constitution Bench of the Supreme Court declined to give its advisory opinion. Within one week thereafter, the J&K National Panthers Party filed a writ⁴⁸ in the Supreme Court challenging the constitutionality of the Act. The Act was stayed, which was ordered to continue in operation and the writ petition is still pending consideration.

In 1982, the West Pakistan refugees took recourse to the Indian judiciary on the issue of permanent resident status. They filed a writ petition⁴⁹ titled *Bachan Lal Kalgotra v. State of J&K* before the Supreme Court of India seeking various reliefs including that they should be given the permanent resident status. The petition was initially filed challenging the vires of the Resettlement Act, 1982, but as the vires of the said Act was pending the decision of the Supreme Court in the aforementioned Presidential Reference, the challenge to the said Act was withdrawn and the claim was laid for the same rights as are given to those who voluntarily migrated to Pakistan at the time of the partition in 1947. The said writ petition was disposed of by the Supreme Court in 1987.⁵⁰ The Court dismissed the writ petition saying that it is up to the legislature of the State of J&K to amend various State laws to include the West Pakistan refugees who constitute nearly 7 to 8 per cent of the population of the State and thus need to be protected by the State and also the Union of India. The Court, however, expressed its inability to grant any relief to the petitioner by the Court itself. The Court while dismissing the said writ petition observed:

In the circumstances, in view of the constitutional position obtaining in the State of Jammu and Kashmir, we do not see what possible relief we can give to the petitioner and those situate like him. All we can say is that the position of the petitioner and those like him is anomalous and it is upto the legislature of the State of Jammu and Kashmir to amend legislations, such as the J&K Representation of the People Act, the Land Alienation Act, the Village Panchayat Act, etc so as to make persons like the petitioner who have migrated from West Pakistan in 1947 and who have settled down in the State of Jammu and Kashmir since then, eligible to be included in the electoral roll, to acquire land, to be elected to the Panchayat, etc.. This can be done by suitably amending the legislations without having to amend the Jammu and Kashmir Constitution. In regard to providing employment opportunities under

the State Government, it can be done by the government by amending the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules. In regard to admission to higher technical educational institutions also, the government may make these persons eligible by issuing appropriate executive directions without even having to introduce any legislation. The petitioners have a justifiable grievance. We are told that they constitute nearly seven to eight percent of the population of the State of Jammu and Kashmir. Surely they are entitled to be protected by the State of Jammu and Kashmir. In the peculiar context of the State of Jammu and Kashmir, the Union of India also owes an obligation to make some provision for the advancement of the cultural, economic and educational rights of these persons. We do hope that the claims of persons like the petitioner and others to exercise greater rights of citizenship will receive due consideration from the Union of India and the State of Jammu and Kashmir. We are, however, unable to give any relief to the petitioners.⁵¹

Expressing thus its inability to intervene in the matter, the judiciary threw the ball in the court of the Union Government and the Government of J&K to address the issues of the West Pakistan refugees.

4.2.3 Union Government Initiatives

Pursuant to the observations made by the Supreme Court, the Government of India, Ministry of Home Affairs, Department of J&K Affairs, in 1994⁵² requested the Government of J&K to consider the case of said West Pakistan refugees to grant them the status of permanent residents of the State of J&K. However, the J&K Government refused to grant the status of permanent residents of the State of J&K to the said West Pakistan refugees.⁵³ In the year 2000, Ministry of Home Affairs, Department of J&K Affairs put up the matter before Parliament⁵⁴ to consider as to whether the said West Pakistan refugees can be granted the status of permanent residents of the State of J&K. Subsequently, in the year 2001, the then Home Minister, L. K. Advani,⁵⁵ requested the Government of J&K to consider the case of West Pakistan refugees and to grant them the status of permanent residents of the State of J&K and if it is not possible to grant State Subject status to them, a survey of such families to be conducted based on which they be given identification papers and access, as any State Subject of J&K would have, for

holding a permit by or under the authority of this law shall be deemed to be a citizen of India.

⁴⁸ Writ Petition (Civil) No. 578/2001.

⁴⁹ Writ petition No. 7698/ 1982.

⁵⁰ By judgment and order dated 20 February 1987.

⁵¹ *Bachan Lal Kalgotra v. State of J&K*, (1987) 2 SCC 223 at 227.

⁵² Vide D.O. No. 1888/ PS/ MOS (15)/94 dated 16 June 1994.

⁵³ Vide D.O. No. Rehab/48/88 dated 18 July 1995 issued by the then Chief Secretary, Government of J&K.

⁵⁴ Vide office memorandum dated 4 May 2000.

⁵⁵ By his letter D.O. No. 15030/18/2001 dated 31 August 2001.

the purposes of higher education, State Government services and to various other social welfare and poverty alleviation schemes. In the year 2005 again, the Ministry of Home Affairs⁵⁶ required the State Government to grant the permanent resident status to West Pakistan refugees without any further delay by legislating under Section 8 of the J&K Constitution considering that they had been resident in the State for the last 56 years. But to no avail.

4.2.4 The Response of the J&K Government

In spite of the efforts made by the Government of India from time to time, the Government of J&K refused to grant the status of permanent residents of J&K to these West Pakistan refugees on the ground that these refugees cannot be treated as permanent residents of State of J&K under Section 6 of the Jammu and Kashmir Constitution read with the provisions of State Notification No. L/84 dated 20 April 1927 and the State Notification No. 13/L dated 27 June 1932.

4.2.4.1 The Wadhwa Committee, 2007

A small scintilla of hope was felt in the refugees when on 11 May 2006, Mr Azad, the then Chief Minister, convened an All Parties Meeting at Srinagar to discuss the problems of the refugees of 1947, 1965 and 1971 from POK and West Pakistan to reach a consensus on political issues concerning the refugees. Subsequently, the Chief Minister constituted a committee under the chairmanship of the Financial Commissioner (Revenue) G. D. Wadhwa to look into the demands and problems of the displaced persons of 1947, 1965 and 1971 (POK and West Pakistan refugees) and furnish its recommendations.⁵⁷ The Committee was assigned the job to enlist the families of such displaced persons, identify their problems, gauge the adequacy of the measures taken by the government to address their problems and to suggest the measures for solving their problems.

The Wadhwa Committee submitted the complete committee report carrying recommendations for the refugees from the POK and West Pakistan to Chief Minister Ghulam Nabi Azad on 30 November 2007.

In the first part of the report, the Committee dealt with the details of the families of the refugees and the benefits provided to them. Regarding West Pakistan refugees, first, it was identified that during the partition of 1947, a total of

5,764 families consisting of 47,215 souls migrated from West Pakistan and settled in Jammu, Kathua and Rajouri districts of Jammu division. Regarding benefits, the Committee identified that no land was allotted to them. However, many of these refugees occupied government lands/EP⁵⁸ lands. These lands were allotted to be retained by them (up to 12 acres of khushki and 8 acres of aabi land) subject to certain conditions. As a result, 46,466 kanals of State/EP land stands retained by these refugees under Cabinet Order No. 578-C of 1954. Second, the Committee pointed out that the demand of the West Pakistan refugees that they should be given civil and political rights is under the consideration of the government.

In the second part of the report, the Committee dealt with the demands of the refugees and suggested recommendations. The first and foremost demand of the West Pakistan refugees was the conferral of citizenship rights to them and other allied demands (connected with citizenship). The Committee recommended that the West Pakistan refugees are very much the citizens of India and there is no separate citizenship of the State. Regarding demand of grant and extension of Permanent Resident Certificate benefits to them in the State, the Committee pointed that the demand is a political one and requires amendment of the State Constitution for which the government can take a decision. (The Wadhwa Committee Report, 2007:30–31).

4.2.4.2 The All Party Meeting of May 2007

On 12 May 2007, the issue was placed in a meeting of all recognised political parties of the State held under the Chairmanship of the then Chief Minister, Mr. Ghulam Nabi Azad. However, divided opinions of different political parties emerged during the meeting. Bharatiya Janata Party (BJP), Bahujan Samaj Party (BSP), National Panthers Party and Jammu Mukti Morcha supported the grant of permanent resident status and all the rights available to the permanent residents of the State. BSP said that they should be rehabilitated like other refugees of 1947 with a special package for jobs to bring them at par with other people of J&K State. The Congress regarded the problem of refugees as human problem, supported the grant of permanent resident status to them but subjected the decision to the agreement of all political parties representing all regions of the State. The People's Democratic Party (PDP), though evincing a sympathetic attitude towards them, said that it was impossible for the party to endorse anything at present. Mr. Abdul Aziz Zargar, on behalf of PDP, said that since at this time stakes are so high and the hopes of the people

⁵⁶ Vide D.O. No. 15030/21/2000-K.V dated 8 January 2005.

⁵⁷ The Wadhwa Committee was constituted vide Government Order No. Rev/Rehab/151 dated 9 May 2007

⁵⁸ Evacuee Property.

from all the regions are pinned on the peace process, other issues like this one can wait for their turn. The PDP accordingly proposed that the issue of granting permanent resident rights to the West Pakistan refugees of 1947 be considered with a solution to the larger problem reached between the concerned parties including India, Pakistan and the people of J&K. The National Conference Party refused even to consider the issue and pitted it against the Resettlement Act, 1982. It said that a section of the people of the Jammu division raised unnecessary hue and cry with the result that the said Act was subjected to Presidential Reference which is still pending the decision of the Supreme Court. If those people covered under the Act are not allowed to return in accordance with the law permitted by the Constitution, how can the permanent resident status be granted to those who do not belong to this State and have migrated from West Pakistan? The CPI (M) also strongly opposed the grant of permanent resident status to the West Pakistan refugees. According to it, the government should address the concerns and interests of all sections of the society. A large number of the people, particularly of the valley, are already feeling alienated and deprived. These sections of society feel that the demand of permanent resident status to West Pakistan refugees raised by a marginal section 'belonging to a particular region' is made only to create hurdles in the peace process and is a ploy to change the demography of the State. When peace process was underway, such issues could impede the process. Such things cannot be forced on the people. The party emphasised that such controversial issues require public consensus and the views of all regions of the State should be taken into consideration. The raising of such controversial issues would be counter-productive and would vitiate the atmosphere of peace and reconciliation. Once the Kashmir issue was resolved amicably, this issue would automatically get resolved. Thus, no consensus could be arrived at among the political parties on the issue of granting permanent resident status to the West Pakistan refugees of 1947 as the majority of participants were of the opinion that this being a constitutional issue it needed further deliberations and a final view could not be taken in isolation at this stage.⁵⁹

However, all political parties supported the providing of basic civic facilities and other social- and development-related amenities to these refugees which are possible without amending any existing law or the Constitution of the State.

The same year (2007) another Committee was constituted to resolve the issue of all types of refugees including the West Pakistan Refugees,⁶⁰ which submitted its recommendations on

11 June 2007. The issue of permanent resident status to the West Pakistan refugees was not taken up at all in the Committee which, however, made a brief reference to domicile certificate while recommending that the State Revenue Department shall examine and ascertain from the Government of India whether the certificate of being domiciled in the State of J&K is required for appointment in the Central Government services.

Panthers Party leader and legislator, Balwant Singh Mankotia, moved a Bill on 8 February 2007 pleading for Permanent Resident Certificates to these refugees. No progress was made on the bill, however.

In the year 2009, a meeting was held under the Chairmanship of Raman Bhalla, Minister for Revenue, Relief and Rehabilitation,⁶¹ wherein the facilitation of issuance of domicile certificates was assured to them. The refugees from West Pakistan are thus being made to reconcile with Domicile Certificates instead of the Permanent Resident Certificates.

4.2.5 The Responses of the West Pakistan Refugees on the Issue

All the respondents vociferously voiced their concern for the grant of permanent resident status. Many of them made claims that the political parties including the leaders of the National Conference had made promises to them but failed to fulfil them. Many respondents stated that Sheikh Abdullah had himself committed that they would be rehabilitated. Sansar Chand of Chak Jaffar even stated that in 1975–76, Sheikh Abdullah had asked them to fill up forms for Permanent Resident Certificate. He states:

Around 2627 forms were filled when one Kehar Singh of Pul Bajjua in Sialkot, who was given land in Gurdaspur in exchange of his *Maliki* land in Sialkot came to Jaffar Chak pretending as a refugee in Jammu and started spreading rumours that by filling these forms the land allotted to the refugees would be cancelled. Hence people became apprehensive and stopped filling up the forms and the process was stalled.

The authenticity of this statement cannot be validated. However, what it reflects is the state of uncertainty in the minds of these refugees and their vulnerability to accept any kind of statement in support of their demand. The lack of basic citizenship rights have made them frustrated and they express this frustration in various ways. The most important issue other

⁵⁹ Minutes of the Meeting of all recognised political parties of the State held under the Chairmanship of the Hon'ble Chief Minister on 12 May 2007.

⁶⁰ The Committee was constituted vide Government Order No. 1372-LD

(PAB) of 2007 dated 24 May 2007. Some of the recommendations of the Committee pertained only to the permanent resident refugees whereas some were common to all types of refugees including those from West Pakistan.

⁶¹ The Meeting was held on 24 September 2009.

than that of citizenship is that of their identity. Since they have migrated from Pakistan, they are known in local parlance as 'Pakistanis'. That this irritates them a lot is reflected in their frequent reference to this name of theirs while talking to us. Almost everyone we met informed us that they are known as 'Pakistanis'. Showing his resentment to this term, 90-year-old Syaru Ram of Chak Jaffar, remorsefully, stated, '*We participated in freedom struggle, iss desh ke liye jhande khare kiye, bhaangre mare, maar khaai, kis liye?*' (We hoisted flags, danced, suffered atrocities of the British for this country, i.e., India – what for?) Similar sentiments were expressed by Chhajju Singh Manhas, State General Secretary, WPRAC, from village Bagyal, Kathua district. He stated:

Women married to State Subjects become Hindustanis but a child born to West Pakistan refugees is still called a Pakistani. Even after 3–4 generations, no rights in the State of J&K. Even educated children are dar-badar (ruined) – they curse us – 'you got only this State to settle down.'

Seventy-five-year-old Nidhan Singh from Meen Sarkar village of Samba *tehsil* and district, who retired from the army, told us that 'two years back, I was arrested and detained in Bari Brahmana Thana for being a Pakistani. Why are we called Pakistanis when we vote for the Lok Sabha?'

4.3 PROBLEMS FACED BY WEST PAKISTAN REFUGEES

4.3.1 Land-related Issues

Being non-permanent residents, the West Pakistan refugees cannot acquire or own any land in the State. As discussed above, all land-related legislations enacted by the State of J&K vest the land rights only in the permanent residents of the State. Even the laws pertaining specifically to displaced persons also make the same provision. The West Pakistan refugees have completely been excluded from the purview of such laws subjecting them to a lack of ownership of land.

When the West Pakistan refugees came to India in 1947, they occupied land available according to their means of livelihood. The land was either the State land (owned by the State) or the evacuee land vacated by Muslims who fled to Pakistan in 1947.

A provision was made by the State government for the refugees who came from POK in 1947. In the beginning, 12 acre land per family was allotted to them. When 6,000 families came, Cabinet Order 578-C dated 7 May 1954 was passed under which a scale was fixed. Allotments were made under this Order to two categories of allottees – the displaced allottees and the

local allottees. The scale was fixed at 6 acres of *khushki* land and 4 acres of *aabi* land for displaced allottees. An identical scale was fixed also for local allottees who were in possession of the land.⁶² Under Section 3-A of Agrarian Reforms Act, 1976, the POK displaced persons of 1947 were given concession on EP. They were declared Occupancy Tenants which meant that if they wanted to sell that land (EP), they shall not be prevented from doing so. Under Cabinet Order 254-C of 1965 dated 7 July 1965, on State land, the displaced persons were granted ownership rights.

These concessions were, however, not extended to the West Pakistan refugees. They were neither made Occupancy Tenants nor were given the ownership of State land. A little protection was guaranteed to them under Section 17(2) of the Agrarian Reforms Act, 1976, under which their possession was not to be disturbed; no proprietary rights, however, were given to them.⁶³

Labha Ram Gandhi, President, WPRAC, points that over the period, the land under the occupation of the West Pakistan refugees has been decreasing. With the successive influx of refugees after the 1965 and 1971 wars, much of the land under their control was allotted to these refugees. He stated:

In the beginning, the Govt. asked the West Pak refugees to occupy land wherever available vacant. Some was State land and some Evacuee land. Majority of the refugees were poor belonging to SC, so were not in a position to cultivate land. Allotment of land was made by issuing *girdawari* in favour of the allottee. Up to 1965 and even up to 1971, West Pak refugees were well settled, had enough land and were happy. In 1965, Chhamb refugees came. Government identified villages having much land and gave away about 4 acre per head to 1965 refugees. In 1971, another batch of refugees came.⁶⁴ In Nandpur, 200–250 families of 1965 refugees had already

⁶² The Wadhwa Committee identified that no land was allotted to the West Pakistan refugees. However, many of these refugees occupied government lands/EP lands. These lands were allowed to be retained by them (upto 12 acres of *khushki* and 8 acres of *aabi* land) subject to certain conditions. As a result, 46,466 *kanals* of State/EP land stands retained by these refugees under Cabinet Order No. 578-C of 1954. (The agricultural land allotted to them is in the areas of R. S. Pura, Bishnah and Samba as most of the rural refugees were settled there.)

⁶³ Section 17 (1) prohibited the vesting of property in favour of any non-permanent resident of the State of J&K. Section 17(2) provides that until the government directs otherwise, nothing in sub-section (1) shall be deemed to interfere with the possession of land of a tiller, who is not a permanent resident of the State, where such tiller, as had come from Pakistan in 1947–48, has been in possession of such land since any date before the first day of September 1950.

⁶⁴ They were placed in the camps in Krishanpur, Manwal and Jhajarkotli. The government kept them in *pahari* areas as they were frightened and were fed up of shelling at border.

settled; 200–250 families of 1971 refugees came. This led to further division of land. The 1971 refugees were also given 3–4 acre per family. So a very small portion of land – around 3 acre per family remained with West Pakistan refugees and that too not with all of them. Only 10–15 per cent of the families of West Pakistan refugees have land. The rest of them were poor and had not occupied much land as they did not have the money to cultivate land and used to work for others. However, unlike other refugees, they were never given ownership rights in land as they were not accepted as the Permanent Residents of the State of J&K.

Some of the West Pakistan refugees in Chak Jaffar informed that they lost the opportunity of allotment of land in their name due to their displacements. Sardari Lal of Chak Jaffar told how after coming from Pakistan, his father first stayed in Chak Jaffar, then went to Purkhoo in 1949, stayed there for 2–3 years, then again came back to Chak Jaffar. By then, the land there had already been occupied; occupiers got the land allotted in their own names and that of their relatives. His father could get only 2–2½ *marlas* to occupy where the family is still staying.

There are a lot of issues related to allotment of land. While some refugees possess documentary evidence of temporary allotment, others do not have any such document. Pandit Dina Nath from Chak Jaffar said:

I am an *arjee* [temporary] allottee of 10 *kanals* of land for which I have girdawari in my own name. I have *constructed* house in 1 *kanal* and I and my sons are paying *chowkidara* for house. But we have no ownership rights on the land and the house and can't sell even a little of the soil.

Melo Devi from Bhagwati Nagar said:

I have 4 *marlas* of land whereupon I have constructed my house and am paying rent. Year to year allotment of land and houses is made to the West Pakistan refugees living in Bhagwati Nagar. Every year we are asked to file an affidavit for that. When we go to file the affidavit, they double the rent.

Though West Pakistan refugees cannot purchase any more land in the State, yet it is not only the small portion of land that makes them feel insecure, but also their relationship with the government officials. The administration of EP is to be done by the custodian authorities under the J&K State Evacuees (Administration of Property) Act, Svt. 2006⁶⁵. Under Section 9 of the Act, the evacuee property is to be maintained by the

custodian authorities. Section 9-A imposes a prohibition on the occupiers of EP from erecting or re-erecting any building thereon without the permission of custodian authorities and disentitles them for any ownership rights in or compensation in lieu of such erections if made in violation of the said prohibition. Section 10-A empowers the custodian authorities to revise the rent for the EP. Prohibition has been imposed on these refugees by the State government that they cannot repair or make alterations in their houses but shall have to pay the rent.⁶⁶ Almost all the respondents conveyed their resentment on this. Sita Ram Manhas, a respondent from Bhagwati Nagar, who has inherited a small house constructed by his father on four *marlas* of land, narrated the exploitative patterns of the custodian authorities. He stated:

Custodian authorities said that they will dismantle the house, impose penalty for constructing the house. They first charged us some lump sum amount and the arrears of rent. We started with Rs. 20 per month. Now it has been raised to Rs. 240 per month. We have for the last two years stopped paying the rent. Why should we pay the rent? We also left so much of property in Pakistan. Nothing has been given to us by the government – no help, no compensation by the government. We have survived on our own.

In Chak Jaffar, the West Pakistan refugees feel threatened even about their possession. Due to the lack of any clear policy, their possession of the property is not properly recorded thanks to the negligence of the government officials. Chanderbhan, a respondent from Chak Jaffar, thus stated:

West Pak people do not have any agricultural land here in Chak Jaffar. They however, have control over land on which they have constructed their houses. It is government land that they are occupying. Earlier they were paying *chowkidara* – now government is not receiving *chowkidara* (*chulha tax*) for the last 10 years. After the death of the *lambardar* nobody has been appointed as *lambardar* for the last 2–3 years, so there is no government official who will receive this tax.

This statement clearly reflects the lack of concern of the government towards the land issues of these people. There seems to be not only official apathy but also lack of direction in the policy towards these refugees. In the absence of any

⁶⁵ Around 1948–49.

⁶⁶ The Wadhwa Committee also identified that the West Pakistan refugees living on custodian lands are prohibited by the Government of J&K from repairing their houses or making new constructions and are asked to pay rent. The Committee recommended that the EP department should consider and allow the West Pakistan refugees to repair their houses as per the norms and rules of the department.

payment of tax, there is discontinuity in the government record regarding their control over the land. People thus fear that in the absence of such records, they may not be able to prove their possession after sometime.

Another issue is their disentanglement to compensation in case of acquisition of land (occupied by them) by the State. The respondents from Bhagwati Nagar reported that the government is soon to start some road widening project in Bhagwati Nagar and acquire some part of the houses or other immovable property as would fall in the road. Pointing out the vulnerabilities of the West Pakistan refugees in this regard, Melo Devi of Bhagwati Nagar stated:

My house is one among the 5–6 houses of refugees which are situated on the main road of Bhagwati Nagar and now a part of the house is now going to fall in the road widening project. I already have a small house in 4 *marlas* which will become still smaller and no compensation will be paid to me.

It is not only the shrinking of the property in their control but also the denial of compensation. Unlike the other citizens of the State who have ownership right over land and get compensated when their property is acquired by the State, these refugees do not have the right of compensation. Hence they face the double loss. This was reiterated by Sahib Singh of Bhagwati Nagar, who said:

4 *marlas* of land was allotted to my father which was divided among me and my two brothers, so I now have 1 and $\frac{1}{4}$ *marlas* out of which 15' has now fallen in the road widening project. I will not get any compensation.

Rashpal of Chak Jaffar said:

In case of acquisition by government of land occupied by West Pakistan refugees, no compensation will be paid to us. In case of acquisition of a house constructed on land, a standard fixed amount of Rs. 500 is to be paid by the State Government as compensation – be it a kulha [a thatched room] or a house worth Rs. 1,00,000 or Rs. 5,00,000.

Thus the State acquisition of land without any compensation to them or without any policy of their rehabilitation worsens the already existing vulnerabilities of these refugees.

Many people reported that they had very uncertain status of land since they neither got the land allotted by the State, nor did they get it from the custodian. They have on their own purchased it from the private owners. However, such ownership is not recognised by the state officially. For instance, Rashpal of Chak Jaffar informed that he had purchased two *kanals* of

land from low-caste SCs. But he is not sure about the official status of his propriety right.

Disentanglement to acquire or own immovable property in the State has made the position of West Pakistan refugees very precarious. Since they cannot acquire or own any immovable property, other than the one occupied by them, it affects their overall control over land. The occupied land gets divided between their following generations 'shrinking' the space for the subsequent generations of the West Pakistan refugees.

Satpal of Babliana village, Gangyal, stated:

Sheikh Abdullah gave 24 *kanals* of land to my father which was custodian allotment (they were asked to take care of the land, earn and eat). My father and his two brothers distributed the land among themselves. The land further got distributed between the next progeny. What when the land is further distributed among next generations – probably nothing will fall in their hands. We can't have any new allotments nor can purchase or own any more land.

There are a number of such refugees whose families (comprising of 4–6 members each) are living in one-room houses constructed on 1 *marla*. They are worried as to what will happen to the subsequent generations amongst whom the 1 *marla* would be divided and what the fate of still subsequent generations would be.

4.3.2 Education- and Employment-related Issues

4.3.2.1 Education

The West Pakistan refugees of the first generation are mostly illiterate with some of them having studied up to middle class, the second generation refugees are mostly under-matric/ matric and even the third generation refugees have not studied beyond matric barring a few exceptions. The following reasons have been attributed to this:

As conveyed by the respondents, the West Pakistan refugees were facing a lot of problems in getting their wards admitted in educational institutions in the State. Whenever they approached for admission, the authorities demanded production of Permanent Resident Certificate which they did not have. Most of them could not study after Class IX due to this reason. Representations in this regard were made by the West Pakistan refugees to the State government. Acting on such representations, the State government, in the year 2007, through Director, School Education, Jammu, and Director Colleges, Jammu, and Chief Education Officer, Jammu, enjoined upon all the heads of the educational institutions falling within

Jammu district to not insist on the production of PRC at the time of granting admission or giving scholarship to the children of West Pakistan refugees.⁶⁷

The State government recognised that the State of J&K being a welfare state had opted for free education to all the citizens irrespective of their caste, creed, religion, etc. and the government does not impose any restriction on free education. All the persons residing in the State in whatever capacity including the West Pakistan refugees are entitled to free access to educational institutions except for the courses which are reserved for the permanent residents of the State. The West Pakistan refugees are residing in the State of J&K right from the day of migration till date. They are ordinarily enjoying all the civil rights except the permanent resident status. As far as educational facilities are concerned, the State provides them even to the non-permanent residents who are serving in the State in various capacities. So the same cannot be denied to the West Pakistan refugees.⁶⁸

Another factor that has impacted their education is the poverty of these refugees. Twenty-four-year old Nisha from Bhagwati Nagar, who is under-matric, told that she wanted to study further but had no money at the required time. Her 33-year-old brother is also under-matric and started as labourer at a young age as there was no source of income. Shobha Devi of Bhagwati Nagar said:

I have two sons, 24 and 19 years of age, both have studied upto class 8th. The elder one is unemployed, works temporarily as driver for 2–3 months with some vehicle and then stays unemployed. I also have two daughters, one 27-year-old has studied upto class 11th and stitches clothes, another aged 23 has studied upto class 9th and stays home. I could not afford further education of my children due to poverty as I had to choose between education and survival.

Sardari Lal of Chak Jaffar stated that he has a son, who studied up to Class VIII and works as labour and four daughters who studied up to Classes VII and VIII. His children could not study further due to poverty. He also told that one of his daughters has been conferred scholarship of Rs. 5000 in Class XII but has not been given the same as she is not a permanent resident.⁶⁹

⁶⁷ Instructions issued by the State Government vide letter No. DCJ/SQ/07-08/1753-56 dated 23 October 2007.

⁶⁸ Ibid.

⁶⁹ Education of girls is not much preferred among West Pakistan refugees. They are less educated and are married off at an early age. There is only a negligible number of girls who have graduated. Pritam Singh Manhas of Bhagwati Nagar said, 'My daughter is M.A., B.Ed. These days boys prefer to marry girls who are in employment. Being non-permanent residents, our daughters even if they are educated, can't be in job, as such it becomes

The Government of India made special provision to provide technical education to the West Pakistan refugees in the technical educational institutions of the State. All India Council for Technical Education has issued guidelines⁷⁰ to all the State Governments for creating necessary provisions for granting concessions in admission to the children and grandchildren of West Pakistan refugees settled in the State of J&K in the matter of admission in technical educational institutions. These are: extension in date of admission by about 30 days; relaxation in cut-off percentage upto 10 per cent subject to minimum eligibility requirement; waiving of domicile requirements; permission to implement upto a maximum of 1 per cent supernumerary increase in intake so as to admit eligible candidates of the above category; facilitation of migration in second and subsequent years. The State government has directed⁷¹ the Government Engineering College, the Government Polytechnics for women and for boys and the Industrial Training Institute in Jammu respectively to give effect to the said guidelines.

However, despite these concessions, these refugees, stricken by poverty, are unable to seek admission in technical educational institutions. Nisha, a respondent from Bhagwati Nagar, said, 'Even if technical education is allowed, we don't have any money for admission.' Darshan Lal of Chak Jaffar told, "A vocational training takes 1–3 years. If we get ourselves enrolled for it, how will we manage two square meals? We are labour class people. By working for the day, we manage our food for the night. How can we enrol for such trainings?"

The other Committee of the year 2007⁷² had recommended that the State Government shall take steps to establish an Anganwari Centre and a Sarv Shiksha Abhiyan Centre in each of the localities/bastis inhabited by refugees but appointment shall be restricted to permanent residents of the State in those centres. However, nothing so far has been done for the establishment of such centres in their localities.

difficult to find suitable matches for them. It thus feels futile to get the girls highly educated.' Karamchand of Bhagwati Nagar said, 'I have two sons, 22 and 23 years of age, both matric, one working in Jandial Press, another in Vishal Mega Mart. I did not have money to continue further their education. So they had no choice but to take up some small employment to make both ends meet.' Sahib Singh Manhas of Bhagwati Nagar said, 'I have two sons, who studied upto classes 10th and 12th, and are working as labour, one with the Best Price Shop and another with a medical store. They wanted to study further but could not: either to earn two square meals or study further. I have three daughters, one of them studied up to class 10th, two up to class 8th and are now married off.'

⁷⁰ Vide Circular F. No. AICTE/PC/Kash-NIG/2008-2009 dated 27 May 2009.

⁷¹ Vide Orders DCJ/Relief/WPR/ 2009-10/222, DCJ/Relief/WPR/ 2009-10/223, DCJ/Relief/WPR/ 2009-10/224, all dated 09 July 2009 and DCJ/SQ/2011-12 dated 09-12-2011.

⁷² Constituted vide Government Order No. 1372-LD (PAB) of 2007 dated 24 May 2007.

4.3.2.2 Employment

There is no bar on the West Pakistan refugees from being employed in the Central government services. However, being non-permanent residents, they cannot seek employment in the services of the State. Ram Lal of Halqa Marh said that there is desperation among the children of West Pakistan refugees over the fact that they are not going to get any jobs in the State.

Most of the West Pakistan refugees in Chak Jaffar and Bhagwati Nagar work as labour with a few exceptions. However, the socio-economic situation of these refugees subjects them to exploitative patterns at the hands of those who employ them. Sansar Chand, a respondent from Chak Jaffar, informed: 'We are paid less for labour as compared to the local labour. We are paid only Rs. 100–150 per day whereas the local labour is paid more than double the amount we get.' Sandhya Devi from Bhagwati Nagar told that she has a 22-year-old son, who is 'under-matric'. Since 2009, he has been working as a daily wager in the Electricity Department. However, he has been paid only twice at the rate of Rs. 2,100 per month on three-month basis. Thereafter, for the last 2 years, he is being called by the AE/JE to work, but is not being paid.

The exceptions are those who served as soldiers in the armed forces and are now pensioners. However, the refugees narrated their difficulties in getting jobs in armed forces as well. They stated that earlier in the armed forces, PRC (Permanent Resident Certificate) was not required. But later, due to militancy in the State, the recruitment in the armed forces was ordered to be through the State and the State, as a matter of policy, required the applicants to produce the PRC.⁷³ Ratan Lal, a respondent from Kothe Tokriyan near Chak Jaffar, stated: 'I joined army at the age of 17 and served it for 28 years. Only school certificate was required at that time. State subject at that time was not asked in army service but now it is essential.'⁷⁴

4.3.3 Domicile Certificate

Since long the West Pakistan refugees had been asking for the grant of domicile certificate in their favour until the demand for the issuance of PRC is taken care of by the State. The Wadhwa Committee recommended that the Deputy Commissioners be

directed to issue the domicile certificates in their favour after fulfilling the procedural formalities.

The Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training), Government of India, issued a notification, 'The Resident of J&K State (Relaxation of Upper Age Limit for Recruitment of Central Civil Services and Posts) Rules, 1997'. Under Rule 4 of these Rules, District Magistrates are competent to issue domicile certificate to any resident of the State to the effect that such person is domiciled in the State of J&K. This notification was extended up to end-December 2011 by the Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training).⁷⁵

The State government had requested to extend the date of notification for a period of two years, that is, up to end-2013, in favour of West Pakistani refugees.⁷⁶ The Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training), Government of India, extended the period to 2013.⁷⁷ The State government has implemented the notification⁷⁸ and the process of issuance of Domicile Certificates is now on.

The respondents also told that even in the issuance of bank loans, the Permanent Resident Certificate is asked from them. Some of them seemed to be precarious about taking up bank loans. Sansar Chand of Chak Jaffar stated: 'I didn't try for bank loan. I am a labour class person. Wherefrom to pay back the loan? In case of non-payment, I may lose even the government property I am holding.' Ram Lal of Halqa Marh referred to one such case from Chatha three years back when a young boy who had studied up to B.A. had applied for bank loan but was denied the loan on the ground that he did not have the Permanent Resident Certificate. Frustrated and finding no way out, the boy consumed poison.

Some self-employment schemes through bank loans need to be devised for them and special provision is required to be made for issuance of bank loans to them for promoting such schemes, so that these refugees can look forward to a better standard of living.⁷⁹

4.3.4 Political Representation

The West Pakistan refugees have the right to vote/contest in parliamentary elections being Indian citizens but they cannot vote for or contest elections of the State Legislative Assembly

⁷³ The recruitment office for army personnel in Jammu confirmed that the Permanent Resident Certificate is asked for appointment in armed forces from J&K but conveyed that it is a practice and the reasons for this are unknown to them.

⁷⁴ The 2007 Committee had also recommended that the State Government shall request the Central Government to provide reservation to wards of all types of refugees in appointments to the Central Government services and that the State Revenue Department shall examine and ascertain from Government of India whether the certificate of being domiciled in the State of J&K is required for appointment in the Central Government services. No provision, however, was recommended for State services.

⁷⁵ Vide Letter No. GRS 839-(E) dated 23 November 2009.

⁷⁶ Vide Letter No. 502/West Pakistani/3860-72.

⁷⁷ Vide Notification dated 30 December 2011.

⁷⁸ Vide Order No. DCJ/SQ/ West Pakistani/2012-13/121-24 dated 9 April 2012.

⁷⁹ Article 47 directs the State to endeavor to raise the standard of living of the people.

or of the State local authorities being non-permanent residents of the State. This lack of political representation in the State makes them feel voiceless. They feel that there is nobody to truly represent them in the State and to speak and fight for the redressal of their grievances. This has made them feel debilitated. So democracy or grass-root level democracy does not carry any meaning for them.

Chanderbhan from Chak Jaffar stated: 'The MLAs are not interested in us as we don't carry any votes for them. So they don't have any political interest in us.' He further stated, 'Permanent Residents, even if illiterate or studied up to IVth standard, can become Sarpanch; however, none of us (West Pak refugees) even if well educated can be the Panch/Sarpanch. I am Matric, but can't participate in elections. We feel bad about it.'

Chhajju Singh Manhas, State General Secretary, WPRAC, from Bagyal village in Kathua said:

We can't vote for Panchayat elections. A West Pak refugee can't be a Panch/Sarpanch. Almost every village has 35–36 families of West Pak refugees but others (permanent resident locals) having only 4–5 families have the Panch/Sarpanch elected. In Nagri there are 390 families of West Pak refugees, in Kidian there are 385 families of West Pak refugees, but no lambardars or Sarpanch from West Pak refugees.⁸⁰

4.3.5 Reserve Category Benefits

About 80 per cent of the West Pakistan refugees belong to the Scheduled Caste (SC) and Other Backward Caste (OBC) categories. However, the Reserve Category Certificates are not issued to them. So they are not entitled to constitutional protections like reservation in education and employment under Articles 15 and 16 of the Constitution of India, protection of Article 17 which abolishes untouchability, political reservation under Articles 330, 332, 243-D and 243-T in the House of the People, Legislative Assemblies of the States, *panchayats* and municipalities. As such the statutory protection of the laws like Protection of Civil Rights Act, 1955 (as amended in 1976), and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, enacted under Article 17 of the Constitution of India is not available to them. This has disentitled them from a number of special schemes and packages launched for the benefit of the reserved category groups by the Government of India. Recognition of the reserve category status in the State of J&K is associated with the permanent resident status. To be placed in a reserve category

in the State of J&K, the West Pakistan refugees must first have the status of a permanent resident of the State.

The Wadhwa Committee also recommended that in view of the fact that most of these refugees belong to the SC category, the government may issue separate Circular Instructions for granting to them Reserve Category Certificates applicable only for recruitment to posts under the Central government or other State governments and paramilitary forces. No such assurance, however, was made for State services.

However, the recommendations of the Wadhwa Committee have not been implemented and till date the West Pakistan refugees have not been issued Reserve Category Certificates for seeking benefits even at the Centre and other States.

4.3.6 Other Basic Amenities

The Wadhwa Committee recommended provision of separate funds for providing basic civic amenities (opening of Anganwari Centres, etc.) in their areas of habitation. The other Committee of 2007⁸¹ also recommended that all refugee *bastis*/residential areas should have every type of basic amenity and modern facility required for making them worth living. It provided that the State government shall make an assessment of the funds required for the purpose and submit a proposal to the Central government to provide the required funds for the said purpose.

However, nothing has been done by the State government in this regard so far. Most of the refugee houses in Chak Jaffar are mud houses and are in dilapidated condition. The roofs made of wooden logs are likely to fall any time. The houses stink with flies in summer. In most of the cases, the whole family is to be accommodated in a small accommodation. Darshan Lal of Chak Jaffar told:

I have six members in my family – my mother, wife, three daughters and a son. We seven people are managing in a one-room accommodation of 8x12 without any kitchen, bathroom, verandah or gate. The roof of the house may fall in rainy season and I don't have any money to repair it.

4.3.6.1 Extension of the Benefits of Schemes Like Indira Awas Yojna (IAY)/Below Poverty Line (BPL) to the West Pakistan Refugees

The benefits of centrally sponsored schemes are not extended to these refugees. For example, Indira Awas Yojna (IAY) is not

⁸⁰ Nagri and Kidian are villages in Kathua district.

⁸¹ Constituted vide Government Order No. 1372-LD (PAB) of 2007 dated 24 May 2007.

extended to these refugees despite the fact that their houses are in dilapidated condition. The respondents in Chak Jaffar informed that only one or two houses of refugees there were given the benefit of IAY but only at the discretion of the *sarpanch* of their area and not because of any policy for their benefit.

Most of the West Pakistan refugees are extremely poor. WPRAC made representations to the State government for their inclusion in the Below Poverty Level (BPL) category but to no avail. The Wadhwa Committee had recommended that the matter be taken up by the Divisional Commissioner, Jammu, with the Rural Development Department through the Revenue Department. However, nothing has been done in the matter.

4.3.7 Special Relief Package

There is a long pending demand on the part of the West Pakistan refugees for a Special Relief Package to them. The Wadhwa Committee had regarded the demand as justified and called for the government's consideration. It recommended that the centrally sponsored schemes be made applicable to their *bastis* and their wards be considered for scholarships, etc. Their demand for the issuance of Identity Cards on the analogy of the Kashmiri Migrants for disbursing any type of relief, etc., was regarded by the Committee as worthy of consideration. They had demanded a special package for them similar to the package sanctioned by the Government of India for the Displaced Persons (DPs) of 1947 as per the latest member of the family. The Committee recommended that Provincial Rehabilitation Officer (PRO), Jammu, will formulate a package for them and take up the matter with the Central government through the Administrative Department.

The 2007 Committee had also recommended that the State government take up the matter with the Central government for the sanctioning of a special compensation package of an amount which shall be upto Rs. 2 lakhs per family but in no case less than Rs. 1 lakh per family for all types of refugees as a one-time settlement of their claims for rehabilitation.

The 2009 Meeting⁸² assured to look into the demand of the West Pakistan refugees for relief package and take necessary action in this regard. However, L. R. Gandhi, President, WPRAC, informed:

No package has been provided by the government, Central or State, till date. On the PM's visit on 26th of May 2008, the West Pak refugees demanded Rs. 400 crore package. However, in view of the fact that the amount would be less as the number of refugees was much more than was

visible, we proposed to increase the amount to Rs. 750 crores. The demand was placed before the Prime Minister in 2010 in Srinagar on his visit to J&K. It is being hoped that the demand will be approved in a few months.

However, the said package has not seen the light of the day till date.

4.3.8 Comparative Analysis of Rehabilitation of POK and West Pakistan Refugees

The West Pakistan refugees have POK refugees as their reference point and compare their situation with the POK refugees since the situations of both were similar in the beginning. Both the groups were forced to migrate from their homeland in the wake of partition disturbances and both were uprooted and both faced similar loss of property. However, while the Government of J&K took the responsibility of the POK refugees and rehabilitated them to some extent, no similar steps were taken to rehabilitate the West Pakistan refugees. The following is comparative analysis of the government's response towards POK refugees and West Pakistan refugees.

The POK refugees of 1947, 1965 and 1971 stand registered with the erstwhile Provincial Organisation which was disbanded in October 1982. In 1984, the State government created the Rehabilitation Cell under the charge of the Custodian Evacuee Property (ex-officio Provincial Rehabilitation Officer) to look into the problems of the DPs. The 1947 POK refugees were put in different relief camps within and outside the State. In 1950, these camps were disposed of by the government and the people who opted their settlements as agriculturists were settled in rural areas. A Joint Rehabilitation Board was constituted by the government. The refugees from rural areas were provided with 8 acres of *aabi* or 12 acres of *khushki* land per unit of family irrespective of the size of the family and Rs. 1,000 as *ex gratia* relief. The refugees from urban areas were given plot measuring 1,800 square feet and an *ex gratia* relief of Rs. 3,500 per unit of family. While the process was going on, the government, in order to provide rehabilitation facility to all DPs, formulated norms for allotment of land and promulgated an ordinance vide Cabinet Order No. 578-C of 1954 dated 7 May 1954 for refugees who were holders of agricultural land in Pakistan. Later on the scale was changed to 4 acres of *aabi* or 6 acres of *khushki* land as more families were displaced in the 1965 and 1971 Indo-Pak wars, and the scale for non-camp DPs of 1947 was reduced to 4/6 acres to rehabilitate them. Thereby as many as 21,116 DP families of 1947 got settled in different parts of the State, by being provided about 10 lakh *kanals* in Jammu division alone. In all, the Evacuee land

⁸² Held on 24 September 2009.

allotted was 6,80,850 *kanals* and the State land allotted was 2,43,000 *kanals*. Over time, the government conferred upon these allottees Occupancy Tenancy rights in respect of Evacuee lands under Section 3-A of the Agrarian Reforms Act, 1976.⁸³ However, it devolved absolute ownership (proprietary rights) to them in respect of State land pursuant to Government Order No. 254-C of 1965.

Apart from land allotment, the displaced families were provided with basti sites near their allotted lands and these were regularised under provisions of Jammu and Kashmir Common Lands Regulation Act, 1956, and a huge amount was spent on improvement of these sites. The rehabilitation of other DPs having opted settlement in urban area was also initiated simultaneously in the year 1954, whereupon as many as 1,628 constructed quarters and 793 residential plots were allotted free of costs at different sites/colonies, namely Bakshi Nagar, Nowshera, Udampur, Rajour, Patoli and Srinagar.

Those DPs who were allotted less than allottable units were paid cash compensation for deficiencies of land. The process of cash compensation started from the year 2000 and an amount of Rs. 5 crores has been released in PRO, Jammu, for this purpose by the Ministry of Home affairs, Government of India, vide order dated 9 August 2000 at the rate of Rs. 5000 per *kanal* subject to a maximum of Rs. 25,000 per family. Rs. 423.71 lakhs was disbursed in favour of 1,873 rightful families till October 2009. However, the State government vide order No. Rev/Rehab/132 of 2009 dated 19.10.2009 revised the rate of compensation from Rs. 5,000 to Rs. 30,000 per *kanal* subject to a maximum of Rs. 1,50,000 for 5 *kanals* and above, and an amount of Rs. 49 crores was sanctioned by the Government of India vide order dated 24 December 2008. Accordingly, the verified claimants were paid the cash compensation at the revised rate.

Till date, out of the applications received from 4,988 families in 1998, 3,913 were verified by the Committee constituted for the purpose. A total of 1,025 claims were rejected and the rest were approved by the Committee. An amount of Rs. 25.20 crores stands disbursed to 2,444 claimants.⁸⁴

⁸³ Section 3-A of the Agrarian Reforms Act, 1976, inserted by Act No. V of 1978, reads as:

Occupancy tenancy of displaced persons in evacuee land

Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, displaced persons cultivating evacuees, lands personally shall in respect thereof be deemed to be occupancy tenants and recorded as such. They shall be liable to pay rent equal to the amount of land revenue and cesses assessed thereon:

Provided that such displaced persons shall have right to transfer their right of occupancy tenancy by sale, mortgage or gift subject to the provisions of the alienation of Land Act, and the provisions of the the J&K Tenancy Act, Samvat 1980 shall not apply to such transfer.

⁸⁴ Source: Office of the Provincial Rehabilitation Officer, Jammu.

4.3.8.1 1965 Refugees

During the 1965 Indo-Pak war, people from Chhamb Niabat were dislocated and forced to migrate to Jammu. During this war, a large number of people were killed, but many more were displaced. They lost their movable and immovable property. More than 16,000 families were uprooted during this time. The majority of these families were settled temporarily along the International Border (IB) from Kathua to the Pargwal sector. Presently these displaced families are living in the villages of Sai, Ramgarh, Kathua, Kaku Kothe, Chanana, Nand Pur, Rangoor Camp and Barota.

These families were allotted EP agricultural land ranging from 16 *kanals* to 32 *kanals* only, which was far below the scale laid down under Order 578-C of 1954. Each family was provided a meagre monetary relief of Rs. 500. No compensation against deficiency of land has been paid to them. Much of their allotted land has fallen under ditches and fences raised by the army but no compensation of their land under ditches and fences has been granted to them as the Occupancy Tenancy rights under Section 3-A of Agrarian Reforms Act, 1976, have not been conferred upon them.

The 1971 refugees from POK have been provided with a relief of an *ex gratia* payment of Rs. 25,000 to non-camp refugees whereas camp refugees have been provided the relief of 8 *kanals* of irrigated (*aabi*) and 48 *kanals* of unirrigated (*khushki*) land.

As compared to these refugees, the West Pakistan refugees have not been provided relief. Other than cultivating the land occupied by them, they have neither been given any land in the rural areas nor any package to settle in urban areas. This generates a sense of resentment among the West Pakistan refugees. The resentment is not only against the government of the State but also against the Government of India. They complain that they have not been owned even by successive governments in New Delhi. In this context, they compare their position with other West Pakistan refugees who were settled in other parts of India. They argue that those West Pakistan refugees who settled down in other States of India were given all opportunities of survival and growth and did not face any discrimination on any count there since they got thoroughly integrated into the local population there. Their claims were settled and they got not only the land but also the money to construct houses. To quote Chanderbhan, respondent from Chak Jaffar:

The West Pakistan refugees like us who were settled in other states were compensated for the loss of their property in a reasonable manner. They were given 8 acre land each. Until harvest was ready, that is, for the first 6 months, they were paid money for subsistence (*kharcha*).

Plots were given to them where houses were constructed by the government for them.

That is the reason that many of them regret their continued stay in J&K. Vijay Badyal, aged 22, of Gho Rakwala village, Samba *tehsil* and district, compared his family's position with that of the position of their relatives and argues that since their relatives chose to settle in Punjab, their quality of life was much better. He thus notes:

My grandfather had eight brothers. Those eight brothers settled in Punjab in 1947 whereas my grandfather preferred Jammu as he had his in-laws here. Today grandfathers' brothers in Punjab are well educated holding posts of doctor, professor, *sarpanch*, *lambardar*, or serving in the army on good posts and own 25 acres of land each. And we are nowhere.

Most of them argue that had they known that they would be treated in a 'discriminatory' manner as compared both to the POK refugees as well as the West Pakistan refugees in the rest of India, they would not have continued to stay in this State. They insist that they had taken the decision to move out of the State but were stopped on the assurance of Sheikh Abdullah. However, no one in the government is ready to accept this argument. But the refugees further note that it was after a few decades that they realised that they would not be getting any relief from the State because they were not State Subjects. But this knowledge at this late stage did not help them, because moving out of the State also would not have brought any relief to them. Sita Ram Manhas of Bhagwati Nagar, stating his apprehensions, said, 'Now if we go to any other State, they say your claims are time-barred. *Ab hum na idhar ke rahe na udhar ke*' (Now we are left neither here nor there). They regret that their claims have remained wholly negated by the government. They have not even been identified or registered by the State government. However, on its own, the West Pakistan Refugee Action Committee (WPRAC) has now started with the process of determination of their total number and is issuing the Identity Cards to the members of the organisation. Their grouse is that the recommendations of the Wadhwa Committee have not been implemented in full till date though these recommendations themselves do not carry much for them. The number of the families of these refugees (as identified by the Wadhwa Committee in its report) has now risen from 5,764 in 1947 to 18,428 in 2012 (as identified by the WPRAC) but their plight has remained the same.

4.3.9 Politics of Protest

The WPRAC has been protesting since 1947 for the consideration of the issues and demands of these refugees. Formed originally

as West Pakistani Refugees Action Committee Cell–1947, this is the major organisation of these refugees. (It has its head office at Swankha More, Vijaypur, Samba *tehsil* and district.) All West Pakistan refugees are members of this association and they are issued identity cards by this association. Mr. Labha Ram Gandhi is presently the President of the WPRAC. It is under the banner of this organisation that most of the protest demonstrations have been organised, though there have been few spontaneous protests at the local levels as well. We were informed by the respondents about various protests in which they had participated. They told us that in 1980–81, a *dharna* was held at Suchetgarh by 300–400 refugees. In the 1980s again, a *dharna* at Parade Ground, Jammu, was held by thousands of West Pakistan refugees.

To make themselves visible at the national level, the West Pakistan refugees have been often organising protest demonstrations in Delhi. The respondents informed that the most notable protest was the nine-month agitation at Jantar Mantar in Delhi in 2005–06 for which nine buses of refugees had gone from various parts of Jammu to Delhi. In 2008, 35 buses of refugees went to Delhi to hold a protest. In 2012, 32 buses of refugees, which included 10 buses carrying women, went to Delhi to hold protest.⁸⁵

A delegation of West Pakistan refugees had also met the Group of Interlocutors on J&K⁸⁶ and in a one-hour meeting with its members, apprised them of their problems and issues.

4.4 CONCLUSIONS AND SUGGESTIONS

In view of the analysis made in the current study, the following conclusions are arrived at and accordingly the suggestions made:

4.4.1 The Issue of 'Statelessness'

A sharp sense of statelessness pervades the West Pakistan people in the State of J&K. The Permanent Resident Status issue of these refugees still remains unresolved as the judiciary has expressed its constitutional limitations to intervene in the matter and has passed the buck to the J&K State Legislature

⁸⁵ The respondents also told that in 2011, Najma Heptullah had attended a meeting organised by them. She conducted a seminar in M.A. Stadium. A movie depicting the plight of the refugees was shown in that seminar. Moved by their plight, Najma Heptullah said that she will talk to the PM on this issue.

⁸⁶ The Group of Interlocutors was appointed on 13 October 2010, following the All-Party Parliamentary Delegation's visit to J&K from 20–22 September 2010 and the Home Minister's announcement of 25 September 2010. The mandate given to the Group was to hold wide-ranging discussions with all sections of opinion in J&K in order to identify the political contours of a solution and the roadmap towards it.

declaring that only the J&K State Legislature has the competence to grant the said status to them. The said status can be granted to them only by a law made by the State Legislature under Section 8 of the Constitution of J&K and any such law requires to be passed by two-thirds majority of each of the Houses of the State Legislature under Section 8 of the Constitution of J&K. The way the different political parties of the State have lobbied on the issue has made the two-thirds majority seem a distant reality.

The issue of statelessness in the State of J&K of the West Pakistan DPs should be addressed as a foremost priority by the State and the Central governments. Section 6 of the Constitution of the State of J&K recognises three classes of permanent residents. First, State Subjects of Class I, who are persons born and residing within the State before the advent of Dogra rule or persons who settled in the State before Samvat year 1942 (1885 A.D.) and have since been permanently residing in the State; second, State Subjects of Class II, who are persons settled within the State before Samvat year 1968 (1911 A.D.) and have since permanently resided and acquired immovable property in the State; and third, having lawfully acquired immovable property in the State, has been ordinarily a resident in the state for not less than 10 years prior to 14 May 1954, that is, when the Constitution (Application to Jammu and Kashmir) Order, 1954, came into force. The West Pakistan DPs do not fall in any of these categories. When they came in 1947, the State of J&K did not have its Constitution. When later the Constitution was enacted by the State in 1957, some provision could have been made to cover their case. The peculiar status of the State of J&K was accepted by the Union of India; so the provision for this section of refugees could have been made through the Constitution of the State.

For most of the respondents of our study, the responsibility for the peculiar situation in which they are placed rests both with the State and Central governments. They argue that the State of J&K should not remain oblivious of the fact that they have been residing in the State for the last 65 years only under the assurance and with the acquiescence of the State government. It is with the consent of the State they could occupy the land in 1947 when it was lying abandoned. Had it not been for the consent and assurance of the State, they would not have continued to control the land and live in the State. However, by refusing to confer permanent resident status on them and by keeping them deprived of all the rights of an inhabitant of the State, the successive State governments have neglected them.

By analysing the atypical situation of the West Pakistan refugees both in the light of their continued stay in the state with the knowledge and concurrence of the successive State governments, it can be argued that the people displaced from

West Pakistan in 1947 and settled in the State of Jammu and Kashmir are not to be equated with the people coming to the State from other States of India. The argument of the State of J&K that if they are given the permanent resident status, then the people from other States will also claim the said status is untenable. They are to be placed on different footing from the migrants from other States. The West Pakistan DPs are the victims of partition holocaust who need be treated on a special footing. Even refugees have the right to naturalisation and integration in the country of refuge for permanently staying there. Though they have been accepted as Indian citizens, in the State of J&K, due to its special status, the citizenship of India becomes meaningful only if accompanied with the status of permanent resident of the State. The State needs to countenance a gesture of magnanimity by extending the umbrella of identity through the conferral of permanent resident status on these refugees reeling under a sense of statelessness. The State of J&K may do it by invoking Section 8 of the Constitution of J&K and make amendment in Section 6 so as to include the case of these partition refugees. This is the most appropriate case for the invocation of this constitutional provision. Considering the issue as humanitarian issues, this step may be taken. In this context, one can quote from Balraj Puri who notes with authenticity the sympathies of Sheikh Abdullah for these refugees. He notes:

I remember when some of their representatives raised the issue at a convention of the National Conference at Bishnah under my presidentship, Sheikh Abdullah replied that it was a humanitarian issue and should be considered sympathetically. (Puri, nd)

However, as the situation appears, the political parties in the State are divided on this issue and in the near future there seems to be no possibility of passing such a Bill which requires two-thirds majority under Section 9 of the Constitution of J&K. There is a need to generate a debate on the issue so that some consensus can be reached as to how to resolve the problem of statelessness of these refugees. Meanwhile, till such consensus is evolved, it may be important to address the problems related with their state of statelessness. Pending the resolution of the issue of their status of permanent residents, these issues can be addressed by providing special measures for them by the state government. The Central government can also, in the meantime, take a policy decision for addressing their basic problems. It may be emphasised that even the grant of permanent resident status will not bring them at par with other inhabitants of the State. For some years to come, affirmative action/reservation benefit is required for them so that they are able to overcome the inequities and deprivations of the past more than six decades.

4.4.2 The Issue of Landlessness

No formal allotment of land has been made to these refugees by the State government. They have only temporarily been allowed to retain the land in their possession. The primary cause of their landlessness is political as in the State of J&K, ownership of land is connected with the status of a person, that is, the status of a permanent resident of the State. Regarding State land in their possession, they cannot be the owners. They cannot be the owners of the EP in their possession as it is still owned by those who left for Pakistan in 1947 and have since settled there. Being non-permanent residents, the West Pakistan people cannot acquire or own any more land in the State of J&K other than that they have already been holding under State fiat. This has brought stagnation in their aspirations to grow. Moreover, the vertical divisions of land/houses to accommodate successive generations have pushed them to inhuman existence with large families compelled to live in one-room accommodations.

The problem of landlessness of these refugees is to be paid serious attention. It is thus enjoined upon the State government to make suitable amendments in the Constitution and the other laws of the State to create ownership rights in State land for these refugees on humanitarian grounds.

Until specific ownership rights are created for them, a proper official record of the possession of land held by them is required to be kept to allay the fears that have generated in the minds of these refugees by the discontinuity in the maintenance of the records. Furthermore, in case of acquisition of their land by the State, compensation at par with others owning land in the State should be given to them in the interest of justice.

4.4.3 Education and Employment

In the matter of education, for a long time these refugees remained deprived of education post matriculation because they were asked to produce permanent resident certificate. Recently, seemingly the State government showed generosity by declaring that being a welfare state, the State of J&K offers free education to all including the West Pakistan people without any discrimination. However, this welfare approach is limited only to courses not restricted exclusively for the permanent residents. It is enjoined upon the State government to allow these refugees the benefits of all the educational courses in the State. Affirmative action/reservation in educational opportunities should for some years be ensured to them. Though some concessions have been offered to them in technical education, these are not sufficient. The number of seats for these refugees in institutions of technical education should be increased and in view of the poverty of these people

due to which they are finding it hard even to avail the already offered concessions, it is recommended that for some prescribed number of years, at least one member from each family of these refugees should be provided technical education free of cost. Some special schemes should be launched to promote the education of girls and also to equip them with vocational training.

Denial of higher education to these refugees for a long time on the basis of non-permanent resident status deprived them eventually in the matter of employment. While in the State services, there is express denial as the State services are restricted exclusively to the permanent residents of the State, due to lack of education, they could not even avail the Central services. They were thus left only with the option to work as labour. Three generations of these refugees have been working as labour. As labour also, their vulnerabilities subject them to exploitations. Affirmative action/reservation in employment for some years is necessary for them to remedy the denials of the past.

4.4.4 Political Representation

The most striking denial to these refugees is the lack of political representation to them in the State of J&K. Being Indian citizens, they vote in the parliamentary elections but not in the State elections, either Assembly or *panchayat*, as voting rights/right to contest in the State are restricted exclusively to the permanent residents. They are devoid of any say in the political will of the State. The right to political representation in the State will automatically incur to them with the grant of permanent resident status to them. Alternatively, the right may be granted to them by making suitable amendments in the relevant State laws, so that they can be represented in the State Legislature and *panchayats* even without being the permanent residents. It is important to note that there are villages consisting exclusively or predominantly of the families of these refugees but are still represented by local *panches* and *sarpanches* (of other villages in case of exclusive refugee population of a village).

4.4.5 Special Relief

No relief or rehabilitation was provided to them by the State government. Only some land under the Wadhwa Committee recommendations was provided to them for occupation. As discussed in the study, no ownership rights or Occupancy Tenant rights are granted to them. These refugees regret that other displaced people groups, for example, those from POK, have been given relief packages by the State, and the Kashmiri Pandit migrants especially have been given hefty packages by the Central as well as the State governments, whereas they

have completely been neglected. Though recently the Central government promised a Rs. 750 crore package for them, yet the same is still hanging fire.

Special relief and rehabilitation package should be provided to these people displaced from West Pakistan. The Wadhwa Committee shifted the responsibility for rehabilitation of these refugees to the Central government. A special compensation package of an amount of up to Rs. 2 lakhs per family but in no case less than Rs. 1 lakh per family for all types of refugees as a one-time settlement of their claims for their rehabilitation was recommended by the other 2007 Committee but was never implemented.

Until now, only temporary measures for the rehabilitation of these refugees have been suggested. It is vital to take measures for their permanent settlement at par with other refugees of 1947 (POK) for which a concerted action both by the Central and the State government is needed.

4.4.6 Enumeration of West Pakistan Refugees

No official record of their number has been maintained after the Wadhwa Committee Report, 2007 which had identified 5764 families of these refugees in 1947. The West Pakistani Refugee Action Committee is itself carrying out this exercise *tehsil*-wise and has identified 18,428 families till date. Any measure of rehabilitation of these refugees would certainly require an ascertainment of their number. An official record of the people displaced from West Pakistan is required to be prepared by the State authorities. This job can be assigned to the Provincial Rehabilitation Office. The State authorities should carry out this exercise of their enumeration, registration and verification of claims through the office of the PRO as in the case of other refugees.

4.4.7 Scheduled Caste Certificates and Other State-supported Facilities

Eighty per cent of the West Pakistan refugees are SCs, OBCs, etc. Nationwide and statewide, the people belonging to reserve categories are enjoying special benefits conferred upon them by the Centre and the States. It is wholly inequitable to deprive the West Pakistan people in J&K of these benefits. It is a violation of their Fundamental Rights under Articles 14 and 16 of the Constitution of India. It becomes imperative for the State as well as the Centre to identify the SCs/OBCs among them and confer upon them the benefits meant for the reserve categories.

Special provision should be made for the issuance of bank loans to these refugees. Self-employment schemes through

bank loans should also be launched for the benefit of these refugees.

All the committees constituted and the meetings held by the State government on the cause of West Pakistan refugees recommended for making the provision for all the basic amenities to these refugees none of these proposals has not been implemented. The State and Central governments need to pay serious attention towards providing basic amenities to these refugees. The appalling and inhuman conditions they are living in are a clear violation of their right to life guaranteed by Article 21 of the Constitution of India.

Most of the West Pakistan refugees are living in dilapidated houses and are poverty-stricken. The benefits of centrally sponsored schemes like IAY, BPL, etc., should be extended to them.

Three generations of these refugees have grown up on *ad hoc* measures, that too trivial. They are temporarily settled in the State by the State government and are not compensated for the properties left behind in West Pakistan territory in 1947. Handing out small temporary reliefs to them by the government will not serve the purpose. Their issues must be settled once and for all. A dialogue should be opened by the State government and the Central government with the leaders of the West Pakistan refugees and any final settlement should be arrived at convincingly with their involvement.

Since there is a silence in the State laws on the status and issues of West Pakistan refugees, the State may either make amendments in the State Constitution and other State laws or it may enact a separate law on West Pakistan refugees to deal specifically with their issues.

The State is required to formulate a policy for them with human approach. These partition refugees require sympathetic consideration. Article 370 must be interpreted and applied by the State to confer broader protections rather than to act as a sword of denial of human rights.

Though citizens of India, in the State of J&K, the people from West Pakistan still continue to remain tangled in the stereotypic image of refugees as individuals devoid of will and resources to rebuild their lives. They are helpless creatures who cannot be active participants in remaking their lives. Their voices need to be heard. A right-based approach is required to be adopted in their case as they are no less the right-bearing individuals. For over 65 years of displacement, this chunk of the displaced people is still struggling in the absence of opportunities. As human beings, they also have the instinct to grow through education, suitable employment, basic amenities, etc. They are the partition refugees. Nationwide, the partition refugees were received and treated with empathy and compassion. Though other displaced

groups in the State of J&K are agitating for the claims of the injuries of the past, yet for the future opportunities, they are at par with the other inhabitants of the State; but, for the West Pakistan people, the past is dark and there is no future.

The State of J&K is a social welfare state. It is hard to imagine that in this State, a group of partition refugees is still living in conditions which have kept the partition nightmares alive for them for the last three generations. The State needs to shower a healing touch on these refugees by owning them. Though the Central government is also required to intervene to provide succour to them, the responsibility of the State of J&K is greater towards them. These refugees are still living their lives in the hope that someday something good may happen to them. The State government needs to keep up their aspirations as their aspirations are nothing more than the basic needs for survival.

*Na pairon mein zameen hai
Na sar pe aasman hai
Kahin gaon bechirag pade hain
Kahin aankhon ke chiraag kisi gaon ki hasrat mein
bujh rahe hain*

ANNEXURE 4A.I

WEST PAKISTAN REFUGEES AND INTERNATIONAL PROTECTION

The West Pakistan refugees also claim the international protection available to refugees. It, therefore, becomes imperative to understand the legitimacy of this claim.

4A.I.I Refugee Protection Regime under International Law

International law has created a full-fledged protection regime for refugees. However, to claim such protection, the claimant must fulfil the definitional requirements of a refugee.

In international law, a refugee is a person who is forced to leave home for certain specified reasons and who, furthermore, is outside the country of his or her origin and does not have its protection. (Chimni, 2008:1).

The United Nations Convention Relating to the Status of Refugees (CRSR), 1951, is an international convention that defines who is a refugee, and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grant asylum.⁸⁷ The Convention defines 'refugee' as:

⁸⁷ The Convention was approved at a special United Nations conference on 28 July 1951. It entered into force on 22 April 1954. It was initially limited to protecting European refugees after World War II but a

A person who as a result of events occurring before January 1, 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing to such fear, is unwilling to return to it.⁸⁸

The 1951 Convention confers a number of rights on the refugees to be respected by the Contracting States, namely:

- (i) Religious rights, that is, the freedom to practise their religion and freedom as regards the religious education of their children⁸⁹
- (ii) Domiciliary rights⁹⁰
- (iii) Right to marriage⁹¹
- (iv) Acquisition of movable and immovable property⁹²
- (v) Artistic rights and industrial property⁹³
- (vi) Right of association⁹⁴
- (vii) Right to access to courts⁹⁵
- (viii) Right to engage in gainful employment⁹⁶
- (ix) Right in public distribution⁹⁷
- (x) Right of housing⁹⁸

1967 Protocol removed the geographical and time limits, expanding the Convention's scope. Denmark was the first state to ratify the treaty (on 4 December 1952). As of 17 June 2011 there were 148 signatories to either the Convention or the Protocol or to both.

⁸⁸ Article 1 of the 1951 Convention as amended by the 1967 Protocol. The Protocol extended the Convention to persons rendered refugees after 1 January 1951.

⁸⁹ Article 4, the United Nations Convention Relating to the Status of Refugees (CRSR), 1951.

⁹⁰ The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence. Article 12, CRSR, 1951.

⁹¹ Ibid.

⁹² Same rights as are accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property. Article 13, CRSR, 1951.

⁹³ Same rights as nationals in respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works. Article 14, CRSR, 1951.

⁹⁴ Same right as nationals to form non-political and non-profit-making associations and trade unions. Article 15, CRSR, 1951.

⁹⁵ Article 16, CRSR, 1951.

⁹⁶ Articles 17, 18 and 19, CRSR, 1951. This is on the fulfilment of certain conditions laid down by the Convention.

⁹⁷ Article 20, CRSR, 1951.

⁹⁸ Such as is accorded to aliens generally in the same circumstances. Article 21, CRSR, 1951..

- (xi) Right to public education⁹⁹
- (xii) Right to public relief or public assistance¹⁰⁰
- (xiii) Right not to be punished for illegal entry into the territory of a contracting State to refugees who come directly from a territory where their life or freedom was threatened¹⁰¹
- (xiv) Right to freedom of movement and the right to choose their place of residence within the territory¹⁰²
- (xv) Right to be issued identity or travel documents¹⁰³
- (xvi) Right not to be expelled, except under certain, strictly defined conditions¹⁰⁴
- (xvii) Prohibition of expulsion or return ('refoulement') –

The cornerstone of the 1951 Convention is the principle of non-refoulement. According to this principle, a refugee should not be returned to a country where he or she faces serious threats to his or her life or freedom on account of his race, religion, nationality, membership of a particular social group or political opinion¹⁰⁵

- (xviii) Right to naturalisation –

The Convention enjoins upon the Contracting States to as far as possible facilitate the assimilation and

naturalisation of refugees. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.¹⁰⁶ By naturalisation, the refugees become the citizens of the host country wherein they are entitled to live and work and have a productive life. The people who are naturalised get integrated with the local community.

The Convention also obligates the Contracting States to apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.¹⁰⁷ The Convention also does not impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.¹⁰⁸

The Convention also prescribes the duties the refugees owe to host communities. It provides that every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.¹⁰⁹ In the performance of this general obligation, they are no different either from the citizens of the host country or an alien. This obligation includes a duty to refrain from any subversive activities against their country of origin.

4A.1.1.1 Political Rights of Refugees under the 1951 Convention

As far as the political rights of refugees are concerned, the 1951 Convention has no explicit provision dealing with the political rights of refugees. The right to form associations under Article 15 has been granted only for non-political purposes. The political rights can somehow be located in Article 26 and Articles 7(1) and 7(3). Article 26 ensures freedom of movement for them. Article 7(1) guarantees refugees the same treatment as is accorded to aliens generally. It means that the refugees are to be accorded the same political rights as other aliens in the country of asylum. Article 7(3) guarantees refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State. The restrictions on these political rights can, however, be imposed under Article 2 for the maintenance of public order and to seek conformity with the laws and regulations of the host State, and under Article 3 which prohibits any discrimination between refugees themselves in the enjoyment of political rights solely on the basis of their race, religion or country of origin.

⁹⁹ Same treatment as is accorded to nationals with respect to elementary education. With respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships, such treatment as is accorded to aliens generally in the same circumstances. Article 22, CRSR, 1951.

¹⁰⁰ Same treatment with respect to public relief and assistance as is accorded to the nationals. (Article 23, *Ibid*) and the same treatment as is accorded to nationals in respect of the labour related matters like remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining; and Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme). Article 24, CRSR, 1951.

¹⁰¹ Provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence, subject to necessary restrictions imposed by the Contracting States until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country. Article 31, CRSR, 1951.

¹⁰² Subject to any regulations applicable to aliens generally in the same circumstances. Article 26, CRSR, 1951.

¹⁰³ Articles 27 and 28, CRSR, 1951.

¹⁰⁴ The exceptions are the threat to national security or public order. The expulsion of a refugee shall be only in pursuance of a decision reached in accordance with due process of law. A reasonable period is to be allowed to the refugee within which he may seek legal admission into another country. Article 32, CRSR, 1951.

¹⁰⁵ Article 33, CRSR, 1951.

¹⁰⁶ Article 34, CRSR, 1951.

¹⁰⁷ Article 3, CRSR, 1951.

¹⁰⁸ Article 5, CRSR, 1951.

¹⁰⁹ Article 2, CRSR, 1951.

The above said limitations, however, should not deprive them from the enjoyment of their basic human rights. Refugees are persons whose Fundamental Rights have been violated. They seek refuge abroad precisely in order to be able to continue to enjoy their basic human rights, including the right to freedom of opinion and expression. While they are clearly no different from other individuals, so far as they must respect the laws and regulations in the country in which they find themselves, this obligation must not be taken to deprive them of their fundamental human rights. (Chimni, 2008:208). The only permissible limit would be when, for example, in the exercise of the right to freedom of opinion and expression, refugees incite violence or the use of force. (Chimni, 2008:209).

Therefore, by virtue of Article 7(3) above, refugees shall continue to enjoy any additional rights to which they were entitled (for example, as a result of domestic laws in the country of asylum) at the date of entry into force of the Convention for the State in question. Thus, subject to any pertinent provisions in regional instruments, reference to international human rights law is necessary in order to flesh out the standards set out in the 1951 Convention.

The 1951 Convention thus provides for the civic and socio-economic rights of refugees. The Convention laying down a refugee-specific rights regime read with the regional and universal human rights instruments sets a wide-ranging, if perhaps not fully adequate or integrated, measure of respect for the basic dignity of refugees. (Hathway and John A. Dent, 1995:1). However, a claimant shall be entitled to the benefit of a plethora of rights available under the Convention on the fulfilment of following two requirements:

- (i) His country of refuge must have signed the Convention
- (ii) He must fall in the definition of refugee

Where States are not parties to the 1951 Convention or have entered reservations under Article 42,¹¹⁰ the network of human rights instruments comprising the Universal Declaration of Human Rights (UDHR), 1948, the International Covenant on Civil and Political Rights (ICCPR), 1966, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, assumes significance as it can be invoked to guarantee the basic rights of refugees.

¹¹⁰ Article 42 of the 1951 Convention reads as follows:
Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to Articles 1, 3, 4, 16(1), 33, 36–46 inclusive.
2. Any State making a reservation in accordance with paragraph 1 of this Article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

The ICCPR, 1966, vests the civil and political rights in an individual. The civil rights are the right to life and survival,¹¹¹ the right to liberty and freedom of movement,¹¹² the right to equality before the law, the right to be presumed innocent until proven guilty and to have a fair and public hearing by an impartial tribunal,¹¹³ the right to be recognised as a person before the law,¹¹⁴ the right to privacy and its protection by the law,¹¹⁵ the freedom of thought, conscience and religion,¹¹⁶ the freedom of opinion and expression,¹¹⁷ the right to marry and found a family,¹¹⁸ the rights for children (status as minors, nationality, registration and name),¹¹⁹ the right to equality before the law and equal protection¹²⁰ and the right, for members of religious, ethnic or linguistic minorities, to enjoy their culture, practise their religion and use their language.¹²¹

The political rights under the ICCPR include the freedom from inhuman or degrading treatment or punishment,¹²² the freedom from slavery and servitude,¹²³ the right to liberty and security of the person and freedom from arbitrary arrest or detention,¹²⁴ the freedom from prison due to debt,¹²⁵ the right to equality before the law; the right to be presumed innocent until proven guilty and to have a fair and public hearing,¹²⁶ prohibition of propaganda advocating war or national, racial or religious hatred,¹²⁷ the right to peaceful assembly,¹²⁸ the right to freedom of association¹²⁹ and the right to participate in the conduct of public affairs, to vote and to be elected and to have access to public service.¹³⁰

In case of violation of rights under the ICCPR, the Convention gives the right to legal recourse even if the violator was acting in an official capacity.¹³¹ It also ensures that men and women should be treated equally in the enjoyment of their civil and political rights.¹³²

¹¹¹ Article 6, International Covenant on Civil and Political Rights (ICCPR), 1966.

¹¹² Article 12, ICCPR, 1966.

¹¹³ Article 14, ICCPR, 1966.

¹¹⁴ Article 16, ICCPR, 1966.

¹¹⁵ Article 17, ICCPR, 1966.

¹¹⁶ Article 18, ICCPR, 1966.

¹¹⁷ Article 19, ICCPR, 1966.

¹¹⁸ Article 23, ICCPR, 1966.

¹¹⁹ Article 24, ICCPR, 1966.

¹²⁰ Article 26, ICCPR, 1966.

¹²¹ Article 27, ICCPR, 1966.

¹²² Article 7, ICCPR, 1966.

¹²³ Article 8, ICCPR, 1966.

¹²⁴ Article 9, ICCPR, 1966.

¹²⁵ Article 11, ICCPR, 1966.

¹²⁶ Article 14, ICCPR, 1966.

¹²⁷ Article 20, ICCPR, 1966.

¹²⁸ Article 21, ICCPR, 1966.

¹²⁹ Article 22, ICCPR, 1966.

¹³⁰ Article 25, ICCPR, 1966.

¹³¹ Article 2, ICCPR, 1966.

¹³² Article 3, ICCPR, 1966.

The ICESCR, 1966, provides for the economic, social and cultural rights of an individual. Under this Covenant, all people have the right of self determination, including the right to determine their political status and freely pursue their economic, social and cultural development.¹³³ Everyone has the right to work, including the right to gain one's living at work that is freely chosen and accepted.¹³⁴ Everyone has the right to just conditions of work; fair wages ensuring a decent living for himself and his family; equal pay for equal work; safe and healthy working conditions; equal opportunity for everyone to be promoted; rest and leisure.¹³⁵ Everyone has the right to form and join trade unions, the right to strike.¹³⁶ Everyone has the right to social security, including social insurance.¹³⁷ Protection and assistance should be accorded to the family. Marriage must be entered into with the free consent of both spouses. Special protection should be provided to mothers. Special measures should be taken on behalf of children, without discrimination. Children and youth should be protected from economic exploitation. Their employment in dangerous or harmful work should be prohibited. There should be age limits below which child labour should be prohibited.¹³⁸ Everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing. Everyone has the right to be free from hunger.¹³⁹ Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.¹⁴⁰ Everyone has the right to education. Primary education should be compulsory and free to all.¹⁴¹ Those States where compulsory, free primary education is not available to all should work out a plan to provide such education.¹⁴² Everyone has the right to take part in cultural life, and to enjoy the benefits of scientific progress.¹⁴³

The ICESCR permits limitations on these rights provided such restrictions are compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.¹⁴⁴ However, no person, group or government has the right to destroy any of these rights.¹⁴⁵

Under the ICESCR, each State Party undertakes to take steps to the maximum of its available resources to achieve progressively

the full realization of the rights in this treaty and to ensure the equal right of men and women to the enjoyment of all rights in this treaty.¹⁴⁶

Thus both the Covenants (ICCPR and ICESCR) together provide elaborately for the civil, political, socio-economic and cultural rights of people living in a State. These rights are available to such people without any distinction between the citizens and the aliens. However, the right to public participation through elected representatives and the right to vote given under Article 25 of the ICCPR has been restricted only to the citizens of a State.

The Universal Declaration of Human Rights has much in common with both the Covenants. However, some of its provisions are exclusively noteworthy. The Declaration provides:

- (i) All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.¹⁴⁷
- (ii) Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.¹⁴⁸
- (iii) Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.¹⁴⁹

4A.1.1.2 Political Rights of Refugees under the Human Rights Regime

Both the UDHR and the ICCPR guarantee the political rights in similar terms. Regarding the voting rights, the UDHR states that everyone has the right to take part in the government of his country, directly or through freely chosen representatives and the right of equal access to public service in his country. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.¹⁵⁰ The ICCPR states that every citizen shall have the right and

¹³³ Article 1, International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966.

¹³⁴ Article 6, ICESCR, 1966.

¹³⁵ Article 7, ICESCR, 1966.

¹³⁶ Article 8, ICESCR, 1966.

¹³⁷ Article 9, ICESCR, 1966.

¹³⁸ Article 10, ICESCR, 1966.

¹³⁹ Article 11, ICESCR, 1966.

¹⁴⁰ Article 12, ICESCR, 1966.

¹⁴¹ Article 13, ICESCR, 1966.

¹⁴² Article 14, ICESCR, 1966.

¹⁴³ Article 15, ICESCR, 1966.

¹⁴⁴ Article 4, ICESCR, 1966.

¹⁴⁵ Article 5, ICESCR, 1966.

¹⁴⁶ Articles 2 and 3, ICESCR, 1966.

¹⁴⁷ Article 1, Universal Declaration of Human Rights (UDHR), 1948.

¹⁴⁸ Article 2, UDHR, 1948.

¹⁴⁹ Article 17, UDHR, 1948.

¹⁵⁰ Article 21, UDHR, 1948.

the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and to have access, on general terms of equality, to public service in his country.¹⁵¹

Though other political rights may be read into the Convention of 1951 subject to the restrictions under Article 2, the said restrictions being further limited by human rights law, the human rights law itself does not guarantee the right to vote and elect representatives to refugees and reserves this right only to the citizens of a State.

Further, the human rights instruments enjoin upon States to promote the respect for the rights prescribed by them. The UDHR states that nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein. Similarly, the ICCPR states that each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

It may be noted that where States are party/signatory to the 1951 Convention, the rights of the refugees will be governed by that Convention whereas in case the States are not party/signatory to the Convention of 1951, the refugees shall have the protection of the human rights instruments. The protection of these human rights instruments is available equally to both the refugees as well as the citizens.

4A.1.2 Indian Position on Refugee Rights

India is not a party to the 1951 Convention or the 1967 Protocol nor has it passed any domestic legislation on the subject of refugees. India being a non-signatory to the 1951 Convention, the United Nations High Commissioner for Refugees (UNHCR) is also inactive in India. However, India acceded in March 1979 to the two 1966 Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights. Moreover, since the Covenants have not been enacted into Indian law, they do not have the force of law in India and are therefore not enforceable in Indian courts. But this does not relieve India of its international obligations under the Covenants. The courts in

India may take them into account in appropriate cases while interpreting the statute law.

In *Kubic Dariusz v. Union of India*,¹⁵² the Supreme Court of India observed:

When an act of preventive detention involves a foreign national, though from the national point of view the municipal law alone counts in its application and interpretation, it is generally a recognized principle in national legal system that in the event of doubt the national rule is to be interpreted in accordance with the State's international obligations.... There is a need for harmonization whenever possible bearing in mind the spirit of the covenants.

India has also signed the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, and the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 1984. On 11 December 1992, India also acceded to the Convention on the rights of the Child, 1989.

India is a Union of States.¹⁵³ Under the Indian Constitution, the Parliament alone is given the right to deal with the subject of citizenship, naturalisation and aliens. India has not passed a refugee specific legislation which regulates the entry and status of refugees. It has handled the influx of refugees at the political and administrative levels. The result is that the refugees are treated under the law applicable to aliens in India. The word 'alien' is not defined anywhere. It appears in the Constitution of India,¹⁵⁴ the Indian Civil Procedure Code¹⁵⁵ and in the Indian Citizenship Act, 1955¹⁵⁶ and some other statutes. The status of aliens in India is regulated by the following laws:

- (i) The Foreigners Act, 1946
- (ii) The Registration Act, 1939¹⁵⁷
- (iii) The Passport (Entry into India) Act, 1920¹⁵⁸
- (iv) The Passport Act, 1967¹⁵⁹

In *State of Arunachal Pradesh v Khudiram Chakma*,¹⁶⁰ the Supreme Court of India held that the power of the Government of India to expel or deport foreigners is absolute and unlimited

¹⁵² AIR 1990 SC 605.

¹⁵³ Article 1 of the Constitution of India.

¹⁵⁴ Article 22(3) and Entry 17, List I, Schedule VII of the Constitution of India.

¹⁵⁵ Section 83 of the C.P.C.

¹⁵⁶ Section 3(2) (b) of the Indian Citizenship Act, 1955.

¹⁵⁷ Deals with the registration of foreigners entering, being present in and departing from India.

¹⁵⁸ Empowers government to impose conditions of passport for entry into India.

¹⁵⁹ Deals with the issue of passports and travel documents to regulate departure from India of citizens of India and in certain instances to other cases too.

¹⁶⁰ JT 1993(3) SC 546.

¹⁵¹ Article 25, ICCPR, 1966.

and there is no provision in the Constitution fettering this discretion.

However, refugees form a special category of aliens under the general international law. There is no specific legislation enacted by India to deal with refugees. So the question arises whether India should give due regard to the principle of *non-refoulement*. It is well established in India that such principles of customary international law as are in conflict with the statutes cannot be enforced by the courts. Courts in India have accepted and applied the *doctrine of incorporation* according to which customary rules are to be considered part of the law of the land and enforced as such, with the qualification that they are incorporated only so far as is not inconsistent with Acts of Parliament. In case of conflict, the Municipal Law must prevail.¹⁶¹ In the light of this interpretation, the absolute power to deport foreigners conferred on the government under the Foreigners Act, 1946, cannot be restricted by the principles of customary international law.

However, in view of the liberal interpretation given by the Supreme Court to Article 21,¹⁶² that it is for the courts to decide whether the procedure prescribed by a law for depriving a person of his life or liberty is fair, just and reasonable,¹⁶³ the view taken in earlier cases seems now to be losing ground when the Foreigners Act, 1946, and other laws relating to aliens are placed vis-à-vis Article 21. Thus a principle which disregards the principle of *non-refoulement* cannot be deemed to be fair, just and reasonable and hence violative of Article 21. This interpretation goes well with the international obligations taken up by India by ratifying the two Covenants of 1966 and the Convention on the Rights of the Child.

As per the Supreme Court of India, even a foreigner or alien possesses rights in India. But it is restricted only to the right to life or personal liberty guaranteed by Article 21 of the Constitution of India. Thus the freedom of movement and the freedom to reside and settle in any part of the territory of India guaranteed under Article 19 (1) (d) and (e) are not available to foreigners or aliens, including refugees. A refugee in India is thus entitled to the protection available under Article 21 of the Constitution of India.

To afford effective protection to refugees, the 1951 Convention and its 1967 Protocol ought to be given legal sanction by enacting domestic laws which can be enforced in the Indian

courts. In the absence of domestic laws, the said Convention and the Protocol can be applied to the extent it is not in conflict with any Municipal Law. This principle of interpretation is applied by the courts to enforce international obligations of the State for the protection of the basic human rights of the individuals. However, to avoid uncertainty, a national legal framework to implement the international Convention is required to be set up. The incorporation of the treaty obligations in the Municipal Law of the land to make their obedience by the executive enforceable directly is the need of the time. In the absence of incorporation of the provisions of the international human rights instruments into Municipal Laws by the Parliament, the judiciary has attempted to enforce the obedience of the treaty obligations by the executive indirectly through the existing legal framework, that is, the Constitution of India and the statutory laws. Articles 14, 21 and 25 guarantee the Right to Equality, Right to Life or Personal Liberty and Freedom of Religion to everyone. Directive Principles of State Policy in Part IV of the Constitution have been construed to be complementary to the Fundamental Rights in Part III by the judiciary, thus enlarging the ambit and scope of the Fundamental Rights. A number of executive orders passed under the Foreigners Act, 1946, have also contributed towards the upholding of human rights of the refugees in India.

Under the Indian Constitution, all human rights jurisprudence has now developed under Article 21 of the Constitution. Thus all human rights of individuals including the refugees can be taken care of and enforced through Article 21.¹⁶⁴ The refugees in India have all the rights available to aliens under the Constitution of India, that is, the Right to Equality, Right to Life or Personal Liberty and Freedom of Religion under Articles 14, 21 and 25 respectively. These rights can be enforced in the Supreme Court under Article 32 and in the High Courts under Article 226 of the Constitution.¹⁶⁵ However, the political rights to vote and elect representatives are restricted only to citizens.

4A.1.3 The Case of West Pakistan Refugees

The preceding discussion on the protection regime for the refugees in general and in India in particular is relevant to

¹⁶¹ *Gramophone Co. of India v Birendra Bahadur Pandey*, AIR 1984 SC 667. See also *Louis de Raedt v Union of India*, AIR 1991 SC 1886; *Hans Muller v Nuremburg v Superintendent, Presidency Jail, Calcutta*, AIR 1955 SC 367.

¹⁶² Article 21 reads that no person shall be deprived of his right to life or personal liberty except according to procedure established by law.

¹⁶³ *Maneka Gandhi v Union of India*, AIR 1978 SC 597; *Sunil Batra v Delhi Administration*, AIR 1978 SC 1675, etc.

¹⁶⁴ *Bachan Singh v State of Punjab*, AIR 1980 SC 898 – the court held that the requirements of international Covenant are the same as the guarantees or prohibitions contained in Articles 20 and 21 of the Constitution of India; *Apparel Export Promotion v A.K. Chopra*, AIR 1999 SC 625 – the Apex Court held that in cases involving human rights, the courts must be alive to international Covenants and instruments and as far as possible to give effect to the principles contained in those international instruments.

¹⁶⁵ See *National Human Rights Commission v Union of India*, (1996) 1 SCC 295; *Khudiram Chakma v Union of India*, (1994) Supp. 1 SCC 614. Relief was granted on the basis of the rights of the aliens under Articles 14 and 21 of the Constitution of India.

understand the degree of protection the West Pakistan DPs are entitled to. This whole study of refugee rights is relevant in the case of West Pakistan DP in the context that had they been refugees and had the Union of India signed the Convention of 1951 guaranteeing the rights to refugees, they would have been entitled to the international protection of the Convention of 1951 as well as the human rights to the extent of their incorporation in the domestic laws of the country. This would mean a limited protection to them. All these years, ever since their migration to India in 1947, they have been called the refugees, the 'Pakistanis'. However, the peculiar situation of the West Pakistan DP is that they have been christened as refugees but actually they are not. They are the Indian citizens. Only a foreign national can be a refugee whereas the people displaced from West Pakistan are Indian citizens; so they cannot be categorized as refugees.¹⁶⁶ Hence, they need not look for their rescue towards the Convention of 1951 as they are entitled to the protection of all the rights which are guaranteed to the citizens of India including the protection of the human rights as assimilated in the Indian law. They are thus entitled to much wider protection as compared to the refugees.

However, in view of the present condition of the West Pakistan people, it can definitely be said that there is clear violation of Fundamental Rights as well as human rights in their case.

The denial of permanent resident status to this section of the displaced people is in effect a denial of human rights to them because in the State of J&K, all other rights flow from the permanent resident status. Even in the case of refugees, the refugee law provides for the naturalisation of refugees and their integration with the local population.

The state of their landlessness, lack of all basic amenities, educational facilities, unemployment, denial of reserve category benefit at par with other citizens falling in reserve category, denial of political representation in the State, denial of measures of rehabilitation, inhuman conditions of living even after 65 years of stay of their three generations in the State of J&K all depict the story of the violation of

their Fundamental Rights as well as the human rights since 1947.

In the year 2006, the WPRAC wrote to the National Human Rights Commission (NHRC) seeking its intervention in regard to the violation of their basic human rights by the Indian and the J&K State governments. Being apprehensive that the J&K State Human Rights Commission is manned by the State government machinery which will not offer any respite to them, the WPRAC appealed directly to the NHRC. The WPRAC appealed in the letter that they have been suffering from grave human rights violations since 1947, which have remained unaddressed. However, the NHRC refused to entertain the complaint on the ground of lack of jurisdiction. The Commission responded:

The complaint is not entertained in accordance with the provisions of section 36 of the Protection of Human Rights Act 1993 read with Regulation 9 of the National Human Rights Commission (Procedure) Regulations 1994, as amended. Hence no action is called for and the file is closed.¹⁶⁷

The appeal made by WPRAC was rejected by the NHRC on the basis of procedure and lack of jurisdiction. The NHRC has no legal jurisdiction over the State of J&K as per Article 370 of the Constitution of India. This poses the greatest hurdle for the West Pakistan refugees in the enforcement of their human rights.

¹⁶⁷Section 36 of the Protection of Human Rights Act, 1933, reads as follows.

36. Matters not subject to jurisdiction of the Commission

The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

Regulation 9 of the NHRC (Procedure) Regulations, 1994 reads as follows

9. Minutes of the Meeting:

(a) The minutes of each meeting of the Commission shall be recorded during the meeting itself or immediately thereafter by the Secretary-General or by any other officer as directed. Such minutes shall be submitted to the Chairperson for his approval and upon approval, be circulated to all the Members of the Commission at the earliest and in any case, sufficiently before the commencement of the next meeting.

(b) The conclusions of the Commission in every matter undertaken by it shall be recorded in the form of an opinion. Dissenting opinions, If given, shall also form part of and be kept on record. Action shall be taken on the basis of the majority opinion where there be any difference.

(c) Follow-up Action: Unless specifically authorised, no action shall be taken by the Secretariat of the Commission on the minutes of the meetings until the same are confirmed by the Chairperson.

¹⁶⁶These include the Fundamental Rights available to the Indian citizens and the human rights which have now been read into the Fundamental Rights by the Indian judiciary.

References

- Anand, Justice A.S. 2004. *The Constitution of Jammu and Kashmir: Its Development and Comments*. Delhi: Universal Law Publishing Company Pvt. Ltd.
- Arora, Subhash Chander. 1990. *Turmoil in Punjab Politics*. New Delhi: Mittal Publications.
- Behera, Navnita Chadha. 2007. *Demystifying Kashmir*. New Delhi: Pearson Education India
- Bose, Sumantra. 2003. *Kashmir: Roots of Conflict: Path to Peace*, New Delhi: Vistar Publications.
- Chandra Bipan, Bipan Chandra, Mridula Mukherjee, Aditya Mukherjee, K.N. Panikkar and Sucheta Mahajan. 1989. *India's Struggle for Independence*. New Delhi: Penguin Books.
- Chimni, B. S. 2008. *International Refugee Law: A Reader*, New Delhi: SAGE Publications.
- Ghai, Prem Vati. 1986. *The Partition of the Punjab 1849–1947*. New Delhi: Munshiram Manoharlal Publishers Pvt. Ltd.
- Hathway, James C. and John A. Dent. 1995. *Refugee Rights: Report on a Comparative Survey*. Toronto: York Lanes Press.
- Schofield, Victoria. 2004. *Kashmir in Conflict*. New Delhi: Viva Books Pvt Ltd.
- Singh, Bhim. 1998. *Flames in Kashmir*. New Delhi: Har-Anand Publications.
- Singh, Jasjit (ed.). 1995. *Pakistan Occupied Kashmir under Jackboot*. New Delhi: Cosmo Publishers.
- Kaul, Santosh. 1962. *Freedom Struggle in Jammu and Kashmir*. Srinagar.
- Khan, Yasmin. 2007. *The Great Partition: The Making of India and Pakistan*. Suffolk: Yale University Press.
- Lyon, Peter. 2008. *Conflict between India and Pakistan: An Encyclopedia*, California: ABC-CLIO.
- International Crisis Group. 2007. 'Discord in Pakistan's Northern Areas,' Asia Report No. 31 (Islamabad/Brussels: ICG, 2 April 2007), p.4. Available at http://www.crisisgroup.org/library/documents/asia/south_asia/131_discord_in_pakistans_northern_areas.pdf (accessed on 4 October 2012).
- Puri, Balraj, 'Refugee Problem in Jammu and Kashmir', n.d. Kashmir Newz. Available at <http://www.kashmirnewz.com/a0002.html> (accessed on 23 January 2012).
- <http://www.timeanddate.com/worldclock/distances.html?n=1237> (accessed on 21 July 2012).



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This publication is part of a project jointly supported by



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