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# Protracted Displacement in Conflict Zones: Refugees and Internally Displaced People in Jammu and Kashmir

Reeta Chowdhari Tremblay

**Abstract.** *This study concentrates on the Indian state of Jammu and Kashmir and on those displaced people who, for the past six and a half decades, have remained invisible against the high profile background of the conflict between India and Pakistan over the Kashmir region. Their difficult situation arises in large part from the identity-based politics of Kashmir Valley which has led to the failure of the state (both national and regional) fully to respond to their very significant conflict-induced displacement resettlement requirements. This essay will address two distinct types of displacement which occurred in 1947 in the wake of Partition and the tribal invasion of the Princely State: the one involving the West Pakistan Refugees (WPR) who moved from Pakistani towns adjacent to the State of Jammu and Kashmir and had not been citizens of the Princely State of Jammu and Kashmir; and the other involving the Pakistan Occupied Kashmir Displaced People (PoKDP), citizens of the State, who moved from the Pakistan-administered part of Kashmir to the Indian-administered Kashmir, mainly the Jammu region and surrounding areas. Both groups belonged predominantly to the Hindu community. While the former, the WPR, remain stateless with no citizenship rights in J&K, the latter, the PoKDP, are considered by the State as temporary migrants, and thus have received only temporary relief.*

The partition of British India in August 1947 into two sovereign states, Pakistan, the new Islamic Republic, and India, was accompanied by the mass, often violent, migration of some 15 million people, for the most part desperate and fearing for their personal safety. The migration was bi-directional as, *mutatis mutandis*, what was origin for one set of migrants was terminus for the other. Masses of people migrated in opposite directions: Hindus and Sikhs began their journey from what was now Pakistan and headed towards India, while Muslims moved in the opposite direction, from India to newly formed Pakistan – both groups leaving behind ancestral homes, farms, other immovable as well as movable property and possessions. The Indian subcontinent witnessed the worst kind of violence as members of all three communities, Hindus, Sikhs and Muslims participated in communal riots: violence of all descriptions, looting sprees, murder and arson were commonplace; entire trains

carrying fleeing migrants were savagely attacked and their passengers massacred as each community in turn sought retribution on the other. Women especially, were frequently used as objects and symbols of the exercise of power in this communal frenzy and, in astonishingly large numbers, were raped, maimed, battered or killed. In all, it is estimated that, both males and females included, communal massacres claimed at least one million lives.

The state of Jammu and Kashmir, like 563 other Princely states (not formally a part of British India and with the status of semi-sovereign states), was not directly implicated in the partition of India. However, by the third week of October 1947, in the wake of the wider conflagration, Jammu and Kashmir, a majority Muslim state, became an arena of religious violence. The state was divided in two—a forced partition brought about when an invasion of its territory by neighbouring tribes from Pakistan provoked its almost immediate accession to India, something its Hindu ruler had resisted until then. Since then, some three-fifths of the former Princely state, called Jammu and Kashmir (J &K), is under Indian administration; the remaining two-fifths, called Azad Kashmir, is administered by Pakistan. This study, concentrating only on the Indian state of Jammu and Kashmir, addresses the protracted displacement of people caused by the state's partition. It highlights two distinct types of displacement. The first type involves the West Pakistan Refugees (WPR) who moved from Pakistani towns adjacent to the state of Jammu and Kashmir (and had therefore never been citizens of the Princely state); their migration was largely to the Jammu region, the predominantly Hindu part of the state. The second type of displacement involves people who were citizens of the Princely state of Jammu and Kashmir: known as the Pakistan Occupied Kashmir Displaced Persons (PoKDP), they moved from the Pakistan administered part of Kashmir to the Indian administered Kashmir, mainly the Jammu region and surrounding areas. Both groups belong predominantly to the Hindu community. While the former (the WPR) remain stateless with no citizenship rights in J&K, the latter (PoKDP), are considered by the state to be temporary migrants, and thus have received only temporary relief. (Other instances of displacement in this troubled region and beyond the scope of the present study are: the displaced who landed up in Pakistan administered Kashmir in 1947; refugees of the Indo-Pakistan war of 1965 and 1971; and the forced migration of Kashmiri Hindus from Kashmir Valley as a result of the 1989 secessionist/nationalist movement.)

Why should this local protracted displacement be a subject of a study? This essay makes two arguments. First, in both the scholarly and policy worlds of 'displacement', definitions matter: they effectively determine who is included and who is not. Exclusion leads to the invisibility of certain groups of people with the result that the problems of all those displaced populations who remain outside the conceptual frameworks developed at the regional, national and international levels are prevented from being either addressed or alleviated. In this paper, 'exclusion' refers specifically to the lack of a conceptual space for the local or context dependent particularities of displacements

and therefore outside the framework of national and international agendas. The question naturally arises how one ought to address the interests and needs of those who get stuck in these local particularities, a case in point being the displacement discussed here whose origins lie in the partition conflict between India and Pakistan over the contested state of Jammu and Kashmir and whose intractability can be traced to the politics of nationalism and sub-nationalism. This essay suggests that there is no single one-size-fits-all blueprint for solutions to the multiple local and context dependent particularities of displacements. The nature and type of displacement cannot be considered in isolation from its political, historical and cultural contexts. Second, given the above, this essay explores viable options for a solution to this protracted displacement. Drawing from the path dependency literature, the essay suggests that, as the room for manoeuvre remains limited because of potential political costs for both India and the state of Jammu and Kashmir, solutions lie in treating this historical displacement as a relatively free standing phenomenon and insulating it from the sticky issues of identity based politics.

### **Definitions Matter**

Since 1947, the West Pakistan Refugees (WPR) and the Pakistan Occupied Kashmir Displaced Persons (PoKDP), in one way or another, have remained outside the legitimate concerns of both the national and international communities. They have been caught up in a tangle of differing conceptions of displacement, stuck at discursive boundaries separating 'refugee' and 'migrant', and hostage to uncertainty about the locus of authority and responsibility in their regard. To begin with, the restricted concept of 'refugee' adopted by the international regime during India's partition excluded the WPR and the PoKDP along with the 15 million people who crossed borders between India and Pakistan. Then, as if to make matters worse, the South Asia Refugee regime, a bilateral arrangement between India and Pakistan to resettle the displaced population living in the refugee camps, excluded the displaced persons in the state of Jammu and Kashmir, the focal point of conflict between the two countries. With no national and international legal or political space, these groups were never officially documented (although some voluntarily registered themselves with nongovernmental humanitarian agencies). The final blow was to come when they were deprived of any protection because of the legal and constitutional arrangements between India and Kashmir. This triple exclusion from the refugee regime at the international, national and regional levels came about and persists to the present day through a historical process of interaction between different standards/definitions adopted in the past of who is to be included in the refugee regime, further complicated by a lack of recognition that there exists a damaging conflict within and between the categories of refugee and displacement.

In the early 1990s, the issue of internal displacement became increasingly integrated within the international agenda and very substantial progress has been made in the refugee discourse (Chimni 1998; Pacitto and Fiddina-

Qasmiyeh 2013; Weiss and Korn 2006). Nevertheless the situation of the West Pakistan Refugees (WPR) and the Pakistan Occupied Kashmir Displaced Persons (PoKDP) has yet to be recognized as a legitimate matter of international concern. Although geopolitical issues loom large as negative factors, it can be argued that the preponderant impediments are in fact jurisprudential/conceptual in nature, specifically with respect to how Internally Displaced Persons (IDPs) are defined and identified. As Erin Mooney points out, the fact that the 'internally displaced person' category does not have legal status and remains purely descriptive where the category 'refugee' is privileged (Mooney 2005, 14), has allowed the authors of the discursive regime to create specific boundaries and use what they consider to be 'objective factors' 'writing the 'other' into humanitarian discourse.' Mooney correctly observes that the IDP definition, has tried to strike a balance "between too narrow a framework that risks excluding people who share similar characteristics and one so broad that it loses focus on the distinct protection and assistance needs arising from forced displacement" (2005, 13). Motivated by the fear of losing focus on the one hand and, on the other hand, by the desire to come up with a universal understanding of 'who is included' and 'who is excluded', the noble attempts to broaden the concept of refugee to include internal displacement suffer from a lack of fluidity in addressing the plurality of circumstances and the local and context dependent particularities of displacement. The effort to construct strict boundaries around the definition of displacement has had two consequences. First, it acknowledges "neither the complexities nor nuances of each situation" and views in "similar ways the displaced are represented across events" (Powell, 2). Second, the definitional parameters surrounding the term IDP limit the international actors' moral authority to intervene where nations fail to protect their own people. Deng and others' attempts to reformulate the concept of sovereignty by moving it from its legal connotations (as the absolute authority of the national state within a bounded territorial space) to a normative one, 'sovereignty with responsibility', could only be seen as shallow and limited in scope (Etzioni 2006; Deng 1996). It would not be an exaggeration to state that the epistemic communities, which should rightfully be credited for their critical evaluation of the dominant paradigms and for ushering in new concepts, norms and culture (including Deng's reworking of the concept of territorial sovereignty into 'sovereignty as responsibility' and the Guiding Principles of Internal Displacement), have not been able to move the discourse on displacement beyond the national space and national actors. The primary responsibility for the protection and welfare of the IDPs still rests with the national government. The nation-state's predominant preoccupation in the construction of nationhood often remains the pursuance of cultural homogeneity. And when the state is struggling with competing subnationalisms, the displaced persons who have no political power, land up at the bottom of the hierarchy. Indeed, as Roger Zetter suggests, "forming a discrete label of 'IDP' can be constructed as containment and restricting forced migrants from accessing the more privileged label 'refugee' (2007, 177).

*Tremblay: Protracted Displacement*

There is an urgent need for discussion in the literature on internal displacement (IDP) of local and the context dependent particularities of displacement if the protracted displacement examples, which are being discussed in this essay are to be resolved. It is a known reality that a large number of internal displacements do occur and are still occurring within the boundaries of a nation state as a result of specific sociopolitical complexities, in particular conflicts over control of sovereign power, sectarian conflicts and ethnic cleansing. The refugees or displaced persons, while trying to escape horrific conditions, inadvertently get trapped in legal and administrative regime structures. We see all displaced persons through the lens of a fixed set of categories of 'refugees', 'migrants' and 'internally displaced persons.' The displaced persons who do not fit the current legal and administrative norms, thus become part of the folklore rather than subjects of a proactive state or international intervention in redressing their problems, thus making the intractability of particular cases at once even more entrenched and invisible. On the other hand, in order to seek protection and humanitarian assistance, the vulnerable displaced communities try to fit within the hegemonic and acceptable labels and categories. Katrina Powell points out that, given the much sought out term 'refugee' which 'brings with it very real material gains', the displaced innovatively 'reproduce labeling expectations' with the consequence of further reinforcing the inclusivity/exclusivity in relation to the official construction of the legal and administrative refugee/displaced discourse. Under the prevailing global hegemonic discourse, ordinary citizens, while in the process of their displacement, in order to define their precarious situation, are forced to adopt the terms and concepts of 'forced migrants,' 'refugees' or 'internally displaced persons.' This results in limiting their choices and framing the response of the political actors - different actors with different means of power with their distinctive "ideas about how returnees should fit into national space," (Stepputat 1994, 177).

One of the aims of this study is to pluralize the term displacement by opening up the refugee discourse to addressing the context dependent character of displacement and examining how one ought to address the interests and needs of those who get stuck in these local particularities. Hopefully, a key takeaway from this study will be that one should not expect a one-size-fits all blueprint for the solutions to the diverse local, context dependent particularities of displacement. Any humanitarian solution to displacement is contingent upon its local context. The nature and type of displacement cannot be considered in isolation from its context, whether it is historical, political or cultural. Therefore, one should not expect that a model for standard or universal response, howsoever successful it might be viewed a priori, would be applicable across various states/situations. In 1995, Malkii cautioned us that the analytical value of a term such as 'refugee' lies only in the degree to which it can be viewed under a "broad legal or descriptive rubric that includes within it a world of socioeconomic statuses, personal histories, and psychological or spiritual situations" (1995, 496). In order adequately to deal with context

dependent displacements it will likely prove necessary to sacrifice the requirement of standardization and allow for some fluidity. The crux of the matter is that international regimes mediate state norms and these norms might be the only hope for displaced persons who are being denied protection by their national and regional governments. Risse and Ropp point out that ‘words matter even if they are only rhetoric’ but these have significant impact. Through these words transnational actors involve and entangle ‘norm violating governments in an argumentative process which then becomes self-sustained’ (1999, 276).

### **Kashmiri Identity, the Indian state and the Ignored Refugee**

The West Pakistan Refugees and the Pakistan Occupied Kashmir Displaced Persons (henceforth referred to as the WPR and PoKDP, respectively) are the unfortunate victims of competing nationalisms and of the constitutional and legal categories defining the federal asymmetric relationship between India and the state of Jammu and Kashmir. The initial policy choices, made by India after the tribal invasion and the state’s accession to India in 1947, have shaped politics, expectations and subsequent policies—both national and regional—emanating in the state. In particular, the state of Jammu and Kashmir, almost immediately after accession, developed a response to migrant populations which is not congruent with the South Asian Refugee Regime but whose terms remain in effect to the present day. This has effectively created a normative framework for the future actions and choices of both the state and the various fragments of its civil society, including the nationalist/secessionist groups that challenge integration of the state with India. This is further complicated by the fact that, since 1989, India has been faced with an active nationalist/secessionist movement in the Muslim majority Kashmir Valley, which enjoys Pakistan’s active and overt support. Both India and the state government perceive that to bring about change would entail high political costs—negatively impacting the Muslim majority Valley’s relationship with India and giving Pakistan a strategic upper hand. Addressing the demands of the WPR and PoKDP means changing both normative and legal institutions. In particular, the Kashmir government is not willing to change the constitutional regime, fearing that the Valley’s Muslim population would interpret these measures as threatening the Kashmiri identity and shifting the state’s demographic reality in favour of the Hindu population. In the process, however, the Kashmir government also rejects the demands made by the Hindu majority Jammu region to fully integrate the state with India, for the louder the integrationist voice makes itself heard in Jammu, the more Kashmiri Muslims become concerned about their identity and the state’s relationship with India. As both sets of refugees belong to the Hindu and Sikh communities, their cause is supported by Jammu’s Hindus. With locked in institutions, the WPR’s and PoKDP’s issues and demands have taken a back seat to identity based politics in the state of Jammu and Kashmir.

In short, the Indian state as well as the political leadership in Jammu and Kashmir find themselves in a quandary. The following discussion provides

an overview of the protracted displacement in Jammu in view of proposing at least the shape of a viable solution—assuming such a solution is even possible—for it may well be that, for a foreseeable future, we are at an impasse. The discussion is divided into four parts: 1) the emergence of the bilateral South Asian Refugee Regime in 1947; 2) a brief historical background of the Kashmir issue including a brief introduction to the asymmetric federal constitutional provisions between India and the state of Jammu and Kashmir; and detailed description of the protracted displacement of: 3) the Pakistan Occupied Kashmir Displaced Persons (PoKDP); and 4) the West Pakistan Refugees (WPR).

### ***The South Asian Refugee Regime***

India's and Pakistan's immediate challenge was the integration of the 10 million partition refugees living in camps, an enormous task made all the more difficult since neither country was able to convince the United Nations to provide assistance or protection to their refugee populations. The latter problem lay with the narrow definition of a refugee that had been adopted by the international community. The United Nations considered only those migrants who had been deprived of their nationality as refugees and thereby be eligible for international recognition, protection and assistance. The Indian partition's refugees were viewed instead as part of an internal refugee flight and/or of transnational migration. It was argued that these refugees had not, in fact, lost their nationality and were therefore still under the legal protection of a national government. Unable to receive any assistance whatever from the United Nations, India and Pakistan, left to their own resources, entered into bilateral treaties, the so called Inter-Dominion Conference Agreements (1948, 51). The Agreements allowed them to establish the legal norms and administrative structures required effectively to standardize reciprocal processes across the two countries for resettlement programs, property administration and other relief arrangements. Unlike the definition adopted by the United Nations, the South Asian Refugee Regime defined as refugees those persons who had moved across borders in the wake of political violence and who had been 'deprived of their ability to access and make use of their immovable property' (Robinson 2012, 352). The underlying goal of both states was to facilitate the integration of the refugees into their respective countries' economic and political life. Refugees were to be converted into citizens (Robinson 2012, 353).

Initially, the Inter-Dominion Conference Agreements did not apply to the 563 Princely states, which existed separately from British India and were not part of the demarcation of the dominions of India. Since all Princely states were to join either India or Pakistan, in 1949 India and Pakistan signed the Karachi Agreement, retroactively to include all Princely states in the South Asian Refugee Regime. There was only one exception to this agreement: the Indian state of Jammu and Kashmir, and it had by that time become a focal point of conflict between the two countries. In all, one million people were to move—in both directions—across the stretch of the India-Pakistan border that

now divided the former Princely state. Moving into the Indian state of Jammu and Kashmir (J&K) were some 750,000 refugees/migrants from West Pakistan and Pakistan administered Kashmir (Azad Kashmir). For its part, Pakistan reported that the West Pakistani camps accommodated 250,000 refugees from the state of Jammu and Kashmir (Robinson 2012, 356).

***Historical Background of the Kashmir Issue, Asymmetric Federalism and Rehabilitation Responsibilities***

The roots of the more than six-decade old protracted displacement can be traced back to the tribal invasion and to the ensuing Treaty of Accession to India signed by the Hindu ruler of the majority Muslim state of Jammu and Kashmir on October 26, 1947. After the British granted independence to India, Jammu and Kashmir remained one of three princely states not to accede to either India or Pakistan. When, seeking to take advantage of the situation, tribesmen from North-West Pakistan, supported by the Pakistan army, invaded the state, its Hindu ruler agreed to accede to India and requested military assistance to liberate the state from the tribal invasion. India accepted the Treaty of Accession with the condition that once law and order were restored and the state was freed of the tribal invaders, the population of the state was to decide its own political future through a plebiscite. The Indian army was able to liberate little more than half of the state. After protracted negotiations a ceasefire was agreed to by both countries, the terms of which were laid out in the 13th August 1948 United Nations resolution. Meanwhile, India filed a formal complaint to the Security Council asking for the withdrawal of Pakistani troops from the state, but to no avail. Since that time, the state has been divided into two parts: two-fifths of its territory—Azad Kashmir—is being administered by Pakistan while the remaining three-fifths—the state of Jammu and Kashmir—is under Indian administration. As a result of this partition, Hindus from Azad Kashmir left their ancestral homes and lands and fled to the Hindu majority Jammu region of Indian administered Kashmir. It should be noted that Jammu and Kashmir, in its post-partitioned form, consists of three distinct regions: Kashmir, Jammu and Ladakh. Each region has a distinct linguistic and religious identity: the largely Kashmiri speaking Kashmir (often referred to simply as ‘the Valley’) has a 97.2 percent Muslim population and less than 2.0 percent Hindus; Jammu is predominately Dogri-speaking, with 65.2 percent Hindus and 34.7 percent Muslims; and Ladakh’s population is 47.4 percent Muslim and 46.9 percent Ladakhi-speaking Buddhist. In 1950 the Indian Constituent Assembly approved Article 370 of the Indian Constitution. Article 370 gives special and differential status to Jammu and Kashmir, unlike any other state in India. The article, while restricting the Central government’s legislative power to Foreign Affairs, Defence and Communication, allowed the state government to legislate on residuary powers. This constitutional provision, enshrined as it was in the Indian constitution due to the unique circumstances of the state’s accession to India, was intended to be temporary. Article 370 also sets the conditions for making any changes to this asymmetrical political

relationship. Importantly, the Indian Parliament needs the state government's concurrence for applying all other laws: constitutional amendments approved by the Indian Parliament, otherwise applicable to all states, are not automatically applicable to the state of Jammu and Kashmir (Bose, 2005; Ganguli, 1997; Schofield 2000; Tremblay, 2015).

The special status of the state of Jammu and Kashmir is additionally reinforced by stringent J&K state determined citizenship provisions, to which Article 35A of the Indian constitution gives legal and constitutional legitimacy. In its 1957 constitution, Jammu and Kashmir state defines 'who is a citizen of the state' and these citizens are called 'Permanent Residents' of the state. These citizenship requirements have their basis in Kashmir's nationalist history. In 1927, the Hindu ruler, Maharaja Hari Singh, promulgated citizenship rules in response to a popular agitation by the Muslim population of the state against outsiders. Through the Permanent Resident requirements and several other legislative acts, Jammu and Kashmir state has chosen, without ambiguity, to protect its citizens from other persons settling within its borders by preventing any settler from acquiring immovable property or laying claim to public employment. Although over the years and with the approval of the state government there has been an incremental abrogation of the state's special status, the provisions regarding Permanent Residents have remained untouched. Among the Muslim population of the state, Article 370 and the state specific citizenship rules regarding employment and acquisition of property have become symbolically and emotionally intertwined with the state's special status and distinct identity.

Both India and Jammu and Kashmir consider the partition of the state to be temporary. In addition, the Jammu and Kashmir Constitution recognizes as citizens, as defined by the 1927 promulgation, all Muslims who, because of communal violence, abandoned their homes and property in the state and moved across the border to Azad Kashmir. To that effect, Article 48 of the J & K constitution has reserved 24 out of 87 legislative seats for Pakistan administered Kashmiri citizens. It stipulates that these 24 seats will remain vacant till Pakistan ceases the 'occupation' of Kashmir.' In addition, in order to assert Kashmir's distinctness and its autonomy, the Jammu and Kashmir legislative assembly passed the Resettlement Bill in 1982 to allow refugees from the state of Jammu and Kashmir then settled in Pakistan and 'Azad' Kashmir to return freely to the state and allow them to reclaim property. The bill was opposed by the Hindus of Jammu, particularly those who had been seeking full citizenship rights for the WPR and the PoKDP. Although the bill was returned by the then Governor B. K. Nehru, citing inconsistencies, the Kashmir government referred the bill to the Supreme Court the same year, seeking its opinion on the legality of the Act. Over thirty years later, the Supreme Court has yet to act upon it.

Under the constitutional federal asymmetrical provisions, it is the state of Jammu and Kashmir, which alone has the responsibility towards the refugees and the internally displaced persons residing within its borders. This state

responsibility—or lack of it—works out differently with regard to the PoKDP who are recognized as Kashmiri citizens and the WPR who are not. The state of Jammu and Kashmir envisions its geographical identity to coincide with the territory enclosed within prepartitioned-Princely state borders and not only expects the two sides of Kashmir—Pakistan administered and Indian administered Kashmir—to be unified when the Kashmir issue is resolved, but also expects the eventual return of all migrants to their ancestral homes. As such, all citizens of the state who have moved from one part of the state to another in 1947 and are located in either Azad Kashmir or Jammu and Kashmir are not considered to be refugees, but only ‘temporary migrants.’ Such is the case with the PoKDP—not refugees but temporary migrants. On the other hand, the state’s Permanent Resident Rules exclude the WPR from its jurisdiction and make them eligible only for temporary relief. Although they are refugees as defined by India and Pakistan under the South Asian Refugee Regime, India has passed on the responsibility of their settlement to the state because of the special and differential status, which the state enjoys within the Indian Constitution. The state, for its part, considers them to be outsiders and therefore beyond their jurisdiction. Ironically India does not consider these refugees to fall under its jurisdiction even though they are considered citizens of India. Because of the Kashmir conflict and the enduring India-Pakistan rivalries, as mentioned earlier, Jammu and Kashmir was kept out of the South Asian Refugee Regime. Although they meet the definition of refugee as per the Inter-Dominion Agreements, they are not part of India-Pakistan’s reciprocal treaty obligations. India, as it considers them to be the wards of Jammu and Kashmir state, maintains that state should assume responsibility for their resettlement. Lastly, as regards those citizens who fled the state, the state has given itself the custodian responsibility to protect their ‘Evacuee Property.’ The ‘Evacuee Property’ is to be reconstituted to them upon their return.

The Refugee issue has been further complicated by the rise of a mass based secessionist movement in the Kashmir Valley in 1989. Although, after that violent secessionist/nationalist agitation (which lasted over seven years) regular elections have resulted in the creation of a popular government in the state, religious regional polarization has come to persist in Jammu and Kashmir (Tremblay 2015). There are competing regional political narratives—the nationalist/secessionist/irredentist one in the Valley vs. the prointegration/autonomy/Hindu/secular one in Jammu. As a result, the resettlement problems of the WPR and the PoKDP are not viewed, either by the mainstream Valley based parties (currently the ruling parties of the state) or by the Valley’s Muslim population, as human rights issues but, instead, as being deeply connected with the distinct status of the state within India and with the Kashmiri identity.

### ***Pakistan Occupied Kashmir Displaced Persons (PoKDP)***

In September 1947, the impoverished Muslim community in the town of Poonch (North of the Kashmir Valley) led a revolt against the Hindu Maharaja of Kashmir. In October, along with the Poonch rebels, tribesmen from Paki-

### *Tremblay: Protracted Displacement*

stan's North West Frontier Province, supported and assisted by the Pakistani Army, invaded the princely state of Jammu and Kashmir. After the accession of Kashmir to India pursuant upon the invasion, the Indian army intervened and, as mentioned earlier, was able to clear three-fifths of the state of the tribal invaders. On the Northern front, the Gilgit-Hunja-Balistan belt, and on the Western front, the Muzaffarabad-Kotli-Mirpur belt (and a part of Poonch) were separated from the Indian side of Kashmir. This partition led to widespread communal frenzy and large scale violence. Sumatra Bose notes, "The entire Hindu-Sikh populations of Muslim majority districts in western Jammu like Muzaffarabad, Bagh, Rawalkot (western Poonch), Kotli, Mirpur, and Bhimber were killed or expelled. Mass murder and expulsions of Muslims occurred in Hindu dominated eastern Jammu districts – Udampur, Kathua, and Jammu city and its environs," (Bose 2005, 40). Pakistan occupied Kashmir Displaced persons Hindus and Sikhs who, when faced with communal violence, left what had been the Western front and moved east into Indian administered Jammu and Kashmir largely into the Hindu majority Jammu region. Most of these displaced persons were merchants, traders, and landowners or had held government jobs.

The PoKDP were never officially or formally registered by either the state government or the Government of India; as a result, there has never been an accurate accounting of their number. However, 31,619 families voluntarily registered with the Rehabilitation Organization, established by the J&K government in 1950; out which 26,319 families remained in the state, with slightly more than 80 percent settling in rural areas. According to Rajiv Chundi, Chairman of the SOS, an organization of PoKDP settled in J&K, there are at present 1.2 million Pakistan occupied Kashmir Displaced persons residing in the state (Chandran 2007). Because India did not accept the partition of Jammu and Kashmir, India's Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the Administration of Evacuee Property Act, 1950 were not made applicable to the state of Jammu and Kashmir. Thus, the Government of India did neither register them nor invite this group of people to request claims for compensation in lieu of the properties left behind. Similarly, the state government also considers the Pakistan occupied Kashmir Displaced Persons as temporary migrants who will eventually return to their homes in Azad Kashmir. In order to assist them with their hardship, all relief measures provided to this group have been temporary.

The Government of India has, on an off-and-on basis, allocated funds to the state government so that temporary relief could be disbursed to the PoKDP. The state government also took measures to allot the PoKDP temporary accommodations over which, however, the latter exercise no ownership rights. They were assigned the 'Evacuee Property' left behind by Muslims who had fled to Azad Kashmir and other parts of Pakistan. The Evacuee Properties are being held in custody by the department of the Custodian of Evacuee Property, Jammu and Kashmir. Its major duty is to look after these properties and ensure they are restored to their rightful owners upon their return. Rajni

Dhingra, who has conducted a detailed study of the Mirpuri displaced community, describes these temporary relief measures:

A family of six was given a 60 x 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 kanal) irrigated land or 8 acres (64 kanal) unirrigated land. The above plots were only given on allotment basis and no registry for the same was done. These families 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 a constructed house (2012, 63).

These relief measures were made subject to three conditions: a) person must have been staying in the camps not with relatives; b) the head of the family should have migrated; and c) migration should have taken place between September, 1947 and December, 1950. (Parliamentary Committee 2014, 23). Two groups were left out of these temporary relief measures: families who migrated after December, 1950 and whose head of the family was killed during migration; and all those who had not registered with the Rehabilitation Organization. Moreover, any one whose monthly income exceeded Rs. 300 did not receive any cash compensation. The state also faced a land deficiency when it came to accommodating some of the rural settlers. In 2008, the Government of India authorized another financial package to provide cash disbursement to rural PoKDP. By 2014, the state government had provided cash compensation of Rs. 50,000 each to 2,524 families in lieu of land.

For more than six-and-a-half decades, the PoKDP have been demanding not to be treated as temporary migrants but instead as internally displaced persons. The Parliamentary Committee, established in 2010, to review the plight of displaced persons in the state of Jammu and Kashmir, recommended in its 2014 report three specific measures to address the demands of the PoKDP. First, because nonregistered families have not been given proper relief and compensation, “the Government should take adequate steps immediately to ensure official registration of Displaced Persons from PoJK in order to ensure that benefits of schemes meant for refugees and Displaced Persons reach the targeted group.” Second, concerned with both insufficient interim relief and a slow implementation of the disbursement of the centrally approved financial packages, the Committee has recommended, “an interim package be sanctioned for PoJKDPs with compensation for loss of life, property, movable and immovable, and the suffering caused to them during last 65 years.’ This should be accompanied with a one time compensation of Rs.300,000 per family.

One of the most controversial recommendations of the Parliamentary Committee is the allocation to the PoKDP of 8 out of 24 reserved seats for state citizens who are presently residing in Azad Kashmir or Pakistan. This

would require the state government to amend its constitution. It is now widely accepted that the Line of Control (LoC) between the Indian and Pakistani controlled parts of the former princely state of Kashmir and Jammu has become a de facto border and that the partition of the state will not be undone. It follows that the displaced communities from Azad Kashmir can no longer meaningfully be considered as temporary migrants. However, the demands of a permanent settlement, which includes ownership of property rights over the 'Evacuee Property' and political representation through the unfreezing of the reserved legislative seats are intricately intertwined with the political and cultural identity of the state. The constitutional and legal regimes, political instruments in the construction of the ethnic identity, have become both sacrosanct and inviolable. Any change would be perceived by the Kashmir Valley's Muslim population as violating the special status of the state and its right to determine its own political and cultural identity.

### ***West Pakistan Refugees (WPR)***

During the partition of India, some of the Hindu and Sikh population from West Punjab in Pakistan, which borders Jammu and Kashmir to the South-west, settled in the Hindu majority districts of Jammu, Samba and Kathua of the state. As Seema Nargotra points out, "the entry into the territory of the state of J&K proved to be a blunder for the refugees from West Pakistan" (2012, 83). Had they moved to any other part of India, their political and economic integration would have been covered under the Inter-Dominion Agreements. In the state of Jammu and Kashmir, they were considered outsiders and not citizens of the state (as per the historically defined Permanent Resident category) and as such not eligible to settle in the state.

Just as happened with the PoKDP, there has been no official registration of the WPR, thus making it difficult to provide an accurate accounting of this group of refugees in the state. The Wadhwa Committee of 2007, constituted by the Government of Jammu and Kashmir, reports that around 5,764 families consisting of 47,215 persons settled in the state in 1947, mostly in the rural areas. A recent survey, conducted by the West Pakistani Refugee Action Committee, one of the lobby groups for the displaced persons, estimates that 18,428 WPR families consisting of 1.5 million people reside in the state. An overwhelming majority of these refugees are from the lower strata of Hindu society, with 80 percent belonging to the Scheduled Castes and another 10 percent to Other Backward castes. They typically earn their livelihoods as labourers, construction workers and potters.

While the PoKDP have been the beneficiaries of relief measures, howsoever temporary and incommensurate with the properties left behind, that is not the case with the West Pakistan Refugees who, as noncitizens of Jammu and Kashmir have been rendered ineligible by the state government to receive any relief benefits. They did, albeit illegally, occupy 11,366 acres (45,466 kanals) of land (half of which is deemed 'Evacuee property'), which they have been allowed to retain by the state without, however, conferring upon them title to

the land. As nonstate citizens, they are ineligible to seek state employment, acquire property, take advantage of state determined special quota programs in technical and professional educational institutions, and participate in the local and regional elections. As citizens of India, they participate in national elections and are also eligible for centrally sponsored welfare programs for Scheduled Castes and backward communities. By and large they have not been able to take advantage of these programs due to the difficulty of obtaining a 'Domicile Certificate' from the state government. They have virtually become invisible in the state's political and economic landscape.

In their submission to the 2014 Parliamentary Committee, the representatives of West Pakistani Refugees described the plight of the WPR:

After the partition of the country in 1947 their forefathers arrived from West Pakistan to settle in Jammu and they have been living there for 66 years but they have been deprived of the rights conferred to the state People. They have not been provided the voting right in the Assembly and their children are running from pillar to post in search of a permanent source of livelihood. Whatever recruitment is made in Jammu, even if it is done on behalf of the Government of India, West Pakistan Refugees are kept at bay. Their three generations in Jammu have been ruined completely and at present the fourth generation is also facing severe problems.... In the recruitments for army and para military forces, domicile certificates are asked, which they do not have. People are living on the land which was given on a compassionate basis. However, they are now not permitted to get repaired the dilapidated houses.... since they cannot vote in Assembly elections and local self government, Members of Legislative Assembly and Panch and Sarpanch do not care for them. As a result they are not benefited under *Indira Awas Yojana* and *Aanganwadi* which are sponsored by the central government, (2012, 16-17).

Consistent with the federal asymmetric constitutional relationship, the central government has left the responsibility of the rehabilitation of the WPR, settled in Jammu and Kashmir, with the state government. To make matters worse, the WPR have also had no success in receiving recourse to their statelessness from the Indian judiciary. In 1997, the Supreme Court of India affirmed that the constitutional provisions pertaining to the special status of Jammu and Kashmir establish that it is only the legislature of the state, which has the ultimate authority to amend its laws to include West Pakistan Refugees in its citizenship regime. Since the 1990s, the Government of India has made several requests to the state government to amend its constitution and include the WPR in its Permanent Resident category to no avail. Finally in 2014, responding to the pressures from the Government of India, the state government did constitute a cabinet subcommittee to consider the matter.

The Government of India, in a 2014 parliamentary committee report,

expressed grave concern over the statelessness of these refugees and made some very bold recommendations. Concerned in particular with the inability of these people to live as free citizens in democratic India, the report asks the central government to “impress upon the state government to consider, as a one time measure, the demand of West Pakistani Refugees to grant them the status of permanent residents of the state sympathetically so that they can live as state subjects in a dignified way, with all legal rights including the right to vote in the state Legislative Assembly.” It has asked the state government to amend its constitution to confer the status of state subjects on the WPRs. The committee is of the opinion that once the permanent resident right is granted to West Pakistani Refugees all subsidiary benefits will automatically follow.

But the state of Jammu and Kashmir, while willing to accommodate those demands of the WPR regarding special considerations for admission to its technical and professional institutions and to grant the WPR settled in the state a ‘Domicile Certificate,’ it is not willing go further and move in the direction of changing its constitution and granting, on an exceptional basis, the state citizenship rights to this group. The Parliamentary Committee’s recommendations have once again brought to the forefront identity based concerns of Kashmir Valley based mainstream political parties and a fierce opposition from moderate to extreme nationalist/secessionist groups. The People’s Democratic Party (the governing coalition partner with the BJP) has cautioned the centre against any arbitrary and hasty decision with regard to the settlement of these refugees; the National Conference Party has called the move to settle West Pakistan refugees a ‘wicked conspiracy’ to change the demographics of the state; the moderate nationalist group, the Hurriyat Conference, has termed the recommendations, an ‘aggressive attempt’ to ‘change the facts on the ground’ and to ‘alter’ the ‘demographics’ of the state and the hardline Hurriyat leader Syed Ali Geelani has called for launching a ‘decisive resistance’ to thwart such moves by the BJP led government at the centre.

### **Are we at an Impasse or is there a viable solution?**

We have shown above how the historical context and the founding constitutional relationship between India and the state of Jammu and Kashmir have resulted in the failure of both the national and the regional government’s efforts to facilitate the resettlement in the Indian administered Kashmir of the Pakistan occupied Kashmir Displaced Persons as well as of the West Pakistan Refugees. The Muslim majority state has developed its own identity based specific response to partition related refugee/displaced persons. It has done so within the context of the 1947 tribal invasion, accession to India by the Hindu Ruler, India’s promise to hold a referendum once the laws were restored and the Pakistani troops had withdrawn, and, the asymmetrical relationship of the federal constitutional relationship with India, granting special status to the state. The Indian state through its legal and constitutional apparatus has named the Kashmiri identity and the parameters surrounding citizenship. Through its historically determined citizenship regime, Jammu and Kashmir has deter-

mined ‘who is in’ and ‘who is out’ by defining citizenship rights—both in terms of political participation and of rights, particularly property rights.

Given that ethno-nationalist aspirations remain deeply entrenched among the Valley’s Muslim population and that their demands for *azadi* (freedom) continue to reverberate in Jammu and Kashmir, neither the state nor the Indian government is likely to move forward in changing the citizenship rules to allow the integration of the West Pakistan Refugees as free and participating citizens of the state. However, the financial compensation demands of the PoKDP might be met by the government so long the PoKDP meet three conditions: a) that there is no reversal of the central government’s position that the partition of the state is temporary; b) that the state of Jammu and Kashmir retains the responsibility to grant all citizenship rights to its citizens who abandoned the state and have settled either in Azad Kashmir or in Pakistan; and c) that Article 370 is not abrogated. While the mainstream political leadership of Jammu and Kashmir views Article 370 as a clear articulation of the special status of the state within the Indian federation and as the bridge between the state and India, the secessionist groups of the Valley consider this constitutional arrangement as conditional and provisional. For them, the accession is not final and Kashmiris’ wishes regarding their political association must be ascertained through a plebiscite. Unfortunately for the displaced population of the state, this political reality is not likely soon to change and the resulting harsh and manifestly unfair status quo can be expected to persist.

The Indian state as well as political leadership in Jammu and Kashmir find themselves in a quandary, though for different reasons. Kashmiri Muslims remain committed to their distinct identity and thus too specific rules of ‘who is a Kashmiri’ and ‘who is not.’ Under no circumstances, would they be willing to make changes to the citizenship rules to accommodate the WPR. India, on the other hand, has no choice but to ensure that the special status of the state and the accompanying citizenship rules are respected because that is the best and only hope to mitigate the alienation of Kashmir Muslims vis-à-vis the Indian state. Thus the room for manoeuvre for both national and the region government remains narrowly constrained. Each is unable to absorb the political costs associated with changing the institutional regime of citizenship. Then the dilemma is: if federal asymmetry is the only viable option to deal with Kashmir conflict, how does one work within the ‘the stickiness’ of existing institutional and political arrangements of citizenship rules to come up with a just response to the protracted displacement? Borrowing from the Mariana Prado and Michael Trebilcock study on path dependency, future institutional reforms and development, one of the strategies which could be pursued is to detach the protracted displacement issues from a ‘mutually reinforcing mechanism’ and to treat these as ‘relatively freestanding’ (in the case of Jammu and Kashmir, that would mean de-linking property, employment and electoral rights from citizenship rules). Prado and Trebilcock point out, “Detached, freestanding institutions, pilot programs, or decentralized initiatives enlisting enthusiastic participants are likely to be more successful than

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across-the-board centralized reforms of existing institutions that conscript unwilling participants by imposing significant costs on them” (2005, 378). In some measure, both the Indian government and state of Jammu and Kashmir are beginning to take steps in identifying small institutional reforms, such as providing domicile certificates to the WPR so that they can seek employment and take advantage of national government programmes specifically targeted towards the scheduled castes, which comprise the vast majority of the WPR. However, the strategy of creating a set of policies, which would allow the delinking of employment, health, property and electoral rights from the sticky issue of citizenship can only be successful if certain core reforms (in this case the issuance of domicile certificates) are followed by complementary reforms in the future. In other words, any changes to the existing status quo would have to be carefully planned and have to be incremental. Getting proper documentation would hopefully lead to their ability to have access to education, health care, employment services (if not with the state then with the central government) and property compensation. Here Prado and Trebilcock’s caution is worth noting: “because of switching costs and institutional interdependencies, ambitious or highly innovative across the board, political, bureaucratic, or legal reforms carry a significantly greater risk of failure than more modest or incremental reforms” (2005, 377). In order to find a durable solution to the plight of the displaced community, the onus also falls on the Jammu and Kashmir government to slowly, but steadily convince its majority population that the needs of the vulnerable displaced community, particularly the stateless West Pakistani refugees must be addressed.

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