

The Kashmir Freedom Series

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**The Indian Claim
To
Jammu & Kashmir**

A Reappraisal

By

Alastair Lamb

World Kashmir Freedom Movement

*If there is Paradise on the surface of the earth,
This is it ! This is it !! This is it !!!*

(A persian poet on Kashmir)



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FOREWORD

This monograph launches a new set of publications by the World Kashmir Movement entitled *The Kashmir Freedom Series*. The series will deal with the political, legal, international and moral aspects of the Kashmir freedom struggle.

The studies will be based on impeccable research and supported by documentary sources. It is hoped they will help to further clarify the distortions and falsifications of the history of Jammu & Kashmir and illegality of India's occupation of the territory.

The World Kashmir Freedom Movement is pleased to present the first of *The Kashmir Freedom Series* entitled '*The Indian Claim To Jammu and Kashmir: A Reappraisal*' by the distinguished scholar and historian, Professor Alastair Lamb.

The publication of this monograph also marks the third anniversary of the present uprising of the Kashmiri people on 21 January 1990. It was on this day that the Indian occupation army went berserk gunning down dozens of Kashmiri men, women and children in Iqbalabad (Srinagar). The Kashmiri people were protesting against the Indian brutal occupation of their homeland.

Dr Ayyub Thukar
President
World Kashmir Freedom Movement

London
21 January, 1993

The Indian Claim to Jammu & Kashmir

A Reappraisal

The formal overt Indian intervention in the internal affairs of the State of Jammu & Kashmir began on about 9.00 a.m on 27 October 1947, when Indian troops started landing at Srinagar airfield. India has officially dated the commencement of its claim that the State was part of Indian sovereign territory to a few hour earlier, at some point in the afternoon or evening of 26 October. From their arrival on 27 October 1947 to the present day, Indian troops have continued to occupy a large proportion of the State of Jammu & Kashmir despite the increasingly manifest opposition of a majority of the population to their presence. To critics of India's position and actions in the State of Jammu & Kashmir, the Government in New Delhi has consistently declared that the State of Jammu & Kashmir lies entirely within the sphere of internal Indian policy. Do the facts support the Indian contention in this respect?

The State of Jammu & Kashmir was a Princely State within the British Indian Empire. By the rules of the British transfer of power in the Indian Subcontinent in 1947 the Ruler of the State, Maharajah Sir Hari Singh, with the departure of the British and the lapsing of Paramountcy (as the relationship between State and British Crown was termed), could opt to join either India or Pakistan or, by doing nothing, become from 15 August 1947 the Ruler of an independent polity. The choice was the Ruler's, and his alone: there was no provision for popular consultation in the Indian Princely States during the final days of the British Raj. On 15 August 1947, by default, the State of Jammu & Kashmir became independent.

India maintains that this period of independence, the existence of which it has never challenged effectively, came to an end on 26/27 October as the result of two pairs of closely related transactions which we must now examine. They are

- a. an Instrument of Accession of Jammu & Kashmir to India which the Maharajah is alleged to have signed on 26 October 1947, and

- b. the acceptance of this Instrument by the Governor-General of India, Lord Mountbatten, on 27 October 1947; plus
- c. a letter from the Maharajah to Lord Mountbatten, dated 26 October 1947, in which Indian military aid is sought in return for accession to India (on terms stated in an allegedly enclosed Instrument) and the appointment of Sheikh Abdullah to head an Interim Government of the State, and
- d. a letter from Lord Mountbatten to the Maharajah, dated 27 October 1947, acknowledging the above and noting that, once the affairs of the State have been settled and law and order is restored, "the question of the State's accession should be settled by a reference to the people".

In both pairs of documents it will be noted that the date of the communication from the Maharajah, be it the alleged Instrument of Accession or the letter to Lord Mountbatten, is given as 26 October 1947, that is to say *before* the Indian troops actually began overtly to intervene in the State's affairs on the morning of 27 October 1947. It has been said that Lord Mountbatten insisted on the Maharajah's signature as a precondition for his approval of Indian intervention in the affairs of what would otherwise be an independent State.

The date, 26 October 1947, has hitherto been accepted as true by virtually all observers, be they sympathetic or hostile to the Indian case. It is to be found in an official communication by Lord Mountbatten, as Governor-General of India, to M.A. Jinnah, Governor-General of Pakistan, on 1 November 1947; and it is repeated in the *White Paper on Jammu & Kashmir* which the Government of India laid before the Indian Parliament in March 1948. Pakistani diplomats have never challenged it. Recent research, however, has demonstrated beyond a shadow of a doubt that the date is false. This fact emerges from the archives, and it is

also quite clear from such sources as the memoirs of the Prime Minister of Jammu & Kashmir at the time, Mehr Chand Mahajan, and the recently published correspondence of Jawharlal Nehru, the Indian Prime Minister. Circumstantial accounts of the events of 26 October 1947, notably that of V.P. Menon (in his *The Integration of the Indian States*, London 1956), who said he was actually present when the Maharajah signed, are simply not true.

It is now absolutely clear that the two documents (a), the Instrument of Accession, and (c), the letter to Lord Mountbatten, could not possibly have been signed by the Maharajah of Jammu & Kashmir on 26 October 1947. The earliest possible time and date for their signature would have to be the afternoon of 27 October 1947. During 26 October 1947 the Maharajah of Jammu & Kashmir was travelling by road from Srinagar to Jammu. His Prime Minister, M.C. Mahajan, who was negotiating with the Government of India, and the senior Indian official concerned in State matters, V.P. Menon, were still in New Delhi where they remained overnight, and where their presence was noted by many observers. There was no communication of any sort between New Delhi and the travelling Maharajah. Menon and Mahajan set out by air from New Delhi to Jammu at about 10.00 a.m on 27 October; and the Maharajah learned from them for the first time the result of his Prime Minister's negotiations in New Delhi in the early afternoon of that day.

The key point, of course, as has already been noted above, is that it is now obvious that these documents could only have been signed *after* the overt Indian intervention in the State of Jammu & Kashmir. When the Indian troops arrived at Srinagar airfield that State was still independent. Any agreements favourable to India signed after such intervention cannot escape the charge of having been produced under duress. It was, one presumes, to escape just such a charge that the false date 26 October 1947 was assigned to these two documents. The deliberately distorted account of that very senior Indian official, V.P. Menon, to which reference has already been made, was no doubt executed for the same end. Falsification of such a fundamental element as date of signature, however, once established, can only cast grave doubt over the validity of the

documents as a whole.

An examination of the transactions behind these four documents in the light of the new evidence produces a number of other serious doubts. It is clear, for example, that in the case of (c) and (d), the exchange of letters between the Maharajah and Lord Mountbatten, Lord Mountbatten's reply must antedate the letter to which it is an answer unless, as seems more than probable, both were drafted by the Government of India before being taken up to Jammu on 27 October 1947 (by V.P. Menon and Jammu & Kashmir Prime Minister M.C. Mahajan, whose movements, incidentally, are correctly reported in the *London Times* of 28 October 1947) *after* the arrival of the Indian troops at Srinagar airfield. The case is very strong, therefore, that document (c), the Maharajah's letter to Lord Mountbatten, was *dictated* to the Maharajah.

Documents (c) and (d) were published by the Government of India on 28 October 1947. The far more important document (a), the alleged Instrument of Accession, was not published until many years later, if at all. It was not communicated to Pakistan at the outset of the overt Indian intervention in the State of Jammu & Kashmir, nor was it presented in facsimile to the United Nations in early 1948 as part of the initial Indian reference to the Security Council. The 1948 *White Paper*, in which the Government of India set out its formal case in respect to the State of Jammu & Kashmir, does not contain *the* Instrument of Accession as claimed to have been signed by the Maharajah: instead, it reproduces *an* unsigned form of Accession such as, it is implied, the Maharajah *might* have signed. To date no satisfactory original of this Instrument as signed by the Maharajah has been produced; though a highly suspect version, complete with *the* false date 26 October 1947, has been circulated by the Indian side since the 1960s. On the present evidence it is by no means clear that the Maharajah *ever did* sign an Instrument of Accession. There are, indeed, grounds for suspecting that he did no such thing. The Instrument of Accession referred to in document (c), a letter which as we have seen was probably drafted by Indian officials prior to being shown by the Maharajah, may never have existed, and can hardly have existed when the letter was being prepared.

Even if there had been an Instrument of Accession, then if it followed the form indicated in the unsigned example of such an Instrument published in the Indian 1948 *White Paper*, it would have been extremely restrictive in the rights conferred upon the Government of India. All that were in fact transferred from the State to the Government of India by such an Instrument were the powers over Defence, Foreign Relations and certain aspects of Communications. Virtually all else was left with the State Government. Thanks to Article 370 of the Indian Constitution of January 1950 (which, unlike much else relating to the former Princely States, has survived to some significant degree in current Indian constitutional theory, if not in practice), the State of Jammu & Kashmir was accorded a degree of autonomy which does not sit at all comfortably with the current authoritarian Indian administration of those parts of the State which it holds.

Not only would such an Instrument have been restrictive, but also by virtue of the provisions of (d), Lord Mountbatten's letter to the Maharajah dated 27 October 1947, it would have been *conditional*. Lord Mountbatten, as Governor-General of India, made it clear that the State of Jammu & Kashmir would only be incorporated permanently within the Indian fold after approval as a result of some form of reference to the people, a procedure which soon (with United Nations participation) became defined as a fair and free plebiscite. India has never permitted such a reference to the people to be made.

Why would the Maharajah of Jammu & Kashmir *not* have signed an Instrument of Accession? The answer lies in the complex course of events of August, September and October 1947 out of which the Kashmir crisis of 26/27 October 1947 emerged. The Maharajah, confronted with growing internal disorder (including a full scale rebellion in the Poonch region of the State), sought Indian military help without, if at all possible, surrendering his own independence. The Government of India delayed assisting him in the hope that in despair he would accede to India before any Indian actions had to be taken. In the event, India had to move first. Having secured what he wanted, Indian military assistance, the Maharajah would naturally have wished to avoid paying the price of

the surrender of his independence by signing any Instrument which he could possibly avoid signing. From the afternoon of 27 October 1947 onwards a smoke screen conceals both the details and the immediate outcome of this struggle of wills between the Government of India and the Maharajah of Jammu & Kashmir. To judge from the 1948 *White Paper*, an Instrument of Accession may *not* have been signed by March 1948, by which time the Indian case for sovereignty over Jammu & Kashmir was already being argued before the United Nations.

The patently false dates of documents (a) and (c) alter fundamentally the nature of the overt Indian intervention in Jammu & Kashmir on 27 October 1947. India was not defending its own but intervening in a foreign State. There can be no reasonable doubt that had Pakistan been aware of this falsification of the record it would have argued very differently in international fora from the outset of the dispute; and had the United Nations understood the true chronology it would have listened with far less sympathy to arguments presented to it by successive Indian representatives. Given the facts as they are now known, it may well be that an impartial international tribunal would decide that India had no right at all to be in the State of Jammu & Kashmir.

ABOUT THE AUTHOR

Professor Harry Alastair Lamb was born in Manchuria in 1930. Son of a British diplomat, he was educated in United States, Canada and England, including Harrow and Trinity College, Cambridge. He is by training both historian and archaeologist. He has a PhD in history from Cambridge University and is a Fellow of the Society of Antiquaries.

Professor Lamb taught at the University of Malaya in Singapore and Kuala Lumpur from 1956 to 64. Then he was for 3 years a Senior Fellow in the Institute of Advanced Studies of the Australian National University, Canberra. From 1968 to 72, he was Professor of History, University of Ghana. Since 1973 he travelled widely, mainly in Africa, carrying out field research into questions of national identity and self determination.

His interest in the Kashmir question was first aroused on a visit to India in 1955. In 1965, with the outbreak of the Indo-Pakistan war of that year, he began serious research into the origins and nature of the question. After a long interval, he returned to the subject of Kashmir in 1990 while resident in France, inspired by news over the BBC World Service of mounting violence and repression in Kashmir. The resulting book, *Kashmir: A Disputed Legacy 1846-1990* (1991) was the product of a careful reappraisal of the source material, much of which had only recently become available. It has been described as the definitive book on the Kashmir problem.

Professor Lamb is the author of several books on Sino-Indian and Indo-Pakistani relations, including *The China-India Border* (1964), *The McMahon Line* (1966), *Crisis in Kashmir* (1966), *Asian Frontiers* (1968), *The Sino-Indian Border in Ladakh* (1973), *Tibet, China and India 1914-1950* (1989). He is also the author of 16 monographs and over 100 articles and papers relating to Asian archaeology and history and various Asian and African ethnographic topics.

KASHMIR AT A GLANCE

Location: It is situated at the heart of South-Central Asia and shares its borders with Afghanistan, China, India and Pakistan. A small strip of Wakhan separates it from Tajikistan.

Area: 85,000 square miles. It is larger than 95 other independent countries in area. Nearly 2/3rd of its territory is under the occupation of India.

Population: 13 million, including 1.5 million refugees in Pakistan and 0.5 million living in other parts of the world. It is thus bigger in size than 109 sovereign countries of the world.

Political Status: Jammu and Kashmir is a disputed territory within the meaning of international law. Indian forces invaded the territory on 27 October, 1947 and obtained temporary accession of the state from its autocratic ruler while at the same time promising the Kashmiri people as well as the United Nations that the future status of the territory would be determined by its people.

These commitments incorporated subsequently into the United Nations resolutions of 13 August 1948 and 5 January 1949 stipulate that the Kashmiri people will exercise their right of self-determination through a free and fair plebiscite to be held under the auspices of the U.N.

Solution: The international community in general and the UN Security Council in particular should use all their moral, economic and diplomatic influence in order to:

1. Stop forthwith the ongoing genocide of the innocent Kashmiri people.
2. Obtain a speedy withdrawal of over 500,000 Indian occupation forces from the territory.
3. Induct the United Nations Plebiscite Administrator in Jammu & Kashmir.
4. Secure the earliest holding of the plebiscite within the terms of the U.N. resolutions.

World Kashmir Freedom Movement

The World Kashmir Freedom Movement (WKFM) is an umbrella organisation of groups working for the cause of Kashmir at international level. In order to achieve its objectives the WKFM will use all peaceful, moral and legal means within the framework of international legality.

The aims and objectives of the WKFM are to:

- * Strive at all regional and international levels to enable the people of Jammu and Kashmir to exercise their right of self-determination within the terms of United Nations resolutions.
- * Provide moral and political support to the freedom movement launched by the people of Jammu and Kashmir and coordinate their efforts within and outside Jammu and Kashmir.
- * Provide material relief to the victims of repression in Jammu Kashmir.
- * Uphold and defend the human rights of people of Jammu and Kashmir presently living under the occupation of India.

Any person of 16 or over who agrees with the aims and objectives of the WKFM can become its member. Honorary membership of the WKFM can be granted to prominent personalities who support the just cause of the Kashmiri people. Any group, association, organisation or party can become a member affiliate of the WKFM.

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