



ISSN Print: 2394-7500
ISSN Online: 2394-5869
Impact Factor: 5.2
IJAR 2016; 2(3): 17-21
www.allresearchjournal.com
Received: 13-01-2016
Accepted: 16-02-2016

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The myth of the instrument of accession: A Re-appraisal

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Abstract

For a majority of the Pakistanis the status quo in Kashmir is illegitimate. They consider the outcome of the partition of British India as a fall out of the conspiratorial scheming on part of the British as well as the top leadership of the Indian National Congress. For them it was neither fair nor just. The border drawn by the Radcliffe Commission was controversial, the division of civil and military assets inequitable, and, most importantly, the accession of princely states was improper. The most glaring injustice was created by the accession in to India, of the state of Jammu and Kashmir-a Muslim majority state under a Hindu ruler, Maharajah Hari Singh.

There is also a widely-prevalent popular perception in Pakistan that Hindu leaders have long oppressed the Muslim population of Jammu and Kashmir, and the questionable accession into the Indian Union has continuously deprived the Kashmiris their right to self-determination. They often emphasize the UN Security Council's demand for a 'free and impartial plebiscite,' but overlook the other UN demands in the same resolution which include, inter alia, a cessation of fighting; withdrawal of forces, "tribesmen," and "Pakistani nationals not normally resident in Jammu and Kashmir"; prevention of any aid to intruders"; and the creation of "proper conditions" for such a vote to take place.

India's determination to hold on to the state of Jammu and Kashmir is taken as proof that only through extensive oppression can the Indian state suppress the desire for Kashmiri self-determination. This popular perception is both a product and a cause of Pakistani government policies. The (so-called) Indian abuses are amplified in the Pakistani press and undue emphasis on the plight of the Kashmiris for both the domestic and international audiences pushes the leadership toward policies that require the use of force to correct this injustice.

At the root of all these allegations is the perceived sense of injustice and conspiracy regarding the Instrument of Accession that was signed between Lord Mountbatten, the Governor General of India and Hari Singh, the Maharaja of Kashmir in the immediate aftermath of the intrusion of the tribal invaders into the state. In the light of the recent debates on the status of Kashmir and its equation with the Indian Union and Pakistan, this paper attempts to make a fresh appraisal of the contentious issues of date and time of the signing of the instrument of accession between the Maharaja of Jammu and Kashmir and the Government of India (If at all, it was signed on the date as claimed by India!).

Keywords: Instrument of Accession, Self-determination, Radcliffe Commission, Plebiscite.

1. Introduction

At the time of independence, around 565 princely states existed in India. They had not been under direct rule of the British but had become possessions of the British Crown, tied to it in a system of subsidiary alliance ^[4]. The concept of the Instrument of Accession was introduced by the Government of India Act 1935, wherein a ruler of a princely state could accede his kingdom into the 'Federation of India'. This was initially opposed by the Indian princes, but ascension of all the princely states was almost complete when World War II broke out.

When the British finally decided of relinquishing power in 1947, uncertainty hung over the question of the future of the princely states ^[5]. Since they were not British, they could not be partitioned by the British between the new sovereign nations of India and Pakistan. The Indian Independence Act of 1947 provided that with the lapse of paramountcy on 15 August 1947, the relationship between the crown and the princely states would get terminated and that would leave the princely states completely independent. It was on part of the respective rulers to decide whether to accede to India, to accede to Pakistan or to remain independent. (Owing to the geographical location many of them had already been dependent on the Government of India for defence, finance, and other infrastructure).

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The Instrument of Accession was the legal document designed to bring about accession between the princely states and either of the two newly-formed nations, India and Pakistan. It was executed by the government of India on the one hand and by the rulers of each of the princely states, individually, on the other hand^[6]. However, because of the controversy shrouding Government of India's legal equation with the state of Jammu and Kashmir, the Instrument of Accession signed with the state has been widely debated upon and constantly come under critic's scrutiny. Passage of more than six decades after the event has in no way dampened the questionable nature of either the signing of the document or of the state's relationship with the Indian Union^[7].

On the Indian side it is widely believed that Maharaja Hari Singh, the ruler of the state of Jammu and Kashmir executed the Instrument of Accession on 26 October 1947 and it was accepted by Lord Mountbatten, the Governor General of India on 27 October 1947^[8]. In a letter sent to Maharajah Hari Singh on 27 October 1947, the then Governor-General of India, accepted the accession with a remark, "it is my Government's wish that as soon as law and order have been restored in Jammu and Kashmir and her soil cleared of the invader the question of the State's accession should be settled by a reference to the people."^[9] Lord Mountbatten's remark and the offer made by the Government of India to conduct a plebiscite or referendum to determine the future status of Kashmir led to a dispute between India and Pakistan regarding the legality of the accession of Jammu and Kashmir to India^[10]. India claims that the accession is unconditional and final while Pakistan maintains that the accession is fraudulent^[11].

Sequence of Events leading to the signing of the Instrument of Accession with the state of Jammu and Kashmir

In the immediate aftermath of India's independence, three rulers had still not merged their states with India despite Sardar Patel's untiring efforts. They were the Nawab of Junagadh, the Nizam of Hyderabad, and Maharaja Hari Singh of Kashmir. Although accession of Hyderabad and Junagadh had their share of drama, the accession of the state of Jammu and Kashmir to India became one of the most momentous as well as contentious events in the politics and history of the subcontinent^[12].

Kashmir had become a princely state on March 16, 1846 after the British acquired it from the Sikhs after the Anglo-Sikh wars. They had then sold it to Gulab Singh, the Dogra ruler of Jammu^[13]. Hari Singh was the great-grandson of Gulab Singh. The founder of Pakistan, Mohammad Ali Jinnah, had perhaps assumed that Kashmir, by the logic of its majority Muslim population, would become a part of his country. The experience of the developments in Junagadh reinforced his belief that Jammu and Kashmir should become a part of Pakistan^[14].

Hari Singh, in the weeks after August 15, 1947, displayed no indication of giving up his state's independence. Pakistan then decided to force the issue, and a tribal invasion to drive out the Maharaja was given the green signal. In the early hours of October 24, 1947 the invasion began, as thousands of tribal Pathans swept into Kashmir. Their destination: the state's capital, Srinagar, from where Hari Singh ruled.^[15] The Maharaja appealed to India for help.

On 25 October, V. P. Menon, a civil servant considered to be close to Patel, flew to Srinagar to get Hari Singh's nod for

Kashmir's accession to India. On 26 October, Hari Singh and his durbar shifted to Jammu, to the safety of the Maharaja's winter palace, and out of harm's way from the marauding tribesmen^[16].

After completion of the accession to India, on 27 October, India's 1st Sikh battalion flew into Srinagar^[17]. Srinagar was soon secured from the Pakistani invaders but the battles in the larger region were just beginning. When Jinnah learnt of the Indian troops' landing, he reportedly ordered his acting British commander-in-chief General Sir Douglas Gracey to move two brigades into Kashmir — one from Rawalpindi and another from Sialkot. The Sialkot army was supposed to march to Jammu and arrest Hari Singh. The Rawalpindi column would take Srinagar. Gracey refused, saying he could not follow orders that would plunge India and Pakistan into war, without the approval of Field Marshal Sir Claude Auchinleck^[18]. Predictably enough, Auchinleck would not agree to sending troops to Kashmir, either.

Lord Louis Mountbatten, India's viceroy, later described a volatile meeting he had with Jinnah in the days following Kashmir's accession to India: "Jinnah said that this accession was the end of a long intrigue and that it had been brought about by violence. I countered this by saying that I entirely agreed that the accession had been brought about by violence; I knew the Maharaja was most anxious to remain independent, and, nothing but the terror or violence could have made him accede to either Dominion; ...the violence had come from tribes for whom Pakistan was responsible..."^[19]

Pakistan finally did send troops to Kashmir but by then Indian forces had taken control of nearly two thirds of the state. Gilgit and Baltistan territories were secured by Pakistani troops. Fighting between Indian troops, and the tribesmen and Pakistani troops continued for more than a year after the accession, in what is generally known as the first India-Pakistan war. Finally, a United Nations (UN) ceasefire was arranged at the end of 1948. After long negotiations, the cease-fire was agreed to by both countries, and came into effect. The terms of the cease-fire, laid out in a United Nations resolution of August 13, 1948, were adopted by the UN on January 5, 1949^[20].

India and Pakistan have had different views on the Instrument of Accession and the circumstances under which it was executed. The Indian government's stated position is: "The Accession of the State of Jammu and Kashmir to India, signed by the Maharaja [erstwhile ruler of the State] on October 26, 1947, was completely valid under the Government of India Act [1935] and international law and was total and irrevocable. The Accession was also supported by the largest political party in the State, the National Conference. In the Indian Independence Act, there was no provision for any conditional accession."^[21]

It is generally accepted by scholars that the official Indian account of the signing of the accession document by Kashmir's maharaja - that it was signed in Jammu on 26 October 1947 - is inaccurate. An Indian historian and commentator, Prem Shankar Jha, has argued that the document was signed by the maharaja on 25 October 1947, just before he left Srinagar for Jammu. A British researcher, Andrew Whitehead, argues that the document was signed in Jammu on 27 October 1947 - a few hours after the beginning of an Indian military airlift to Srinagar to repulse an invading force of Pakistani tribesmen^[22].

Though the Instrument of Accession executed on October 27, 1947 between the ruler of Kashmir and the Governor General of India was a legal act, Pakistan chose to refute it more than once almost from day one. Thus, on November 1, 1948, in his meeting with Lord Mountbatten, Mohammad Ali Jinnah, Pakistan's founder, claimed that the accession of Kashmir to India was based on violence. Mountbatten replied, 'the accession had indeed been brought about by violence, but the violence came from tribesmen, for whom Pakistan, not India, was responsible.'^[23] Liaquat Ali Khan, Pakistan's first prime minister, was quoted in *Dawn* newspaper of November 5, 1947, as saying: 'We do not recognize this accession. The accession of Kashmir to India is a fraud, perpetrated on the people of Kashmir by its cowardly ruler with the aggressive help of the Indian government.'

Twelve days later, the Pakistan newspaper, which was the official mouthpiece of the Muslim League, quoted Liaquat Ali Khan as saying, 'There is not the slightest doubt that the whole plot of accession of Kashmir to India was preplanned. It cannot be justified on any moral or political grounds. On March 6, 1951, the above thesis was repeated on the floor of the UN Security Council by Sir Zafarullah Khan, Pakistan's foreign minister. In support of his argument, he alleged that the Maharaja had no authority to sign the Instrument of Accession as he had lost the confidence of his people.'^[24]

It needs to be reiterated that the Government of India had no right to question the right of the Maharaja to sign the Instrument of Accession, as he alone had the right and power to take a decision for his state. To have asked the ruler to establish his right to sign the Instrument of Accession would have meant that the Government of India was going to meddle with the internal policies of the state. Law does not permit any such intervention in the affairs of another state.'^[25]

However, cynics have continued to doubt the legality of Kashmir's accession. Historian, Alastair Lamb, in *Birth of A Tragedy: 1947* claimed 'On the present evidence it is by no means clear that the Maharaja (of Kashmir) ever did sign an Instrument of Accession... The Instrument of Accession may never have existed...'. He also states " To judge from the White Paper (on Jammu and Kashmir issued by the Government of India, 1948) an Instrument of Accession may not have been signed by March 1948...'^[26]

Finally, he also challenges the Indian contention that the Maharaja of Kashmir signed the Instrument of Accession on October 26, 1947, one day before the Indian troops landed at Srinagar^[27]. In support of his rebuttal, Lamb states that i. during October 26, 1947 the Maharaja was travelling by road from Srinagar to Jammu, and ii. the account of V P Menon, secretary of the Ministry of States, in his book *The Integration of Indian states*, London, 1950, that he was actually present when the Maharaja signed the Instrument is simply not true because many observers noted Menon's presence in Delhi on October 26^[28].

The Instrument of Accession is one of the most contentious documents in the history of modern world. Many unanswered questions keep surfacing once in a while with regard to the accession of the state of Jammu and Kashmir with the Indian dominion. Two diametrically opposite versions make the rounds and commentators depending on their perceptions and inclinations harp on their side of the story where they justify the move of one country and vilify the other.

The questions frequently raised are:^[29]

- i. Was the Instrument of Accession actually signed (if signed at all)?
- ii. When was the Instrument of Accession signed? 26th or 27th October 1947?
- iii. Was it signed after the Indian troops reached Kashmir?
- iv. Was the will of the people taken into account?
- v. Was it signed under duress?
- vi. What was the role played by Jawaharlal Nehru and Mountbatten in securing the Instrument of Accession?^[30]
- vii. Was the Instrument of Accession, a part of Indian government's special design on Kashmir?

These conflicting accounts have not only pointed towards the possibility of Indian government's attempts at hiding facts related to the Instrument of Accession but has also succeeded in providing enough fodder for people doubting India's intentions to continuously harp on the questionable nature of the whole process.

Documents which Lamb uses selectively to prove that the central government in Pakistan was not officially a party of the raid in Kashmir were used by Ayesha Jalal, a Pakistani political scientist, to arrive at a different conclusion altogether! Thus, in her *The State of Martial Rule*, 1990, Jalal asserts that, 'The government of Pakistan with the connivance of the frontier ministry was actively promoting the sentiments that had encouraged the tribesmen to invade Kashmir.' She then adds that 'Pakistani officers, conveniently on leave from the army, were certainly fighting alongside the Azad Forces -- a conglomerate of Kashmiri Muslims and Pathani tribesmen.'^[31]

Alan Campbell-Johnson's *Mission with Mountbatten*, (1951), says 'The legality of the accession is beyond doubt... It should be stressed that the accession has complete validity both in terms of the British Government's and Jinnah's expressed policy statements.'^[32] Equally importantly, (as proved later), even Kashmiris approved of their state's accession to India. This view is somewhat corroborated by the statement by Dr. Karan Singh, Maharaja of Jammu & Kashmir, and former *Sadar-e-Riyasat*, read out to the participants of the National Integration Convention at Jammu on October 27, 2001, the 54th anniversary of the Accession (VOM News Service, Jammu, October 29, 2001).

"Regarding the events of 1947, my father Maharaja Hari Singh realized that with the whole sub-continent engulfed in communal violence he had to be very cautious in deciding the future of the State. He, therefore, offered Standstill Agreements both to India and Pakistan. But in October an invasion was launched from Pakistan and, in order to save the State from fatal destruction, he signed the Instrument of Accession in Hari Niwas, Jammu on 26th October 1947. In fact, I was present in the palace on that momentous occasion. A policy of peace and reconciliation is the only sane option for India and Pakistan in the present highly surcharged and dangerous situation that is developing in this region, and that calls for the greater statesmanship that looks beyond the present crisis into the future that lies ahead"^[32].

The crisis in Kashmir is obviously a direct result of the events of the partition days and can easily be traced to the signing of the Instrument of Accession. A lasting solution to the crisis to a great extent requires Indian and Pakistan goodwill, leadership and constraint. Clearly, powerful domestic forces within the two states have made a settlement difficult. It is not unlikely that either India or Pakistan could yet opt for war as a means of achieving a final settlement.

References

1. Cohen, The Idea of Pakistan, 46-47, cited in Peter R Lavoy (ed.,) *Asymmetric Warfare in South Asia: The Causes and Consequences of the Kargil Conflict*, Cambridge University Press, Delhi, 2009, 68-69.
2. Official Records of the UN Security Council, Third Year, 286th Meeting, 21 April 1948 (document S/726), www.un.org/Depts/dpa/repertoire/46-51_08.pdf.
3. In the aftermath of the loss of the thirteen colonies in America, the system of Subsidiary Alliance was effectively executed by Lord Wellesley in India to eliminate any possible alignment between foreign powers with the native princes which could be a threat to the British interests. Nizam of Hyderabad was one of the first native rulers to sign the subsidiary Alliance as he was being constantly harassed by the Marathas. This is also referred to as the Trojan-Horse tactics. Those rulers who refused to get into a subsidiary pact with the Company were systematically decimated by the use of force.
4. Merger of the native states was a much greater problem in its degree of intensity and expanse than it is usually visualized. The princely states were veritable dens of medieval autocracy, debauchery and corruption. People lived in various stages of economic, political and intellectual development. Getting them together under one administration was a huge challenge. Sardar Patel managed the challenge quite diligently. Some consider the merger of these states as a bigger task than the task performed by Bismarck in unifying the German states. While Bismarck fought three quick wars, Sardar Patel was forced to fight a war with Hyderabad (Operation Polo) and the accession of the other (Jammu and Kashmir) sparked off a war which has continued unabated till now. "In a mere two years, over 500 autonomous ...chiefdoms had been dissolved into fourteen new administrative units of India". Ramachandra Guha, *India after Gandhi*, Picador, 2007, 44.
5. The Indian Independence Act, 1947, contained the following provision with regard to Indian states, "All treaties, agreements etc., between His Majesty's Government and the rulers of Indian states shall lapse. The words 'Emperor of India' shall be omitted from Royal Style and Titles. The Indian States will be free to accede to either of the new Dominion of India or Pakistan. Cited in B L Grover & Alka Mehta, *A New Look At Modern Indian History*, S Chand, New Delhi, 2015, 470.
6. Judith M Brown. *Modern India: The Origins of an Asian Democracy*, Oxford University Press, New York, 1984, p.334. Also see Edward Luce, *In Spite of Gods: The Strange Rise of Modern India*, Little Brown, UK, 2006, 231.
7. Thomas Bruce Millar, *The Commonwealth and the United Nations 1967*, 26.
8. The date, time and place of the signing of the instrument of accession by Maharaja Hari Singh are still contested. Date and time mentioned by V P Menon, M C Mahajan, Prem Sankar Jha and Alstair Lamb in their respective works do not match.
9. Sumit Ganguly, *Conflict unending: India-Pakistan tensions since 1947*, 2001, 154. Also see A G Noorani, *Kashmir Questions*.
10. Kashmir: The origins of the dispute by Victoria Schofield.
11. Edward Luce, op. cit., p. 231-232. The valley of Kashmir has proved much more problematic for India. Its absorption into Pakistan would have been perfectly feasible since it bordered the Pakistani province of Punjab. But for India, retaining this crucial strategic Himalayan outpost was of equal significance. While Nehru always wanted Kashmir to be a part of India, (he himself was an ethnic Kashmiri) Patel was at one time inclined to allow the state to join Pakistan. His mind changed on 13 September 1947, the day Pakistan government accepted the accession of Junagadh. If 'Jinnah could take hold of a Hindu-majority state with a muslim ruler, why should the sardar not be interested in a Muslim-majority state with a Hindu ruler?' Rajmohan Gandhi, *Patel: A Life*, Navjivan Press, Ahmedabad, 1991, 439.
12. The territory centred on the Kashmir valley, extending into Ladakh, Gilgit and Chamba and down towards the Punjab plains in the vicinity of Jammu was sold by the Sikhs to the British after the Anglo-Sikh War in 1846. This was later sold to Gulab Singh, a vassal of the former Sikh Empire for a notional sum of 750, 000 pounds. Kashmir: Learning From the Past, International Crisis Group (ICG) Asia Report 4 December (Report available online). 2003, 70.
13. Junagadh was essentially a Hindu majority state with a Muslim ruler who had decided to throw in his lot with the newly formed state of Pakistan. After the people of the state revolted, the Indian National Congress openly came out in support of the agitating subjects and conducted a referendum after the ruler had run away. Jinnah was under the impression that a similar experiment will be undertaken in Jammu and Kashmir. After the dispute started and Mounbatten flew to Lahore on a peace mission, in course of a meeting with Jinnah on 1 November he was told that if India gave up its claim to Kashmir, Pakistan would relinquish its claim on that other disputed state, Junagadh. Ramachandra Guha, op. cit., 1947, 70.
14. Maj. K C Praval, *Indian Army after Independence*, Lancer Paperback, New Delhi, 1993, 24-25.
15. Maria Mishra, *Vishnu's Crowded Temple: India since the Great Rebellion*, Penguin Books, London, 2008, 244-245.
16. Ramachandra Guha, Op. Cit., 68.
17. The 329 Sikhs of the First Sikh Regiment and eight tons of material landed by nine DC 3s on a miraculously empty Srinagar airfield at dawn, Monday, 27 October would be just the first instalment in an uninterrupted flow of men and material India would pour into Kashmir. Dominique Lappierre and Larry Collins, *Freedom at Midnight*, Vikas Publishing House, New Delhi, (4th Reprint), 2000, 448-449.
18. Durga Das, *India from Curzon to Nehru and After*, Rupa & Co., New Delhi, 4th Reprint, 1977, 286.
19. Lord Mountbatten, 'Note of a discussion with Mr Jinnah in the presence of Lord Is may at Government House, Lahore on 1 November in SPC, 1947; 1:73-81.
20. Despite Nehru's reservations, Mountbatten persuaded the prime minister and the cabinet to attach to Kashmir's accession a capital provision. The Maharaja's accession would be considered temporary. It would be rendered

- permanent only after law and order had been restored and it had been confirmed by a plebiscite as representing the will of Kashmir's population. Dominique Lappierre and Larry Collins, *Op. Cit.*, 445-446. Who precisely originated the idea that India should take the Kashmir question to the Security Council (described by Sardar Patel as 'Insecurity Council') is not clear. Some at the time mentioned the name of Mountbatten and others that of Nehru and his key official advisers. Durga Das, *op. cit.*, 270.
21. The Indian acceptance of the Maharaja's accession, which was signed on 27th October, took the shape of two documents. One was a formal statement by Mountbatten, the Governor General, that I hereby accept this Instrument of Accession' which the Maharaja had sent through V P Menon. The second was a personal letter from Mountbatten in reply to a letter from the Maharaja. Alastair Lamb, *Crisis in Kashmir 1947 to 1966*, Routledge & Kegan Paul, London, 1966, 46.
 22. Andrew Whitehead, *A Mission in Kashmir*, (2007) available online, <http://www.andrewwhitehead.net/full-text-a-mission-in-kashmir.html>).
 23. <http://www.rediff.com/news/1999/jun/01jk.htm>, The Rediff Special/ Arvind Lavakare, *Legality of Accession Unquestionable under Kashmir: The Real Story*.
 24. *Ibid.* Also see http://news.bbc.co.uk/2/hi/south_asia/1762146.stm Kashmir: The origins of the dispute.
 25. *Ibid.*
 26. *Ibid.*
 27. *Ibid.*
 28. *ibid.*
 29. There has been a peculiar vagueness surrounding the date and time when the Instrument of Accession was signed in various Indian Accounts. The Maharaja's letter accompanying the Instrument of Accession was dated 26th October 1947. But in various other Indian accounts, the letter or a letter of accession is supposed to have been signed by the Maharaja on no less than three separate dates, and at four different times. In his memoirs, Mehr Chand Mahajan wrote that Ramlal Batra, the Dy PM, carried a letter of accession with him when he flew down to Delhi on 24th October. However, in the appendix to the same book, describing his involvement with Kashmir's accession to India, Mahajan changed the date to 25th and claimed that V P Menon brought the Instrument of Accession back with him on the 26th after his visit to Srinagar on the 25th night. V P Menon, however, has stated categorically that he took Instrument of Accession to Jammu for the Maharaja to sign on 26th morning and that the Maharaja signed it sometime during the middle of the day or in the early afternoon. However, the white paper on Kashmir issued by the Indian government in March 1948, says that the Maharaja, signed the Instrument of Accession in Jammu, late at night on the 26th ! Prem Shankar Jha, *Kashmir, 1947: Rival Versions of History*, OUP, Delhi, 1998, 61-62.
 30. In the Official History of Jammu and Kashmir titled, *Defending Kashmir*, online site Bharat Rakshak, p.2. it is narrated that 'when the first wave of tribal warriors from Pakistan invaded the Kashmir valley on 22nd October 1947, the Kingdom of Jammu and Kashmir had not acceded to either Pakistan or India....when Maharaja Hari Singh signed the Instrument of Accession with the Indian government on the evening of 26th October 1947, J& K became an integral part of the Indian Dominion legally, morally and constitutionally....'
 31. Lamb's and Jalal's views are quite in contrast to the views expressed by Durga Das. He writes in his book, *India from Curzon to Nehru and after*, "Jinnah's British advisers and fanatical followers were determined to get Kashmir for Pakistan...The army, for instance, had ordered prior to independence a large number of maps for Kashmir from the survey of India. At the time of partition, these were quietly handed over by the British officers to Pakistan. Worse still, Indian officials discovered at the time of taking over that all the records of military intelligence and most of those of the Central Intelligence Bureau relating to the state were missing." Durga Das, *Op. cit.*, 270-271.
 32. Association for Communal Harmony in Asia (ACHA), *Archive of Kashmir Resources* <http://asiapeace.org/acha/kashmir104.htm>.
 33. International Crisis Group (ICG) *Asia Report No.70*, 4 December 2003, 24-25. (Report available online).