

# CONSTITUTIONAL STATUS OF GILGIT-BALTISTAN: FUTURE SCENARIOS

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## Abstract

*This paper analyses the conundrum of the constitutional status of Gilgit-Baltistan (GB). The question is raised consistently whether GB should be considered a fully integrated part of Pakistan or part of Kashmir. There has also been a lot of debate on a de facto integration of GB with Pakistan. The paper discusses the political history and developments in the region and what could be called a progressive realisation of rights. It outlines the governance system in the Indian Occupied Kashmir (IOK), the fallout from the revocation of Article 370, and the major differences between IOK's and GB's constitutional status. Five possible policy options are presented for Pakistan, along with their respective advantages and disadvantages. In the end, specific recommendations are given regarding the next steps Pakistan needs to undertake to address the GB question.*

**Key Words:** *Gilgit-Baltistan, constitutional status, interim/provisional province, de facto integration, referendum, unconditional accession.*

## Introduction

The sparsely populated Gilgit-Baltistan (GB) region of Pakistan is immensely important. The China-Pakistan Economic Corridor (CPEC) enters Pakistan via Gilgit-Baltistan. GB is home to the world's highest mountains, attracts a substantial share of Pakistan's tourism and provides unique

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mountain products. Nearly 500 km of the Pak-China joint venture, the Friendship/Karakoram Highway, traverses through the difficult terrain of GB from Khunjerab Pass to the border of the Khyber-Pakhtunkhwa (KP) province.<sup>1</sup> Gilgit-Baltistan has been locked in the struggle of acquiring constitutional status ever since Pakistan's independence in 1947. GB's political status has stayed in a perpetual limbo because of the linkage of this region with the Kashmir issue.

The status of GB and Kashmir is a politically antagonistic and analytically challenging topic. Pakistan administers GB directly, neither as a separate province nor as part of the adjoining KP province. Thus, there are varying and conflicting views on this issue in Pakistan, India, the people in both Azad Jammu and Kashmir (AJK) and IOK, the larger international community, and the people of GB.

GB is always associated with the dilemma of the Indian Occupied Kashmir (IOK). Since it has become intrinsically tied to the Kashmir dispute, it does not seem hopeful that this matter will be decided any time soon. This paper looks into the constitutional status of GB and IOK, along with the future outlook for GB and how the Modi government's abrogation of Article 370 of the Indian Constitution affects all future scenarios for lasting peace in this region and between Pakistan and India.

## **Background**

The status of the people of GB has been uncertain for over 70 years. GB's linkage with the disputed larger region of Kashmir hinders any major change to its administration. With the advent of CPEC, this region has again come into the limelight. Strong opinions are being shared across the board from the AJK Assembly, the Indian government, and even the freedom fighters in IOK.

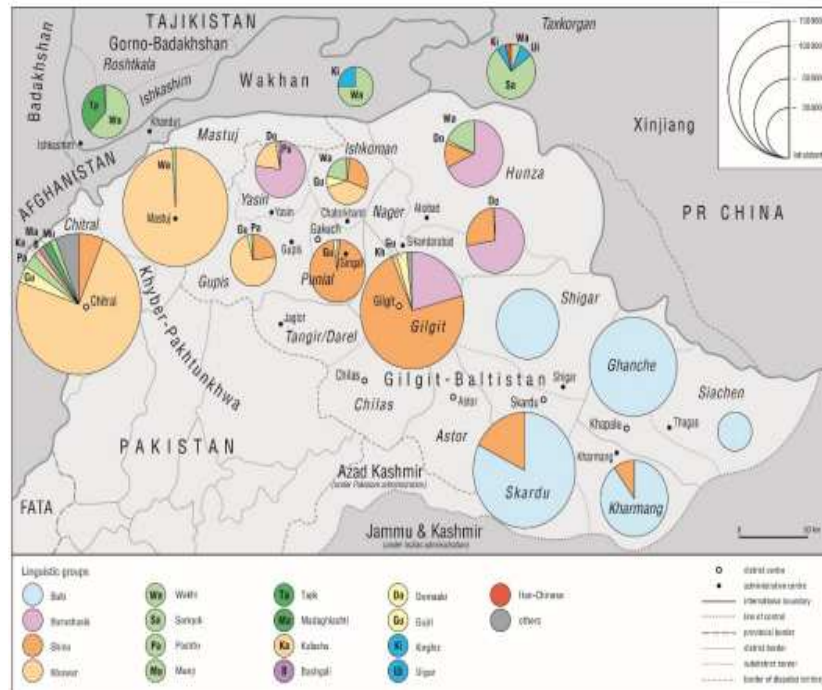
At the time of the partition of the subcontinent, GB was a distant and almost unreachable region, which was then ruled by the Dogra rulers. Under British Raj that ended in August 1947, GB was made a part of Kashmir by force and afterwards sold to Gulab Singh in 1846 under the Treaty of Amritsar. However, there was hardly any trade between GB and Kashmir and people-to-

people interaction was negligible. There was also an immense language barrier. As the linguistic map below shows, the people of GB speak Khowar, Shina, Balti, Burushaski, and Wakhi. On the other hand, the people belonging to Jammu and Kashmir speak Kashmiri, Hindko, Pahari, and Gojri.<sup>2</sup> There was little to no shared heritage or culture. Hence, the people of GB harboured a feeling of resentment towards the merger of GB with Kashmir. Refer to Map 1 below for a visual representation of the prevailing languages within the region.

The local people, supported by the Gilgit Scouts and the Muslims who were serving in the Dogra Army, freed the Gilgit-Baltistan from India through an armed struggle. GB became a republic on 1 November 1947 and fifteen days later announced that it had acceded to Pakistan.<sup>3</sup> At the time, this request was not accepted by the Pakistani government because of the uncertainty of the Kashmir situation.

Map 1

## Linguistic Map of Gilgit Baltistan



Source: *Languages*. (n.d.). from Gilgit-Baltistan Scouts: <http://www.gilgitbaltistanscouts.gov.pk/geodemo.htm> (last accessed on 2 October 2019).

### Political History of Gilgit-Baltistan

On 16 March 1846, the British sold, for a meagre sum, the Jammu and Kashmir territory together with several hundred thousand Kashmiri subjects to Gulab Singh. This sale deed is more commonly known as the Treaty of Amritsar. This raises the question whether it is legal under international law for people's freedom, honour, respect, and indisputable rights to be sold without their consent being involved in the process.<sup>4</sup>

Gulab Singh had annexed Ladakh in the 1830s and Baltistan in 1840. The 1846 Treaty of Amritsar led to the creation of a mini empire. This

comprised India's northern areas and asserting control over the Muslim-majority areas of Gilgit, Hunza, Nagar, and other territories.<sup>5</sup>

In the Treaty of Amritsar<sup>6</sup> between the Maharaja and the British Empire, a portion of Gilgit Agency was given to the British on lease for sixty years. This was the condition and arrangement until 1 August 1947. Right before the independence of the subcontinent, the British decided to end this lease agreement and hand over the control back to the Kashmiri Hindu Dogra Ruler. The people of Gilgit were unhappy with being returned to the Maharaja's rule and upon his decision to accede to India, their feelings erupted into a rebellion. They succeeded in maintaining control over large areas of Gilgit-Baltistan and transferred power to Pakistan on 16 November.

In 1949, Pakistan established the Ministry of Kashmir Affairs and Northern Areas (KANA) for administrative control of GB.<sup>7</sup> This area has not been included in the three Constitutions of Pakistan, nor is it represented in the parliament. The first law to be enforced in these areas, in 1947, was the Frontier Crimes Regulation (FCR). It was a perpetuation of the existing British laws. This law took away three basic rights from the people of FATA and GB, namely the rights of *appeal*, *wakeel*, and *daleel* (the right to request a change to a conviction in any court, the right to legal representation, and the right to present reasoned evidence, respectively).<sup>8</sup>

In 1967, the powers of the High Court and Revenue Commissioner were extended to the area. In 1970, the two parts of the territory, i.e., the Gilgit Agency and Baltistan, were merged into a single administrative unit, and given the name Northern Areas. The Shaksgam tract was ceded by Pakistan to China following the signing of the Sino-Pakistani Frontier Agreement in 1963.

A map of the Sino-Pak Border Agreement is shown below.



Source: Based on the map at <https://defence.pk/pdf/threads/why-did-pakistan-give-the-shaksgam-valley-to-china-what-was-indias-reaction.565519/> (last accessed on 1 February 2020).

A Northern Areas Advisory Council (NAAC) was established in 1969, and later it was retitled the Northern Areas Council (NAC) in 1974 and Northern Areas Legislative Council (NALC) in 1994.<sup>9</sup> The body did not have any legislative powers, those powers rested with the KANA Ministry.

In 1970, a Legal Framework Order (LFO) was issued by the then President of Pakistan Gen Yahya Khan and served as the *de facto* Constitution of the region. In 1970, democratic elections were held and via this election, 16 members of the NAAC were elected. In 1972, Gilgit and Baltistan Agencies

were converted into districts, along with another district, Diamer. Zulfiqar Ali Bhutto abolished the princely state of Hunza and the Frontier Crime Regulation (FCR) in 1974 and announced administrative and judicial reforms. Later on, in 1977, General Zia ul Haq declared martial law in Pakistan and GB was included in it as Zone E with representation in the Pakistan Parliament, called the *Majlis-e-Shura*. Select members of the Northern Areas Council were included in the *Majlis-e-Shura*. This was one of the first steps that deviated from Pakistan's established stance on the Kashmir issue. Under a subsequent democratic government, a reforms package was brought forward as the Legal Framework Order (LFO) in 1994 and the office of the Chief Secretary and Civil Secretariats were established. The LFO allowed the Council to independently legislate on a list of 49 items.

Northern Areas Court of Appeals was established at Gilgit, on 8 November 1999, as a consequence of a case filed by Wahab Al Kahiri, late Justice Shehbaz Khan, and others through *Al-Jehad Trust Versus Federation of Pakistan*, and as per the orders of the Supreme Court of Pakistan, Government of Pakistan. The court started functioning on 27 September 2005, when its chairman and members were appointed. On 15 December 2007, by virtue of amendments in the Northern Areas Governance Order, 1994, the nomenclature of the court was re-designated as Northern Areas Supreme Appellate Court and its jurisdiction was also enlarged by conferring original and appellate jurisdiction, It was also given a status equal to the Supreme Court of Azad Jammu and Kashmir.<sup>10</sup>

After a lengthy process of discussions and consultations, the President of Pakistan issued the Gilgit-Baltistan (Empowerment and Self-governance) Order in 2009.<sup>11</sup> This order was modelled after and influenced by the setups of the provinces as well as AJK. This order explained that the Government of Pakistan had decided to allow GB more internal autonomy due to the persistent demand of the people of GB. This was also done as a step to bring parity between GB and the other provinces. The Gilgit-Baltistan Legislative Assembly (GBLA) was formed in 2009, which is a 33-seat unicameral legislative body, granting the region self-rule and an elected legislative assembly. On 9

September 2009, the Supreme Appellate Court was conferred a similar jurisdiction equal to the Supreme Court of Pakistan through the promulgation of the Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009.<sup>12</sup>

Even keeping in mind the steps taken to grant GB internal autonomy, it cannot be considered as a separate, independent province of Pakistan. However, if the Northern Areas Council Legal Framework Order, 1994, can be considered as the first step, the present package of reforms further moves towards fulfilling the demand of local people for their constitutional rights.

The 2009 Order changed the name of the Northern Areas to Gilgit-Baltistan. It also created the posts of Governor, Chief Minister, and Ministers and the Gilgit-Baltistan Council. However, the GB Council is headed by the Prime Minister of Pakistan. The legislative ability of the GBLA was also increased from 49 to 61 items. Gilgit-Baltistan Council can separately legislate on a further 55 items. Under the 2009 Presidential Order, the Prime Minister of Pakistan advises the President on the appointment of the Governor of GB, who is the Vice Chairman of the GB Council. The reforms were passed through a Presidential Order and never deliberated upon by any Legislative body.<sup>13</sup>

It treats GB in most aspects as an administrative unit of Pakistan and holds it accountable to many of the liabilities and duties of a province. GB does not, however, enjoy the constitutional rights and powers available to the other provinces. It is a part of Pakistan because of the Karachi Agreement but it has not been accepted constitutionally. It also has no representation in the National Assembly of Pakistan.

The Karachi Agreement was purportedly executed on 28 April 1949 between the Government of Pakistan and the then Government of Azad Kashmir governing the relations between Pakistan and Azad Kashmir. It set down the division of powers between the two governments as well as the All Jammu and Kashmir Muslim Conference. Through the agreement, Azad Kashmir ceded to the Government of Pakistan complete control over Gilgit-Baltistan (then called the Northern Areas), and the control over subjects of defence, foreign affairs, and communications in its area. It was revealed for the first time in the *Verdict on Gilgit and Baltistan (Northern Area)* by the High Court



of Azad Kashmir in the 1990s, which states that the agreement "appears to have been executed on 28 April 1949." Later, it was published as the Appendix XVII of *The Constitution of Azad Jammu and Kashmir* by Justice Syed Manzoor Hussain Gilani in 2008.<sup>14</sup>

### **Comparative Analysis of the Status of the IOK**

In 1947, the ruler of Kashmir acceded to India and was given a guarantee that the new state would largely retain its autonomy within India and this autonomy was protected by Article 370 of the Indian Constitution. This 'conditional' accession is a completely different scenario than that of Gilgit-Baltistan as GB unconditionally acceded to Pakistan. There were no such conditions put into place. The reason for its status being disputed is because, over the next decades, it was tied in with the Kashmir dispute. We have already discussed above how GB being considered a part of the larger historic state of Kashmir, can be disputed.

#### **Indian Occupied Kashmir**

The IOK is under Indian occupation and was, until 2019, governed by Article 370 of the Indian Constitution. India also has a specific Constitution for occupied Jammu and Kashmir, 'The Constitution of Jammu and Kashmir, 1956'. The preamble of this Constitution reaffirmed the accession of the state to India and declared it to be an integral part of India. Within this Constitution, Article 2(a) declares that the Indian Constitution will apply to this state and gives fundamental rights to the people of India-Occupied Kashmir (IOK).<sup>15</sup> It also set up a legislative system comprised of the Sadar-i-Riyasat (Head of the State), the Prime Minister, and two houses: the Legislative Assembly and the Legislative Council.<sup>16</sup> This continued until 1965 when the IOK Constitution was amended (Sixth Constitution of J&K Amendment Act, 1965) by the then Congress government, which replaced the two positions with Chief Minister and Governor respectively.

The IOK High Court announced, in 2015, that the conversion of the post of 'Sadar-e-Riyasat' (Head of the State) into Governor was

unconstitutional and asked the state legislature to take measures to uphold the Constitution.

"The Constitution of Jammu & Kashmir (Sixth Amendment) Act 1965 amended the State Constitution and replaced 'Sadri Reyasat' by Governor. The 'elective' status of Head of the State was an important attribute of constitutional autonomy enjoyed by the State, a part of 'Basic Framework' of the State Constitution and therefore not within the amending power of the State legislature," Justice Hasnain Masoodi observed in his judgment.<sup>17</sup>

### **Revocation of Article 370**

The two most significant concessions given to Kashmir in the Indian Constitution of 1950 were Article 370 and Article 35-A. Article 370 gave the IOK autonomy in all areas except defence, communication, and foreign policy. Article 35-A gave only 'permanent residents' of Kashmir the right to own property. Ever since these articles came into power, Hindu nationalists had opposed them vehemently. They argued that India could not bend its rules for the Muslim-majority Kashmir. It was during the 2019 election campaign that the ruling Bharatiya Janata Party (BJP) promised that it would revoke Kashmir's 'special status' and clamp down on separatism within India.<sup>18</sup>

On 5 August 2019, the Government of India revoked the special status, or limited autonomy, granted under Article 370 of the Indian Constitution to IOK. The state's Constitution, as well as its penal code and state flag, was nullified, and the region is now subject to the central laws as applicable in all other Indian territories. A plan was put in motion to split IOK into two separate 'Union Territories'.<sup>19</sup> The first being Jammu and Kashmir with its separate legislature and the second being the region of Ladakh, which will be ruled directly by the Central Government.

## STATEMENT OF OBJECTS AND REASONS

The Ladakh Division of the State of Jammu and Kashmir has a large area but is sparsely populated with a very difficult terrain. There has been a long pending demand of people of Ladakh, to give it the status of a Union Territory to enable them to realise their aspirations. The Union Territory of Ladakh will be without Legislature.

Further, keeping in view the prevailing internal security situation, fuelled by cross border terrorism in the existing State of Jammu and Kashmir, a separate Union Territory for Jammu and Kashmir is being created. The Union Territory of Jammu and Kashmir will be with legislature.

AMIT SHAH

New Delhi;  
The 5<sup>th</sup> August, 2019

Source: Tweeted by the BJP spokesperson, Syed Shahnawaz Hussain

In doing so, India will greatly increase the Delhi government's control over both regions. India has added to the suffering of the Kashmiris by maintaining a strict curfew and a complete media blackout since 5 August 2019. Mehbooba Mufti, the former Chief Minister of IOK, who was also a coalition partner of the BJP in the state, called 5 August "the darkest day in Indian democracy." Omar Abdullah, another former CM of IOK, called this Indian action a "total betrayal of trust" and an "aggression against the people of state."<sup>20</sup>

After revoking Article 370, India issued a new political map of occupied Jammu and Kashmir, in contravention of the bilateral agreements and UN resolutions on the matter, where it shows Azad Kashmir as a part of the newly created union territory of the occupied Jammu and Kashmir and Gilgit Baltistan in the union territory of Ladakh.<sup>21</sup>

## Map 2

### New Political Map of IOK Issued by the Government of India



Source: <http://www.surveyofindia.gov.in> accessed on 12 December 2019

Jammu and Kashmir Reorganisation (Adaptation of State Laws) Act, 2020, was passed on 31 March 2020. It repealed 29 state laws and amended 109 laws of occupied Jammu and Kashmir. This law determines new rules for obtaining domicile or residency in Jammu and Kashmir.

The reasons given by the Indian government for the revocation Article 370 have also been varied in nature. The Home Minister of India, Amit Shah, cited security concerns while the Prime Minister, Narendra Modi, highlighted economic concerns. Other leaders claimed legislative efficiency as the cause for the revocation. Opposition politicians in India have decried the move as an attack on Indian democracy, and analysts have described it as unprecedented. Political leaders in Kashmir called the special status revocation “illegal and unconstitutional.” Mehbooba Mufti, a former Chief Minister of IOK, warned that it would render India an “occupational force” in the area and called this the “darkest day in Indian democracy.”<sup>22</sup>

### Reaction within the State

There have always been political differences and a lack of unity between the regions that make up the IOK. Article 370 is very much a product of Kashmiri identity politics and is viewed as being intrinsically linked to their

identity and their dignity. However, when it comes to Jammu and Ladakh, it did not have the same symbolic importance. The news of its revocation was met with approval in certain parts, such as Jammu city and Leh. Although, even in Jammu and Ladakh, there were areas that opposed these constitutional changes, such as, Kargil in Ladakh, Doda belt, and Poonch district in Jammu.<sup>23</sup>

Furthermore, there was a twist in the tale, because the revocation of Article 370 was also combined with the withdrawal of Article 35-A. The latter restricted sale of land to non-residents. It also provided state residents with preference and quotas when it came to government jobs and educational institutional slots. Suddenly, there is a fear of outsiders flooding the region, of a growing land mafia, of competition with job seekers from outside and small traders and business people being subsumed by big corporate houses. There have been demands regarding a special domicile law, and that some kind of arrangement under Article 371 should be made for the new Union Territories of Jammu and Kashmir, involving restrictions on outsiders getting jobs.<sup>24</sup>

Even in Jammu's Dogra Hindu heartland, this step has hurt their Dogra pride. Dating from the British Raj and earlier, this was one of the largest princely states and the downgrading of autonomy has hurt parties on both sides of the aisle and Ladakh, seen to be the only gainer in this whole process, also has its reservations. Of the two districts of Ladakh, it is the district of Leh, which has been raising the demand for the Union Territory status. The politics of Kargil, however, is about the relative backwardness of this district within the region of Ladakh. Leh is seen to be the dominant and powerful partner in Ladakh and, therefore, the politics of Kargil has been defined by the struggle to attain parity with Leh.<sup>25</sup>

However, even predominantly Buddhist Leh has reservations about the removal of Article 35-A. They are concerned about the land mafia, the environment, and the heritage and culture getting affected due to the arrival of outsiders. Since the Union Territory of Ladakh has been designed without a Legislative Assembly and will be more like a centrally administered territory under the Lieutenant Governor, there is a feeling of loss regarding their

representation in the state legislature and state ministry. For the first time in the post-1947 history of Jammu and Kashmir, there is a growing common demand for the restoration of the state and a special domicile law.<sup>26</sup>

The passage of this law is yet another step in the Hindutva agenda to create demographic imbalance and overturn the longstanding Muslim majority of Kashmir. Pakistan's principled stand will be helpful in the future if there ever is a plebiscite held in the disputed territories. Furthermore, the Indian action is a blatant violation of international law and the relevant UNSC resolution, which prohibit introducing material changes to the disputed territory.

### **Indian View**

Not surprisingly, India has a completely different view regarding the history of Gilgit-Baltistan and its accession to Pakistan. The Indians inaccurately hold that many of the people from GB were not in favour of the decision to join Pakistan. The Karachi Agreement of 1949 is also considered as the moment when GB's will was completely eviscerated. The Azad Kashmir government, according to this view, gave up complete administration and control of GB to Pakistan; a move made without consulting the people of GB.<sup>27</sup>

India erroneously holds that Pakistan is illegally occupying Gilgit-Baltistan and they tout Article 257 of the Pakistani Constitution as proof. This paper asserts that IOK is a disputed territory and does not belong to India. Another reason for them to find excuses for blaming the government's intentions is that Pakistan abrogated the State Subject Rule of GB in 1974.<sup>28</sup> India viewed this as an effort to bring demographic change within GB by increasing the Sunni population as opposed to the already existing predominantly Shia population. According to one Indian source, in 1948, the GB region was approximately 85 per cent Shia, which has come down to 50 per cent in the post-1974 scenario.<sup>29</sup> India thus claims that Pakistan itself created this precedent and does not have a leg to stand on while complaining about India's treatment of IOK. However, Pakistan has publicly stated with facts and figures that the Shia population still constitutes about 75 per cent of the total regional population.<sup>30</sup>

## **Current Scenario**

### **Gilgit-Baltistan Orders 2018-19**

In February 2018, in a historical move, the then Prime Minister of Pakistan Shahid Khaqan Abbasi abolished the Gilgit-Baltistan Council and transferred all the powers to the GBLA. There was to be no role of Kashmir Affairs ministry as the Gilgit Baltistan Assembly now held the powers of legislation. The Northern Areas Supreme Appellate Court was renamed as High Court comprised of 7 judges. Appointments of judges were ordered to be made at the GB. There was also declared to be a Gilgit-Baltistan Provincial Service Commission and a Provincial Auditor General. Gilgit-Baltistan was further given the status of non-voting/co-opted membership in all constitutional bodies like the National Finance Commission, the Economic Coordination Committee, the Council of Common Interests, and the Indus River System Authority, even though this was not part of the order. Nevertheless, critics termed this order as Prime Minister centric. Article 41 of the new order states:

The executive authority of the government shall extend to the matters with respect to which the assembly has the power to make laws, provided that in any matter with respect to which both Prime Minister and the assembly has the power to make laws, the executive authority of the government shall be subject to and limited by the executive authority expressly conferred and this order by law made and by the Prime Minister.

According to article 60 (4) of order

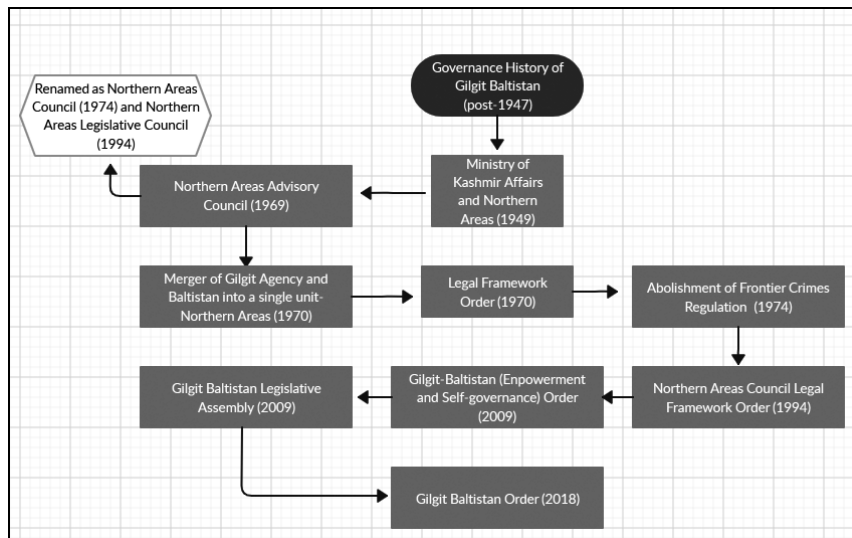
Any law which the Prime Minister is competent to enact then the law made by the Prime Minister, whether passed before or after the act of the assembly shall prevail and the act of the assembly shall to the extent of the repugnancy, be void.<sup>31</sup>

On 20 June 2018, the Supreme Appellate Court of Gilgit-Baltistan, the highest court of the region, suspended the newly-promulgated Order. The

government of Gilgit-Baltistan also objected because their viewpoints were not addressed and that the area needed to be governed through an Act of Parliament and not Presidential Orders. A meeting of the stakeholders was held in February 2019 and a consensus was reached that the GB Governance Reforms 2019 may be enacted through the Parliament of Pakistan as per the aspirations of the People of GB.

The matter went to Pakistan's Supreme Court and, on 8 August 2018, a three-member SC bench, headed by the then Chief Justice of Pakistan (CJP) Mian Saqib Nisar heard the appeal and CJP Nisar observed, "The government needs to ensure that the people of GB have the same respect and rights as all others."<sup>32</sup>

Below is a diagram depicting the timeline of the governance history of Gilgit-Baltistan (post-1947).



Given the SC's emphasis on 'equal rights' to the people of GB, the Government of Pakistan proposed the Gilgit-Baltistan Governance Reforms, 2019. On 17 January 2019, the Supreme Court declared that the 'modified order' shall be immediately promulgated by the President on the advice of the Federal Government within a fortnight. As expected, the deadline was not met, and the Federal Government on 13 May 2019 sought time to implement the reforms.<sup>33</sup>



### **The Conundrum of Gilgit-Baltistan**

The governance system and administrative reforms within Gilgit-Baltistan have been slow but are now picking up pace. The integration of GB within Pakistan is still not addressed. Linking this issue with the Kashmir dispute has caused it to remain unaddressed for more than seventy years now and this has stirred great feelings of neglect and helplessness within the population of GB. This region has historically (post-independence) faced sectarian issues, weak communication infrastructure, less development, low economic activity and general neglect by the Federal Government. However, the army, self-help, and the Aga Khan have helped it forge ahead of the rest of the country in certain areas such as education, sustainable energy production, small enterprises and marketing their produce.

Quite clearly, Kashmir and GB should not be considered interlinked, especially when GB had already gained independence from the Maharaja of Kashmir. Thus, as its people proudly and repeatedly proclaim, GB openly acceded to Pakistan in 1947. If we take into account the United Nations Commission for India and Pakistan (UNCIP), all its resolutions have addressed ceasefires between the two countries, reduction of the military presence in Kashmir but there is no specific and direct mention of the areas of Gilgit-Baltistan. Additionally, the Supreme Court of Pakistan, on 29 May 1999, directed the Government of Pakistan to take administrative and legislative steps to grant the people of GB their fundamental rights. This was an unprecedented decision and can be seen as the catalyst that led to the Gilgit-Baltistan Empowerment and Self-Governance Order of 2009.

To this day, the people of GB are not recognised citizens of Pakistan and the area does not benefit from citizen rights granted by the Constitution of Pakistan. It also needs to be understood that GB has its own identity, culture, and history, independent from Kashmir. The constant association with the Kashmir dispute leads to resentment among the GB population. It is not logical to intertwine the fates of GB and Kashmir because Kashmir is a disputed territory. On the other hand, GB was independent at the time of independence and acceded to Pakistan.<sup>34</sup>

Another way of dealing with this issue is by holding a free and fair referendum within Gilgit-Baltistan. This referendum would give the population two options of either joining Pakistan or remaining a part of Kashmir. All efforts must be taken to keep this referendum transparent and foreign observers must be invited to monitor the process so that India would not be able to have an objection on that front. Pakistan, I propose, should also not fear holding that long-promised plebiscite in the regions under its administration, including GB and AJK. As long as it is free and fair, with UN observers present, no objection could be raised internationally. It will also demonstrate to the world Pakistan's commitment to the Kashmiri cause and our willingness to provide justice where we can. India has so far been unwilling or afraid to hold a referendum or a plebiscite in the areas under its occupation. However, Pakistan must not show that same fear.

At the end of the day, this issue is about the lives of the Kashmiris as well as the people of Gilgit-Baltistan. People on both sides of the LOC should be able to live their lives with all fundamental human rights, as well as economic and educational opportunities. Furthermore, after India's recent aggressive policy towards Kashmir, the reaction of most countries has been one of complacency. Additionally, when this issue was originally taken to the UN in 1948, the total UN members were 58 and a majority of those shared Pakistan's view. The UN Security Council passed a resolution inviting a plebiscite to give the people of Jammu and Kashmir the right of self-determination, which was not applied by either India or Pakistan. The last Security Council resolution was in 1957, and at that time the total UN membership was 82.<sup>35</sup>

In the present day, Pakistan might just have to accept that acknowledging the status quo and providing rights and autonomy to the people of AJK and GB is the best possible scenario for them. International relations can sometimes overlook moral arguments when faced with personal interest and Pakistan's value on the international stage has just decreased more and more. China's annual trade with India amounts to \$95 billion compared to \$13 billion with Pakistan. Turkey's trade with India stands at \$8.6

billion against \$1 billion with Pakistan. Malaysia-India trade at \$14 billion is 14 times more than the \$1 billion of goods and services Malaysia exchanges with Pakistan.<sup>36</sup> These statistics cannot be ignored. They must count in the decision-making regarding all India-Pakistan disputes.

### **Should Gilgit-Baltistan be delinked from the Kashmir issue?**

One of the biggest disadvantages of considering GB as part of the Kashmir conundrum is that it leads to undermining the separate and distinctive identity of the region. GB has its own identity and history and it would be foolish to overlook that. Even within GB, the people can hardly be considered as homogeneous. They have separate origins, identities, cultures, ethnicities, histories and even religions. One can imagine the kind of issues that would arise were anyone to force a Kashmiri national identity on to this largely diverse population. However, in modern democratic states, different identities are not the only basis for determining allegiance. It is, instead, based on the citizenship and all subsequent rights that are granted to a people according to a legally and publicly accepted Constitution. Hence, taking this viewpoint, the integration of GB with Kashmir is plausible.

Most of the Shia population in GB is greatly opposed to association with the Kashmir issue. They do not want a future where they will become a minority in the larger state of Jammu and Kashmir. Contrarily, a large portion of the Sunni population would positively consider that association because they are currently living in a predominantly Shia area.<sup>37</sup>

There is also a large segment of GB society that is neither interested in the sectarian divide or the nationalist agenda. When GB was under Dogra rule they had been deprived of even their basic rights. To them, assimilation into the Kashmir state would be reminiscent of that time.

There is a lot of criticism from across the border on Pakistan abolishing State Subject Rule (SSR) in 1974. The facts are that the SSR, especially with regard to GB, was a colonial instrument that was implemented without any legal basis and only on the postulation that GB was a province of Kashmir. Delinking of GB from the Kashmir issue will allow the people of GB to be able

to forge their way ahead towards an agreement that would be more acceptable to all segments of the population, allowing them to participate more fully in their future through consensus.

### **Future Options for Gilgit-Baltistan**

The following five options can be considered with respect to deciding the future of GB within the federation of Pakistan. Each option has pros and cons that are listed below.

#### **Merger with KP**

The merger of Gilgit-Baltistan with the province of Khyber Pakhtunkhwa would essentially be an easy transition on paper. Similar to what occurred with the merger of the Federally Administered Tribal Areas (FATA) along the Afghan border and the province of Khyber-Pakhtunkhwa (KP), GB would be incorporated within that province. However, even with this move, Pakistan will appear to be trying to amass more territory and to assimilate regions within it. Critics on both sides of the Kashmir dispute will herald this as a power-hungry move. Furthermore, due to the multitude of ethnic groups that GB encompasses, this step would not be seen as providing them with autonomy or identity. The other provinces of Pakistan might also raise concerns about both FATA and GB being merged with KP.

#### **The merger of Gilgit-Baltistan and Azad Kashmir**

This step would support Pakistan's original stance of resolving Kashmir dispute through a plebiscite as directed by the UN. Large segments of Kashmiri population will welcome this decision. It may be recalled that Kashmiris not only reside in Pakistani and Indian administered territories but also in large numbers in Britain, Canada, and other countries. Several Kashmiri expatriates today occupy politically important positions in their adopted countries. They express their opinion freely and wield great influence over international politics.

However, in this option, the people of GB will not feel like their demands have been met. They will also not feel like they have been adequately represented on the national stage. The Shia sects comprise more

than 75% of the population of GB<sup>38</sup> and they will not welcome this move. There could be an upsurge in the nationalistic movements. Furthermore, India's stance on GB will be validated while Gilgit-Baltistan will become a minority in the Azad Jammu and Kashmir Assembly. This could lead to further administrative, organisational, and governance problems.

#### **Providing the same Status as Azad Jammu and Kashmir**

Under this measure, GB will attain a similar status to AJK, having their interim Constitution, a President, a Prime Minister, an Assembly, a judiciary, and their flag. This would address the concerns that the people of GB have regarding autonomy and governance. This measure would also require minimum organisational and structural changes.

As mentioned earlier, even in this solution, the preliminary demand of the people of GB of accession to Pakistan will not be answered. The people have never actually demanded the status of an independent state, and due to the small population of GB, it might not even be advisable financially. There will be a lot of opposition to this decision on both sides of the border and it might make it impossible for Pakistan to justify this move to the UN, taking into consideration its primary stance on the Kashmir dispute.

#### **Declaring Gilgit-Baltistan as the Fifth Province of Pakistan**

Art. 1(2)(d) of the 1973 Constitution of Pakistan states, "Territories of Pakistan shall comprise, such States and territories as are or may be included in Pakistan, whether by accession or otherwise."<sup>39</sup> Therefore, it is legal for the integration to take place as GB has already acceded to Pakistan. The unstable future of GB will be sorted resolutely and it would serve to allay the discomfort of the people of GB regarding the current system.

However, creation of the GB province could be erroneously viewed as Pakistan going back on its long-held stance on the Kashmir dispute. The decision would also be objectionable to Kashmiris on either side of the LOC. It could also be taken as an abrogation of the Karachi Agreement of 1949.<sup>40</sup>

### **Interim or Provisional Provincial Status**

Currently, there is no effective national forum where the representatives of GB can voice their thoughts and opinions and take part in discussions about national affairs and interests. The existing system of governance within GB can be augmented by an interim or provisional provincial status. This reform would allow its representation within the parliament of Pakistan. The people of Gilgit-Baltistan feel a sense of neglect and political deprivation, which would be mitigated when they are given an official identity and representation on the national stage. It will also help the GB administration to get better assimilated within the political system of Pakistan. However, this step would require an amendment of the Constitution of 1973 and it may lead to opposition from India, the two Kashmir governments, and even the international audience. This is because they will view it as a step that weakens Pakistan's original stance on the Kashmir dispute.

It could also be considered as a step towards formalising the status quo, which is arguably what India desires. Although, if we use the term 'provisional' or 'interim' it is justified under the Karachi Agreement of 1949.<sup>41</sup> Furthermore, as long as you are keeping the provisional status, India, Kashmir or the United Nations should not have an objection as GB remains a part of the disputed Jammu and Kashmir issue. After the revocation of Article 370 and the administrative changes of the state of Jammu and Kashmir in India, our neighbour should not be able to voice a logical argument as to why Pakistan cannot take this measure.

It is also apparent that the Kashmir issue is not anywhere close to being solved soon. Hence, this is a way through which the grievances of the people of GB can be addressed while maintaining their independent status. This step would require minimum changes to the organisational structure of GB, the slowly increasing nationalist fervour will be calmed and this option also has the support of the people of GB as their demand has always been integration with Pakistan. It will not fully address the question of GB's political

status and the preliminary demand of the people for accession to Pakistan will not be answered. However, it is the best option available to Pakistan as of now.

### **Conclusion and Recommendations**

The constitutional status of Gilgit-Baltistan has been discussed and deliberated upon ever since independence in 1947. Consistently the question is raised whether GB should be considered as a fully integrated part of Pakistan or indefinitely linked with the Kashmir issue. As has been observed in other disputed regions of the world, here too, Pakistan has demonstrated a trend of what we can call a progressive realisation of rights. There has been a general trend of recognising GB's status and allowing it more power and autonomy. There has also been a lot of debate on a de facto integration of GB with Pakistan.

It may be time that Pakistan realises that as India has been making more aggressive policy decisions including the new illegal map that was released after the revocation of Article 370, which incorporated all of AJK and GB into Indian Union Territory, some concrete steps need to be taken. Pakistan does not have many options when it comes to handling the status of GB. GB cannot be integrated as a fifth province into Pakistan. It can also not completely withdraw from GB and allow India to take over. Furthermore, GB cannot be left in its current state of uncertainty, specifically because of the rising discontent amongst its people, especially youth. Asking for support from the United Nations or friendly countries is also out of the question as the recent responses on India's lockdown of Kashmir make apparent. It is also an internationally held belief that due to the Simla Agreement, Kashmir is a bilateral issue between India and Pakistan and no other country should intervene.

Therefore, the only viable option for Pakistan at this time would be to grant Gilgit-Baltistan a provisional or interim provincial status. This would not affect Pakistan's long-held stance on the Kashmir issue as the region is not being repressed, as opposed to what is currently happening in IOK. Pakistan needs to come up with a solution as to how the status of GB can be improved

and how the representation can be granted keeping in mind the will of the people.

Following are some of the recommendations that I believe, would be greatly beneficial if adopted by Pakistan:

1. In an ideal world, GB could be integrated with Pakistan as a fifth province, but as has been discussed earlier, that option is not feasible for a variety of reasons. Hence, the next best option would be allowing GB an interim or provisional provincial status. This would end the identity crisis that the people of GB feel while at the same time providing adequate representation to them. In this scenario, GB would have a right to vote and representation in the Parliament of Pakistan. This move would also be justified as India has demonstrated its constitutional jurisdiction over Jammu and Kashmir and also regions such as Ladakh.
2. The mandate of the Supreme Court of Pakistan must be extended to Gilgit-Baltistan.
3. There needs to be an adequate representation of GB in various national forums and dialogues.
4. GB should be given its fair share from the projects that affect it directly; including but not limited to CPEC, Diamer Basha Dam, various hydro projects, mining, tourism, etc.
5. As with AJK, a referendum needs to be held in GB giving the population the choice of either remaining linked with the Kashmir issue or to formalise their earlier decision to unconditionally accede to Pakistan. This needs to be done with utmost transparency and fairness; inviting foreign observers to monitor would greatly support Pakistan's cause on the international stage.



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- <sup>13</sup> However, parliamentary committees have deliberated upon further reforms in GB. "The nine-member constitutional committee headed by Sartaj Aziz — the then adviser to the PM on foreign affairs — was formed by the ousted prime minister Nawaz Sharif on 29 October 2015, to recommend steps to bring political and constitutional reforms in GB. Before its presentation in the cabinet, the report — a copy of which is available with Dawn — was submitted to PM Abbasi on Jan 3. The committee recommended de-facto integration of GB with Pakistan but not a de-jure change since that would affect the country's principle position

on Kashmir. The committee also advised to bring the GB Legislative Assembly on a par with other provincial assemblies, all legislative subjects, other than those enumerated in Article 142 of the Constitution and that its fourth schedule might be devolved from the GB Council to GBLA. "PM Decides to Abolish GB Council," *Dawn*, 17 February 2018.

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