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THE GILGIT BALTISTAN ORDER-2018



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Since the time it came under Pakistan's occupation in 1947, the people of Gilgit Baltistan have been under stifling administrative regimens. There have been various 'Reforms' that have been initiated from time to time. However, on a close examination it is evident that primacy of these 'reforms is not to establish substantive democracy but to ensure that the strategic and political interests of the Pakistan State are protected and furthered.

There have been longstanding grievances of the people of the Gilgit Baltistan region which, contrary to the rest of Pakistan, comprises a Shia majority that speak various languages and dialects and have a culture vastly different from the rest of Pakistan. The

major issues are:

Grant of Political Rights as in other Provinces of Pakistan:

This has been the consistent political demand of the people of Gilgit Baltistan that they did not enjoy equal rights as citizens of Pakistan and had thereby come to be 'second class' citizens with no or little stake in the political process.

Gilgit Baltistan to be a Province of Pakistan:

The amalgamation of the region into Pakistan, first announced by then President Zia-ul-Haq in 1982, be taken to its logical conclusion and Gilgit Baltistan be made the fifth province of Pakistan



Tilting the Demographic Balance:

There has been a perceptible policy, since the Zia era, of altering the demographic balance of Shia-dominated Gilgit Baltistan by settling outsiders in the area. It is reported that, as of January 2001, the old population ratio of 1:4 (non-locals to locals) has now changed to 3:4 (non-locals to locals). The Shia pockets of Skardu and Gilgit are witnessing a constant increase in the population of non-Shias. In the Gilgit and Skardu areas, large tracts of land have been allotted to non-locals. Other outsiders have purchased substantial stretches of land since they are economically better off than the locals. The rapid induction of Punjabi and Pushtun outsiders has created a sense of acute insecurity among the locals.

Imposition of 'Nizam-e-Mustafa':

General Zia-ul-Haq who assumed power as the Martial Law Administrator through the 1980s imposed Sharia with a distinct pro-Sunni bent and interpretation. Several Sunni Islamic parties and Deobandi Groups had come up during his rule which caused disaffection amongst the majority Shia community in Gilgit Baltistan.

The 1994 Reforms Package

Under the 1994 Reforms package, a Northern Areas Executive Council with 24 elected members was set up though with limited authority and the Northern Areas Rules of Business framed. The major administrative provisions of this 1994 'package' were:

- the Federal Minister of Kashmir Affairs, to be the Chief Executive of the Council and to be assisted by a Deputy Chief Executive to be elected by the Council.

- Three to five members of the Council to be taken as Advisors to the Chief Executive who will enjoy the status of provincial ministers.
- The post of Judicial Commissioner was abolished, and a 3-member Chief Court constituted under the chairmanship of a retired Judge. The Court was however, not authorized to hear writ petitions.
- For the first time, a Chief Secretary and four Secretaries of the federal government appointed in the area.

A positive outcome from the package had been that party-based elections were held for the first time in 1994.

Petition before the Pakistan Supreme Court (1999)

In a petition brought before the Supreme Court of Pakistan in 1999 by Habib Wahab al-Khairi (founder of Al-Jihad Trust, Rawalpindi) a plea was made **to restore the basic human rights of the people of the area on grounds that though the constitutional position of the Northern Areas is that they are part of the state of Jammu and Kashmir, there is persistent confusion in the administrative and judicial structure that gave rise to various problems and the people of the area that needed to be redressed.**

Judgement of Pakistan Supreme Court

In their judgement, the Pakistan Supreme Court held that **the two million residents of Gilgit Baltistan were citizens of Pakistan and directed the Federal Government to assure they are given rights as provide in the 1973 Constitution.** The Judgement asked the Federal Government to ensure that the region's Chief Court be equated with

a High Court and the powers of the Courts in the region be enlarged to include the powers of entertaining constitutional petitions seeking fundamental rights and set a period of six months to bring about necessary changes in the statutes, laws and regulations to give effect to its judgement.

Response of the Government of Pakistan to the Supreme Court Directions (October 1999)

In response to the Pakistan Supreme Court's directions, the then Minister for Kashmir Affairs and Northern Areas Lt Gen (Retd) Abdul Majeed Malik made a detailed visit to the area and on October 2, 1999 where after he announced Government's intent to bring a constitutional reforms package that would elevate the Northern Areas Council into Northern Areas Legislative Council. The Federal government also announced the holding of elections for the Council and local bodies.

The main features of the 1999 Reforms Package were:

- Northern Area Council was renamed "Northern Area Legislative Council" and authorized legislation on 40 subjects.
- Membership of the Council was raised to twenty-nine. Five seats were reserved for women - one elected indirectly, from each district.
- "Chief Executive" will not be from amongst the Council members.
- Speaker of the Council to be elected by the majority of Council members and would preside over Council's meetings.
- The Council Members to be empowered to approve development schemes.
- The Deputy Chief Executive to be

authorized to transfer officers of various grades but not the Deputy Commissioner or the Superintendent of Police (for which he would need prior approval of the Chief Secretary).

Though it was expected that the "package" would lead to the setting up of local government with powers being devolved, the real transfer of power and decision-making the elected representatives did not take place and power continued to vest with the bureaucracy. However, even as the modalities for holding elections under the Package were under deliberation, Pakistan came under martial law once again on October 12, 1999. The new government nevertheless decided to hold the elections as scheduled and these were held under the supervision of the Military.

The Gilgit Baltistan Reforms Package 2007

On August 23, 2007, President Parvez Musharraf visited Gilgit and declared the promulgation of an amended version of the existing Legal Framework Order (LFO) to fulfil a longstanding demand of the local people.

As per the new amendments, the powers of the Federal Ministry of Kashmir Affairs and Northern Areas have been curtailed and vested in the elected government. The Deputy Chief Executive was promoted to the position of Chief Executive, while the Minister of Kashmir Affairs and Northern Areas would be the Chairman of the Northern Areas government.

Gilgit Baltistan Empowerment and Self-Governance Order, 2009.

On August 29, 2009, the Gilgit Baltistan Empowerment and Self-Governance Order 2009, was passed by the Pakistan Cabinet



and later signed and promulgated as law. The major provisions of the Order are:

(a) Grant of self-rule to the people of Gilgit– Baltistan, by creating, an elected Gilgit Baltistan Legislative Assembly and Gilgit Baltistan Council. Gilgit Baltistan thus gained de facto province-like status without constitutionally becoming part of Pakistan.

(b) Gilgit Baltistan Legislative Assembly to be a 33-seat unicameral legislative body. Of the 33 seats, 24 are filled by direct elections. In addition, the reserves 3 seats for technocrats and 6 seats for women.

(c) A Speaker and a Deputy Speaker to be elected by the Assembly from amongst its members. After the election of the Speaker and the Deputy Speaker, the Assembly cannot transact any other business unless it elects the Chief Minister.

(d) The Chief Minister is elected in a special session, summoned by the Governor on a day specified by the President. The Chief Minister obtains vote of confidence from the Assembly within 60 days of assuming office.

(e) The Legislative Assembly has powers to make laws on selected 61 subjects. (Council, in contrast, had the powers to legislate on 52 subjects including mining, tourism and water resources).

(f) A Gilgit Baltistan Consolidated Fund set up and the annual budget to be presented to the Assembly and voted upon as per practice in other Provinces (of Pakistan).

The Protests of 2016 and the CPEC Factor

Hundreds of protesters took to the streets across Gilgit-Baltistan region against human rights abuses and crackdown by the Pakistani security forces. Angry protesters said these young men were imprisoned for demanding political rights and asking the Pakistani Army to leave the soil of Gilgit.

An important reason for the discontent among the people of Gilgit against Pakistan is the growing presence of China. The CPEC, as is known, passes through Gilgit and is widely seen as a project that benefits China and Punjabi traders with little gain to the region. There were also growing apprehensions due to an increasing number of Chinese workers and soldiers becoming visible. **Angry protesters took to the streets in Gilgit town, Astore, Diamer and Hunza with some even raising “anti-Pakistan” slogans.**

The ‘Anti Tax’ Movement of Nov-Dec 2017

The Gilgit Baltistan Council Income Tax (Adaptation) Act 2012, had been passed by the GB Council in 2012 that authorised the adaptation of Pakistan’s Income Tax Ordinance, 2001 to all of Gilgit Baltistan. Large scale protests had broken out throughout the region against the new tax regimen and saw a ten day ‘Shutter down’ in all districts of Gilgit Baltistan. The agitation subsided after notification by the Department of Inland Revenue Gilgit-Baltistan directing tax agents to withhold collecting tax until amendments have been made in the Income Adaptation Act, 2012 by Gilgit-Baltistan Council.

The protests were on the principle that there should be ‘No imposition of Taxes until GB is a constitutional part of Pakistan’. In subsequent developments, the GB Council decided that instead of bringing a

new taxation Act, the existing Gilgit Baltistan Council Income Tax (Adaptation) Act, 2012 shall be amended by incorporating the desired changes in consultation with all the stakeholders.

The Sartaj Aziz Committee

A nine-member constitutional committee headed by Sartaj Aziz, the then adviser to the PM on Foreign Affairs, was formed on Oct 29, 2015, to recommend steps to bring political and constitutional reforms in GB. The mandate of the Committee included:

(a) Review of the current constitutional and administrative arrangements in Gilgit Baltistan and analyse any shortcomings in relation to aspirations of the people;

(b) After studying the historic record and relevant treaties, examine whether the existing eternal boundaries of the territories that constitute Gilgit Baltistan overlap with territories that formed part of the state Jammu and Kashmir and if so, make recommendations for corrective measures;

(c) recommend constitutional and administrative reforms for GB, keeping in view the implications of these recommendations vis-a-vis the UN resolutions on Kashmir.

The Committee, which submitted its Report to the Pakistan Federal Government on 10 March 2017 recommended:

(a) A de-facto integration of GB with Pakistan but not a de-jure change since that will affect Pakistan's principled position on Kashmir and delegating further legislative, administrative and financial powers to GB to enhance the people's sense of participation and to improve service delivery.

(b) The GB Legislative Assembly be brought on a par with other the provincial assemblies, with all legislative subjects, other than those enumerated in article 142 of constitution of Pakistan and its fourth schedule be devolved from the GB Council to the GB Legislative Assembly.

(c) The GB government may be given representation in constitutional bodies like NEC, ECNEC, the NFC, and IRSA as an observer.

(d) One or more SEZs be set up in GB under CPEC to provide larger employment opportunities for GB people.

(e) People of Gilgit Baltistan be given special representation in the Parliament.

On July 3, 2017, the Sartaj Aziz Committee was reconstituted to include the Ministers of Finance, Law and Kashmir Affairs. The Committee thereafter submitted a Supplementary Report on 26 September 2017 making some further recommendations, importantly:

(a) Provision of funds through an agreed formula to cover the revenue deficit in GB budget.

(b) Transfer of development funds directly to Gilgit Baltistan Government rather than through the ministry of Kashmir Affairs.

(c) Shifting of budget of Gilgit Baltistan Supreme Appellate Court and Chief Court to Gilgit Baltistan Council.



(d) The Ministry of Kashmir Affairs to consult the Government of Gilgit Baltistan. before extending any federal government notification to Gilgit Baltistan.

(e) Gilgit Baltistan to be accorded 'Observer' status in the Executive Committee of the National Economic Council (ECNEC), the National Economic Council (NEC), the Indus River System Authority (IRSA) and the Council of Common Interests (formed under 1973 Constitution and presently consists of the Prime Minister of Pakistan and all four provincial Chief Ministers. The CCI is mandated under the Constitution to meet at least once in 90 days). The suggestion to give representation to Gilgit Baltistan in the National Assembly and Senate was not accepted.

The Final Report and Recommendations of the Sartaj Aziz Committee are not available in the public space.

Annulment of the Gilgit Baltistan Council

In February 2018, Pakistan's Prime Minister Abbasi announced the decision to annul the Gilgit-Baltistan Legislative Council (established under GB (Empowerment and Self Governance) Order in 2009. Instead, a Committee headed by the Prime Minister of Pakistan was accorded the mandate to legislate in 52 subjects. While some hailed the decision as 'historic' others thought it as a ploy to shift the Council's powers to the Ministry of Kashmir Affairs and Gilgit Baltistan.

There was also no clarity on other demands of the people such as representation in the Pakistan Parliament and in bodies such as the Council of Common Interests, the National Finance Commission and the Indus River Systems Authority.

The Gilgit Baltistan Order, 2018

The Gilgit Baltistan Order of May 2018 replaces the Empowerment and Self-Governance Order of 2009 and seeks to bring Gilgit Baltistan region on as per par with other provinces by devolution of greater authority and financial powers, empower the Gilgit Baltistan Assembly with the same legislative powers as other provinces of Pakistan including powers under the Schedule-IV of Pakistan's Constitution.

Several powers hitherto dealt by the Gilgit Baltistan Council would henceforth be dealt by the Gilgit Baltistan Assembly have been included in a List of subjects that both the Prime Minister of Pakistan as also the GB Assembly can pass orders / legislate with the proviso that Orders of the Prime Minister would require to be considered and passed by the GB Assembly and approved by the GB Governor. Pertinently, these include the subjects of minerals, hydropower and tourism.

Insofar as residents of the region are concerned, hitherto they had been guaranteed only 17 basic rights and that too was limited only to GB. In terms of the Order, they are now empowered to those rights anywhere in Pakistan and have access to all apex courts of Pakistan.

Orders Suspended and Restored

On 21 June 2018, the Supreme Appellate Court of Gilgit Baltistan suspended the operation of the GB Order 2018. However,

on 08 Aug 2018 these were restored by the Supreme Court of Pakistan with the directive that “...it was the Government’s responsibility to ensure that the people of GB are treated the same manner as the citizens of any other part of the country”.

Pakistan PM Imran Khan thereafter set up a high-level reforms Committee to evaluate the legal status of Gilgit-Baltistan, as per instructions given by the country’s Supreme Court. The Committee recommended to change the status of Gilgit-Baltistan to an interim province and for the people of the region to be given due rights. These recommendations had been accepted in principle by Prime Minister Imran Khan who directed they be placed for approval before the Federal Cabinet.

The China Factor

The Karakoram Highway (KKH) that wind through Gilgit Baltistan provides the link between roads in Xinjiang AR of China and the road network of Pakistan. There is no gainsaying the importance of both the road and the region for the China Pakistan Economic Corridor (CPEC), which is premised on that connectivity. China’s strategic interests in the region are therefore inevitable. The GB Region are a rich trove of minerals, potentially also of uranium.

As Pakistan’s debt builds up and its ability to pay off that debt declines, a Shaksgamtracthandover of territory model or a Gwadar /Hambantota long lease of territory type model of settlement are not difficult to envisage.

The aspect of China’s commercial interests clearly underlies the promulgation of the GB 2018 Order. A number of infrastructure projects are planned in Gilgit Baltistan, both under the CPEC and otherwise. There is

considerable public awareness on these projects, their impact on the region and the development and employment spinoffs they provide. The pressures on the Gilgit Baltistan’s Assembly and Government to consider and approve major infrastructure projects would be immense. From a Chinese perspective, obtaining these approvals and backing guarantees from the Federal Government is less cumbersome and far more pragmatic. This is a prime factor underlying the Gilgit Baltistan Order of 2018 – to retain substantive powers with the ‘single window’ of the Federal Government. Grant full province status to Gilgit Baltistan, on the other hand, may prove inimical to Chinese interests. For the Federal Government under Prime Minister Imran Khan, how it seeks to reconcile the growing aspirations of the Gilgit Baltistan people vis-à-vis facilitating Chinese interests is the real the challenge.

India’s Position and Concerns

India has vehemently opposed Pakistan’s move to announce Gilgit-Baltistan as its fifth province.

On 28 November 2018, just a day before Pakistan’s Federal Cabinet was scheduled to consider the issue of provincial status to GB, India’s COAS had made sharp observations. In his words “Pakistan was changing the demography of Pakistan-occupied Kashmir (PoK) and Gilgit-Baltistan, and seeking to take over the people” and that “People from Gilgit-Baltistan are also now being taken over gradually. So, to say that there is an identity between our side of Kashmiri and the other side, then identity thing has gradually been eroded very cleverly by Pakistanis. That is an issue we have to look at”. He also emphasised that “Pakistan has very cleverly changed the complete demography of so-called Pakistan-occupied Kashmir, Gilgit-Baltistan. So, one is



not very sure as to who is an actual Kashmiri, whom we're addressing these issues to..." and that "Every time something happens on our side (J&K), we must always address it to say that it is also going to have a radical effect on the other side (PoK). The issue is, on the other side, the complete demography has changed..."

On 27 May 2018, the Deputy High Commissioner of Pakistan to India was summoned to the MEA and a strong protest made against the issuance of the "so-called Gilgit Baltistan Order 2018". The MEA Media Release that states the position of the Government of India, reads as follows:

"... the entire state of Jammu and Kashmir which also includes the so-called 'Gilgit-Baltistan' areas is an integral part of India by virtue of its accession in 1947. Any action to alter the status of any part of the territory under forcible and illegal occupation of Pakistan has no legal basis whatsoever, and is completely unacceptable. Instead of seeking to alter the status of the occupied territories, Pakistan should immediately vacate all areas under its illegal occupation". It was further conveyed that "such actions can neither hide the illegal occupation of part of the

state of Jammu and Kashmir by Pakistan nor the grave human rights violations, exploitation and denial of freedom to the people residing in Pakistan occupied territories for the past seven decades".

While India has been consistent and unswerving on that stated position, the geo-strategic realities in, and around GB have changed. India's principled position unless backed by economic, military and political force and will, would not provide credibility to that stance.

Slowly, yet steadily, the integration of Gilgit Baltistan into Pakistan is progressing incrementally. The CPEC has irreversibly introduced a very potent China interest into the region.

An aspect that is perceptibly absent is the clamour for reintegration with India. Even if this aspiration is harboured in the hearts and minds of the people of Gilgit Baltistan, it finds little articulation or demonstration. The longer such a situation persists, the more tedious would be India's climb to regain its rightful authority and control.

The time for India to candidly review its position in the context of obtaining realities has clearly come.

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