

AZAD JAMMU AND KASHMIR AND GILGIT-BALTISTAN: HISTORICAL, CONSTITUTIONAL & ADMINISTRATIVE DEVELOPMENT

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Abstract

Azad Jammu and Kashmir (AJK) and Gilgit-Baltistan (GB) are two parts of the erstwhile state of Jammu & Kashmir affiliated with Pakistan. These areas have a unique character as they are neither independent in their administrative affairs nor are they a part of Pakistan for administrative purposes like the other four provinces. Since the question of final status of Jammu and Kashmir remained unresolved, the constitutional development of both AJK and GB has been slow. This study explores the rationale behind peculiar and ad hoc administrative structures of these two regions and their relationship with Pakistan. It examines issues in their administrative and constitutional evolution, the legal and constitutional voids in the systems of these territories and suggests some corrective measures as a way forward. The study relies mainly on data of official archives and structured interviews of policy makers and relevant stakeholders.

Key words: *Constitutional Voids, Ad Hoc Administrative Set Up, Azad Jammu & Kashmir, Gilgit-Baltistan, Unresolved Kashmir Dispute*

Introduction

The area of the state of Jammu and Kashmir is 88,471 square miles. Out of this 33,958 square miles or about 25 percent is under the control of Pakistan since 1947, comprising 29,814 square miles of

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Gilgit-Baltistan (GB) and 4,144 square miles of Azad Jammu and Kashmir (AJK).¹ The population of GB is 1.4 million and the population of AJK is 3.5 million. Besides, the people of GB and AJK residing outside these areas in the rest of the country and overseas are 1.6 million and 1.5 million respectively.²

Formerly known as the Northern Areas, GB is situated in the north of Pakistan and is surrounded by the Chinese province of Xinjiang in the North, Indian Held Kashmir (IHK) in the East, AJK in the South and Afghanistan and Central Asia, through the Wakhan Corridor in the West. Gilgit being the political and administrative capital, Skardu and Diamer districts are the other important areas. GB is also famous for its five peaks of over 8000 meters including K2 and Nanga Parbat and to more than fifty peaks above 7000 meters. Three of the world's longest glaciers including the Biafo, Batura and the Baltoro Glacier are found in GB. Deosai Plains is the second-highest plateau in the world at 4,115 meters after Tibet.³

AJK, the southern part of the former princely state of Jammu and Kashmir is surrounded by the IHK in the East, separated by the Line of Control (LoC), the Khyber Pakhtunkhwa in the West, the Federally Administered Northern Areas (FANA) in the North, and the Punjab Province of Pakistan in the South. Muzaffarabad is the capital of AJK. It is mainly hilly and mountainous with valleys and plains. It is bequeathed with natural beauty having thick green forests, gushing rivers and meandering streams; main rivers are Jhelum, Poonch and Neelum. It has two divisions and ten districts.

Currently, AJK is governed by the Interim Constitution Act of 1974. This Act was passed by the legislative assembly of AJK and vetted by the government of Pakistan. GB on the other hand is governed by the Gilgit-Baltistan (Empowerment and Self- governance) Order 2009, which was issued by the President of Pakistan after a long process of informal consultation with local and national leaders. The administration of both territories was entrusted to Pakistan by a United Nations Security Council resolution. Both have since been treated in many aspects as administrative units of Pakistan and are subject to most of the liabilities and obligations of a province, though not enjoying any of the constitutional rights and powers availed to other provinces. Thus, both GB and AJK are independent of the constitution of Pakistan, having different administrative set ups, from rest of Pakistan. Reflecting upon the inclusion of AJK and GB in the national politics and decision making set ups, it is revealed that the regions don't have any seats in the parliament of Pakistan or in the

¹ *Assessment of Socio Economic Trends in GB*, (Agha Khan Rural Support Program, 2005).

² *AJK at a Glance*, (Muzaffarabad: Planning and Development Department, 2013), pndajk.gov.pk accessed May 26, 2014.

³ M. R. Cyan & A. Latif, *Northern Areas Strategy for Sustainable Development* (Gilgit: IUCN, 2003).

institutions established by the constitution for consultation and coordination between the federation and its component units, such as the National Security Council, Counsel of Common Interest (CCI), and the National Finance Commission. Similarly both have no representation in the Indus River System Authority (IRSA) and unlike the provinces, they get no share in the profits earned from the hydroelectric projects located in AJK and GB. This denial of rights of royalty has generated considerable resentment in both areas.

Political History of Azad Jammu and Kashmir

In the backdrop of centuries old geographical and demographic developments, the State of Jammu and Kashmir was taken over by Dogra ruler Gulab Singh of Jammu on 16th March, 1846 through Treaty of Amritsar (Sale Deed) signed between Maharaja Gulab Singh of Jammu and British Government. As a consequence of partition plan under the Independence Act, 1947, British India was divided into two sovereign and independent dominions: India and Pakistan. Almost five hundred sixty princely states including the State of Jammu and Kashmir were given the option to accede to either of the two dominions. The criteria for acceding to the two sovereign dominions were such that geographical situation and communal interests were to be considered.⁴ The wishes of the people of Jammu and Kashmir were reflected by the Resolution adopted by the All Jammu and Kashmir Muslim Conference on 19th July, 1947 in which accession of the State of Jammu and Kashmir to Pakistan was univocally declared⁵. The Hindu Maharaja of Kashmir had sympathies with the Indian leadership so both started a large scale massacre in Jammu and adjoining areas. Resultantly, widespread armed conflict took place between Muslim activists and the Dogra Forces, which resulted in rebellion against the Rule of Maharaja Hari Singh.

News of brutalities reached Pakistan through its press. To help their Muslim brethren, tribal-men started marching towards Kashmir and reached the outskirts of Srinagar in the last week of October, 1947⁶. Maharaja Hari Singh remained indecisive regarding accession to either of the two dominions as per partition plan. He sent telegrams to the High Commissioners of India and Pakistan simultaneously on August 12, 1947 and offered a stand-still agreement with India and Pakistan to continue existing arrangements till a settlement of the details⁷. The government of Pakistan accepted the proposal of the Maharaja vide its telegram dated 15

⁴ Ijaz Hussain, *Kashmir Dispute: An International Law Perspective* (Islamabad: National Institute of Pakistan Studies, 1998), 70.

⁵ Sardar Ibrahim Khan, *The Kashmir Saga* (Mirpur : Verinag Publishers, 1965), 89.

⁶ Mirza Hassan Khan, *Shamsheer, Se Zanjeer Tak*, (Islamabad : Maktab Press, 2010).

⁷ Ijaz Hussain, *Kashmir Dispute: An International Law Perspective* (Islamabad: National Institute of Pakistan Studies, 1998),120.

August 15, 1947 while government of India did not. The acceptance of the stand-still agreement by the Government of Pakistan had entitled it to exercise sovereignty/suzerainty over state of Jammu and Kashmir. A declaration of the Azad Government of the State of Jammu and Kashmir was issued on 24th October, 1947, long before Hari Singh allegedly acceded to India. The massacre continued even after establishment of the Azad Government.⁸

On 1st January, 1948, the Government of India sent a telegram to President of the United Nations Security Council (UNSC) and levelled allegations against the Government of Pakistan that it allowed the invaders to transit across the Pakistani territory and use it as their base for operations. The Indian complaint was based on Article 35 of Chapter VI of the UN charter which relates to “peaceful settlement of disputes” and not chapter VII which deals with “acts of aggression”.⁹ The Indian and Pakistani delegates traded charges against each other in the Council. UNSC assumed the role of mediator between the parties and passed a Resolution (No. 38) on 17th January, 1948 through which it stressed upon the Governments of Pakistan and India to take all measures to improve the situation and refrain from any action which might worsen the situation.¹⁰

The successive UNSC Resolution on Jammu and Kashmir set up United Nations Commissions on India and Pakistan (UNCIP) consisting of three UN members and one each from parties to the dispute. Under different UNCIP Resolutions, three distinct stages towards the resolution of Kashmir problem were contemplated. First relates to cease fire, which was governed by part one of the Commission’s Resolution of 13th August, 1948.¹¹ The second relates to negotiations in the light of truce agreement in accordance with the principles set out in 1948 Resolution and the third relates to the holding of a free and impartial plebiscite under auspices of the UN, to determine whether the State of Jammu and Kashmir should accede to India or Pakistan in accordance with principles set up in the Commission’s Resolution of 5th January, 1949.¹²

⁸ Mirza Hassan Khan, *Shamsheer Se Zanjeer Tak*, (Islamabad : Maktab Press, 2010).

⁹ Pauline Dawson, “Indian Complaint, supra note 24” in, *The Peacekeepers of Kashmir: The UN Military Observer Group in India and Pakistan* (London: Palgrave Macmillian, 1994), <https://www.amazon.com/Peacekeepers-Kashmir-Military-Observer-Pakistan/dp/1850651086> (accessed June 6, 2014).

¹⁰ “United Nations Security Council Resolution 38,” <http://www.un.org/en/sc/documents/resolutions/1948.shtml> (accessed August 8, 2015).

¹¹ “Resolution adopted by the United Nations Commission for India and Pakistan on 13 August 1948”, Part I, <http://www.mofa.gov.pk/documents/unsc/Resolution%20adopted%20by%20the%20United%20Nations%20Commission%20for%20India%20and%20Pakistan%20on%2013%20August%201948.pdf> (accessed August 9, 2015).

¹² Ibid.

The responsibilities of the Government of Pakistan under the UNCIP Resolution include¹³ the defense and security of Azad Jammu and Kashmir; the issuance of current coin or the issue of the bills, notes or other paper currency; manage the external affairs of Azad Jammu and Kashmir including foreign trade and foreign aid (under Section 31(3) of AJK Interim Constitution Act, 1974).¹⁴ Besides, Pakistan was bound to provide guarantee and protection of human and political rights of AJK people; empowerment of the people of AJK; self-rule no less than the provinces of Pakistan; good governance and non-discrimination; socio-economic development of AJK; due share from federal pool of resources; net hydel profits earned from bulk generation of hydro electric power stations located in AJK (Mangla and Neelum and Jhelum hydro-electric power stations) as mandatory under Article 161 of the Constitution of Pakistan, 1973. Likewise, representation in National Finance Commission (NFC) and other Federal/Inter Ministerial Forums is also mandatory in pursuance of UNCIP Resolution and GOP policy No. 8/9/70(cord) 1, dated 24th June, 1970, which treats AJK at par with other provinces of Pakistan.

Political History of Gilgit-Baltistan

The chronology of Kashmir entails a chain of events leading to the current situation. Gulab Singh was the Sikh ruler of Hindu-majority fiefdom of Jammu; he annexed Laddakh in 1930s and Baltistan in 1941 to his fiefdom. In 1846, the British sold the beautiful northern valley of Kashmir (which had an overwhelmingly Muslim population) to Gulab Singh. Thus for the next few decades, history witnessed the creation of a strong mini-empire, consisting of the outermost regions of India's northern frontier and establishing control over a large area including the predominantly Muslim regions of the former principalities of Gilgit, Hunza, Nagar and other territories bordering Afghanistan and the Chinese province of Xinjiang.

By the 1930s, Maharaja Gulab Singh had acquired almost complete control over the agency and its neighborhood, with the compliance of the British government. However, the chain of events led the Maharaja to lose control over this area, and in 1935 he handed over control of part of Gilgit Agency to the British for 60 years on lease. This arrangement remained in place until 1st August, 1947. On the eve of partition of subcontinent, British government decided to unilaterally dissolve the lease agreement and return Gilgit Agency to Hindu Dogra ruler of Kashmir. The people of Gilgit, who were predominantly Muslims and Gilgit Scouts who again consisted of predominantly Muslim soldiers, were much displeased at being reassigned

¹³ Sumit Ganguly, *The Origins of War in South Asia* (Boulder: Westview Press, 1994), 98.

¹⁴ "Azad Jammu and Kashmir Government Act, 1974," Consultative meeting group proceedings retrieved from http://www.ajkassembly.gok.pk/AJK_Interim_Constitution_Act_1974.pdf

to the Maharajah's rule and service. In August 1947, when the Maharaja decided to accede to India, this resentment converted into a rebellion. So in October 1947, Pashtun tribesmen from the North West Frontier Province (NWFP now Khyber Pakhtunkhwa (KPK) declared a "holy war" against Kashmir's Hindu ruler, and started a march towards Srinagar, the Maharaja's capital.

The territory they captured became *Azad* (free) Jammu and Kashmir (AJK) on 24th October¹⁵. The Maharaja panicked and asked the Indian government for help and allegedly acceded to India, following which India moved troops to Srinagar, starting the first of several wars with Pakistan. The Maharaja's decision also led to a full-scale rebellion in Gilgit, spearheaded by the Gilgit Scouts and Muslim members of the Jammu and Kashmir state troops, with the support of the overwhelmingly Muslim local population¹⁶. They were victorious in keeping control over a large area of Gilgit and Baltistan and power was transferred to the first Pakistani Political Agent in Gilgit on 16th November. Hunza and Nagar signed instruments of accession to Pakistan. Indian and Pakistani military representatives signed an agreement in Karachi on 29th July, 1949, which defined the ceasefire line in the state of Jammu and Kashmir.

In 1949, Pakistan's Ministry of Kashmir affairs was established initially to deal with matters related to the Kashmir dispute. This ministry was later renamed as the Ministry of Kashmir Affairs and Northern Areas (KANA) and it assumed administrative control over Gilgit Agency, including Baltistan¹⁷. The Northern Areas' constitutional status is uncertain to this day and awaits a final solution of the Kashmir dispute to clarify its position. As a result, the Northern Areas were neither included in any reference of the three constitutions of Pakistan, nor given representation in any of its parliaments. The region remains in a constitutionally indeterminate state. The people of this area largely support integration with Pakistan, but are still seeking for an identity and deeply piqued by their uncertain status. At last on continuous demand of local people, the government of Pakistan has decided to grant GB further internal autonomy and bring it at par with the provinces of Pakistan but not to a status of province. The Gilgit-Baltistan Empowerment and Self Governance Order 2009 was introduced in August 2009.¹⁸

¹⁵ Mirza Hassan Khan, *Shamsheer Se Zanjeer Tak*, 4.

¹⁶ William A. Brown, *The Gilgit Rebellion 1947* (London: Ibex, 1998),164.

¹⁷ Retrieved from unpublished official archives (2013).

¹⁸ Prime Minster Secretariat, *Gilgit Baltistan Self-Governance Order 2009* (Islamabad: Government of Pakistan, 2009).

Evolution of AJK Governance Structure

The Government of AJK was established on 24th October, 1947, to work as a war council. Under the Rules of Business which were developed in order to run the administration of Azad Jammu and Kashmir, the executive as well as the legislative authority was vested in the President. The law of the land was enacted in 1948 which laid the foundation for running the judicial administration and even some laws of former State of Jammu and Kashmir remained in operation. In 1952, new needs arose and the Rules of Business were revised. The system was streamlined and new rules for administration as well as new legislation were incorporated in the Rules of Business. Another revision of the Rules of Business took place in 1957. This system prevailed from 1947 to 1960, in which the person who had the confidence of the Working Committee of Muslims was nominated as the president of Azad Jammu and Kashmir.¹⁹ Another position called the office of Supreme Head, also existed in the earlier years of AJK parliamentary history, which was the final body to approve the legislation for Azad Jammu and Kashmir, but this office was abolished in 1952. After that the President was declared the Executive Head, who worked with the assistance of some cabinet ministers.²⁰

In 1960, another system was introduced which was the Presidential election system through the “votes of basic democrats” in Azad Jammu and Kashmir. Within this system another body known as 'Azad Jammu and Kashmir State Council' was established and it was decided that its members will be elected by the basic democrats. The council consisted of 24 members, of which 12 members are supposed to be from Azad Jammu and Kashmir elected by people living in AJK, whereas 12 members were to be from among the refugees and elected by the refugees from the erstwhile state of Jammu and Kashmir settled in Pakistan. In 1964, this system was also abolished and replaced by the Azad Jammu and Kashmir Government Act, 1964. This act also contained the provision for the State Council with the amendment that eight State Councilors were to be elected by the basic democrats of Azad Jammu and Kashmir. In 1965, another amendment was made and provision for appointment of two more members to be nominated by the President from amongst the refugees settled in Pakistan was allowed. Under the Act of 1964 the Chairman of the Council was to be nominated by the Chief Advisor from amongst the members. The Chairman had to act as the President for Azad Jammu and Kashmir ex-officio. In 1968, the Azad Jammu and Kashmir Government Act, 1968, was enacted with the provision that eight members will be elected, while four members were to be nominated by the Chief

¹⁹ “AJK rules of Business, 1952,” retrieved from unpublished Government documents

²⁰ “Legislative Assembly of Azad Jammu & Kashmir,” www.ajkassembly.gok.pk/ajkinintroduction.htm (accessed August 9, 2015).

Advisor from amongst the refugees settled in Pakistan. The Chairman of the Council was elected by the Councilors, who was also ex-officio President. In 1969, a caretaker government was inducted in the office.²¹

In 1970, the system of a democratic setup i.e. adult franchise was adopted in Azad Jammu and Kashmir through Azad Jammu and Kashmir Act, 1970. For the first time, it provided the opportunity of electing the Legislative Assembly as well as President of Azad Jammu and Kashmir on the basis of adult franchise by the people of Azad Jammu and Kashmir, and the refugees of Jammu and Kashmir settled in Pakistan. The Assembly consisted of 24 elected members and it was decided that there would be quota for one woman member selected by the other members.²² The presidential system of government prevailed for about 4 years when, in 1974, it was again replaced by the parliamentary system which was introduced in AJK under the AJK Interim Constitution Act, 1974.

The salient features of the present structure of governance in AJK introduced through re-enactment of AJK Interim Constitution Act, 1974 are briefly highlighted in the following table.²³ For the purpose of analysis the present system is being compared with the previous system as defined by AJK Government Act, 1970.

Table: 1
Comparison of the AJK Act, 1970 and Interim Constitution Act, 1974

AJK Government Act, 1970	AJK Interim Constitution Act, 1974
Presidential form of government elected on the basis of adult franchise by the state subjects living in Azad Kashmir and Pakistan.	Parliamentary democratic form of govt. with Prime Minister as Chief executive and repository of all executive powers.
Full internal executive and legislative autonomy except the responsibilities of GoP. The responsibilities of the GoP under the UNCIP Resolutions were: i) The defense and security of Azad Jammu and Kashmir. ii) The issuance of currency, coins, bills, notes or other	AJK Council, with the Prime Minister of Pakistan as its Chairman, was vested with legislative powers with respect to 52 subjects in the form of 'Council Legislative List' Responsibilities assigned to GoP under Act, 1970, however, were continued with following addition:- i) The external affairs of Azad Jammu and Kashmir including foreign trade and foreign aid. ii) Institution of "Joint Sitting" as legislative body also created for purposes mentioned in Section 31,

²¹ Unpublished Archives, 2013.

²² AJ&K Portal, *AJ&K History*, <http://www.ajk.gov.pk/history.php> (accessed August 11, 2015).

²³ "The Azad Jammu and Kashmir Interim Constitution Act, 1974", www.ajkassembly.gov.pk/AJK_Interim_Constitution_Act_1974.pdf (accessed August 15, 2015).

paper currency. Legislature consists of AJK Assembly, only.	33 and 53 etc. and different other purposes.
Executive Authority vested in the government	Executive Authority bifurcated among Government of AJK, AJK Council and Govt. of Pakistan
Four year term of Government/AJK Assembly	Five years term of AJK Assembly/ Government
Fundamental Rights guaranteed through written jurisdiction of High Court AJK	Similar to former Act, 1970
Independence of Judiciary	Same as in Act of 1970
Appointment of High Court Judges and of Chief Election Commissioner by the President.	The appointment of Judges in Superior Courts and of Chief Election Commissioner to be made by the President AJK. The method has been modified through subsequent amendment made in year 1975 under which these appointments can be made on mandatory advice by the Prime Minister of Pakistan/Chairman AJK Council.

Source: Compiled by the authors.

The presidential form of government introduced by AJK Government Act, 1970 was replaced by re-enactment of AJK Interim Constitution Act, 1974 that introduced Parliamentary Democratic System, as proposed and agreed with Government of Pakistan. The Constitution Act, 1974 defines three organs of statehood i.e. Legislature, Executive and Judiciary.²⁴

The legislative Assembly consists of 49 members out of which 41 are elected by the people of AJK and Kashmiri refugees settled in Pakistan, on the basis of adult franchise. Out of 41 elected seats, 29 MLAs are elected from constituencies within AJK territory and 12 MLAs are elected from constituencies in Pakistan for representation of Kashmiri refugees settled in Pakistan. Eight MLAs are indirectly elected against seats reserved for technocrat, overseas Kashmiris, ulema, mushaikh and women.²⁵ This body is empowered to make laws with respect to residuary matters not enumerated in the Council Legislative List nor assigned to Government of Pakistan.

The AJK Council consists of the Prime Minister of Pakistan (ex-officio Chairman), the President of AJK (Vice Chairman), the Prime Minister of AJK or any person nominated by him (Member), six members elected by AJK Legislative Assembly and five members nominated by the

²⁴ Ibid.

²⁵ Interim Constitution Act, 1974, Section 22.

Prime Minister of Pakistan.²⁶ The Council as a legislative body is assigned 52 subjects for making laws. The AJK Council is also vested with executive powers in respect of laws made by AJK Council despite its composition as a legislative body. Joint sitting of the two bodies is held occasionally for making amendments in the Interim Constitution Act, 1974, voting for election, removal of the president and consideration of matters concerning proclamation of emergency under Section 33 of the 1974 Act.

Under Section 31 (3) of AJK Interim Constitution Act, 1974, the Government of Pakistan is empowered to exercise Executive Authority in relation to certain matters and to regulate the AJK territory in terms of legislation and administration, to fulfill its responsibilities under the UNCIP Resolutions, the defense and external security of Azad Jammu and Kashmir, the issuance of currency, coins or bills and the external affairs of Azad Jammu and Kashmir including foreign aid.²⁷

Analysis

Peculiarity of Structure

There are many tiers of government structure in AJK governance: Government of Pakistan, Government of AJK and the AJK Council. AJK Council is a constitutional body established under section 21 of AJK Interim Constitution Act, 1974, with defined executive and legislative powers. Similar to former Federal list in the constitution of Pakistan, AJK Council has a list of 52 subjects called AJK Council Legislative list with a status of centralized power of AJK. Being vested with executive powers w.r.t. AJK Council's law, it was conceived as another body of AJK legislature, for the legislation of certain subjects dealt by AJK Government. At the same time, through section 19 (2) (b) of AJK Interim Constitution Act some legislative powers were amalgamated with executive power as well.²⁸ Now AJK Council is neither a legislative body Federal legislature nor an executive authority in AJK but is vested with both kinds of powers in it.

Bureaucratic Authority

From day one, all those subjects which are enlisted in AJK Council's Schedule are being controlled, managed and coordinated by a huge infrastructure of offices and a large manpower by the Government of Pakistan. Legislative and executive powers cannot be conjoined within the legislature but it has been done in case of AJK Council/Council Secretariat (located at Islamabad). Executive Authority entrusted to AJK Council is contrary to the principles of separation of powers between legislature and executive authority. The executive authority entrusted to AJK Council to be

²⁶ Interim Constitution Act, 1974, Section 21

²⁷ Interim Constitution Act, 1974, Section 31 (3).

²⁸ Ibid., Section 19 (2) (b).

exercised by the Chairman himself or nominated Federal Minister without corresponding provision of accountability to the AJK Assembly (Chamber of AJK people) is inherently alien to principles of justice and democracy. That is why even the politicians of AJK, especially of the opposition parties, always made calls of foul play in this matter. So the Government of AJK has been continuously exercising de facto executive control over many subjects enumerated in AJK Council Legislative List, since 1974.

For instance, Tourism and Electricity Departments are located in AJK while these subjects are with AJK Council's list. Now practically it is so difficult for AJK Council to set up extensive branches of offices all over AJK and handle mapping of tourists, managing of the rest houses and electricity billing processes for the reason that AJK Government is handling all these matters via its extensive official set up all over the area. The situation on ground has created many anomalies because assigning legislative list of subjects to both authorities is one thing while ground reality regarding the use of authority on these subjects is a different one. So the lists of powers assigned to both AJK Council and Assembly direly need to be revised and brought in coherence with the operational contingencies. In this regard, all the subjects like Tourism, Electricity etc must be delisted from AJK Council's list and be made part of AJK govt. authority.

Parity with other Provinces

Despite the unique status of AJK, that of neither a full-fledge province not an entirely independent entity, there still are many legal, administrative and constitutional features and practices which bring AJK at par with other provinces.²⁹ These measures include voting rights to AJK state subjects living in other provinces of Pakistan, regular issuance of CNICs and passports for them by the Government of Pakistan and many other practices where for all practical purposes it is considered equivalent of the other four provinces.

Evolution of the Governance Structure

When Government of Pakistan took over control of GB in 1947, the first law to be enforced there was a continuation of the colonial law of Frontier Crimes Regulations (FCR) which was enforced over the entire area. The FCR was also enforced in all other agencies annexed with Pakistan including Federally Administrative Tribal Areas. Under this British law for the tribal areas and GB, a civil bureaucracy exercised all judicial and administrative powers. However, before enactment of this law in November 1947 in the State of Jammu and Kashmir, an independent

²⁹ S.M.H Gillani, *Proposed Constitutional Ammendments in the Constitution of Islamic Republic of Pakistan 1973 for Empowerment of Azad Jammu & Kashmir and Gilgit Baltistan* (Islamabad: PILDAT, 2011).

judicial system for the areas was in place. Over the years, different administrative and political reforms have been introduced by the Government of Pakistan in response to increasing demands for such reforms by the local people.

In 1950, the Federal Government established the Ministry of Kashmir Affairs and Northern Areas (KANA) and the affairs of the Northern Areas were handed over to the Ministry.³⁰ Joint Secretary of the Ministry of Kashmir Affairs has been performing duties of Resident in the Northern Areas with all administrative and judicial authority since 1952. In 1967, Ministry of Kashmir Affairs initiated reforms by transferring powers of High Court and Revenue Commissioner to the Resident and appointed two Political Agents, one each for Gilgit and Baltistan. The democratic elections were held for the first time in 1970. Through this election, 16 members of Northern Areas Advisory Council (NAAC) were elected in 1970.³¹ Again in 1972, through a Presidential order the post of Resident was re-designated as Resident Commissioner and Gilgit and Baltistan Agencies were changed into districts. An additional district of Diamer was created and Deputy Commissioners were appointed.

In 1974, the government of Z. A. Bhutto abolished the State of Hunza and Frontier Crime Regulation (FCR) and announced a package of administrative and judicial reforms instead. In 1977, General Zia-ul-Haq imposed martial law in Pakistan and GB was also included in it and was declared as the Zone-E of this martial law.³² This was the first major step showing the deviance from Pakistan's stance about GB with regard to Kashmir issue. The representatives from GB were included in the Majlis-e-Shura. In 1994, another major breakthrough was achieved when the Federal Cabinet approved a "Reforms Package" as Legal Framework Order 1994 for NAs and Northern Areas Rules of Business were framed for the first time. The offices of the Chief Secretary and Civil Secretariats were established and judicial reforms were introduced. The LFO of 1994 empowered the Northern Areas Legislative Council (NALC) to legislate on a list of 49 focuses as envisaged in schedule-II of the LFO.³³ In May 1999, the Supreme Court of Pakistan gave a landmark verdict on the legal status of the Northern Areas in response to Constitutional Petition 17 of 1994, which sought after the enforcement of fundamental rights under the constitution of Pakistan.

Although there was occasional unrest and resentment for the lack of fundamental human, political and constitutional rights by the local

³⁰ Ershad Mahmud, "Status of AJK in Political Milieu," *Policy Perspectives*, 3, no. 2 (July - December 2006), 105-123.

³¹ Altaf Hussain, "The Gilgit-Baltistan Reforms 2009", www.civiceducation.org/wp-content/uploads/2010/08/Gilgit-Baltistan-Reforms.doc (accessed September 4, 2015).

³² Ibid.

³³ Ijaz Hussain, *Kashmir Dispute: An International Law Perspective*, 4.

people of GB, yet they continued their legal and political efforts. During this development, some organized and some unorganized reactions broke out in the area against the actions of officers appointed by the government of Pakistan but these issues were resolved through interventions from Islamabad.

The Gilgit-Baltistan Empowerment and Self-Governance Order 2009

The people of Gilgit-Baltistan have been living in a constitutional void for over sixty years; they were neither given representation in the parliament, nor a chance to have their own local assembly. Whereas AJK has had an elaborate governance structure operating under an Interim Constitution which was enacted by the Legislative Assembly of AJK in 1974, GB has remained devoid of such an arrangement. In August 2009, the Gilgit-Baltistan Empowerment and Self Governance Order 2009 was introduced; this was deeply influenced by the AJK setup and provincial setups of Pakistan. It explains that on the continuous demand of local people, the federal government of Pakistan has decided to grant GB greater internal autonomy and bring it at par administratively with the other provinces of Pakistan. But it should not be considered a separate province of Pakistan in terms of Article-1 of the Constitution of Islamic Republic of Pakistan which defines the territorial boundaries of the country. However, if the Northern Areas Council Legal Framework Order 1994 was the first stepping stone, the present package of reforms is in fact, a step further towards fulfilling the demand of local people for their constitutional rights.

Gilgit-Baltistan Empowerment and Self-Governance Order, 2009, gave a new name to the area, from Northern Areas to Gilgit-Baltistan; new Offices of Governor, Chief Minister and Ministers were also created.³⁴ On the pattern of AJK Council, the Gilgit-Baltistan Council was introduced; like AJK, this Council was also headed by the Prime Minister of Pakistan. The powers of approving budget were delegated to Gilgit-Baltistan. The concept of Consolidated Fund was introduced and the legislative powers of the Assembly were increased from 49 to 61 subjects along with powers to legislate on all other subjects not in the domain of the Gilgit-Baltistan Council.³⁵ Gilgit-Baltistan Council has the power to legislate on 55 subjects. The GB Assembly was given freedom to formulate its own Rules of Procedure while legislation on various subjects pertinent to governance were allotted to the Council and Assembly in their respective jurisdictions.

The Legislative Assembly of GB consists of 33 members, of which twenty four members are to be elected directly on the basis of adult franchise. Six women members shall be elected on reserved seats on the

³⁴ Ibid., 6.

³⁵ Ibid.

pattern prevailing in other provinces; three technocrats and professional members are to be elected on the same pattern. The lower house will have 61 subjects for legislation given in the fourth schedule of the Presidential Order.³⁶

Gilgit-Baltistan Council consists of thirteen members headed by the Prime Minister of Pakistan. It was decided that the Governor shall be the Vice-Chairman of the Council and the Minister of State for Kashmir Affairs and Gilgit-Baltistan would be an ex-officio non-voting member of the Council. The prime minister will advise the president to appoint the Governor of GB.

Evolution of governance structure for GB since 1970 and administrative set-up during this period is summarized below:-

Evolution from Northern Areas to Gilgit-Baltistan

1970	The NAs Advisory Council with 22 members (14 elected 8 nominated) was setup under Constitutional Order 1970.
1972	Frontier Crimes Regulation (FCR) was abolished and Civil and Criminal Laws extended to NAs.
1974	Legal Framework Order was introduced which repealed Constitutional Order 1970.
1975	Advisory Council was renamed as Northern Areas Council with 18 elected members only.
1994	LFO 1994 was introduced by repealing LFO 1974. Eight additional seats in NAs Council, post of Deputy Chief Executive and 5 Advisors were created.
1999	LFO was amended; NAs Council was renamed as NAs Legislative Council and powers given to legislate on 49 subjects. The post of Speaker and 3 women seats were also created.
2003	Post of Deputy Speaker created.
2004	6 seats of Technocrats created, women seats increased from 3 to 6 (one for each district).
2007	NAs Governance Order 2007 replaced LFO 1994.
2009	Gilgit-Baltistan Empowerment and self-Governance Order 2009.

The Northern Areas Administration

1878-1950	Political Agent
1950-1986	Resident Commissioner
1986-1992	Administrator
1992-1994	Chief Commissioner
1994 to date	Chief Secretary
	Presently Northern Areas has a Provincial setup administratively (not constitutionally)

Source: Compiled by the authors.

³⁶ Ijaz Hussain, *Kashmir Dispute: An International Law Perspective*, 7.

Dichotomy of Structure

As far as the constitutional situation in GB is concerned, the main stay is the reforms package. The reforms package in the form of GB Empowerment and Self Governance Order 2009 has been promulgated through a Presidential Order. These reforms, although approved by the federal cabinet, were never presented before either house of the parliament with the reasoning that the area does not come under the purview of Pakistan's legislating body and therefore, cannot be discussed here. According to the law of the land (constitution of Pakistan), the President has the authority to issue any orders through an ordinance, but the same would have to be approved by the Parliament with simple majority to make it an Act of the Parliament within 120 days after the ordinance was issued. This is because an executive order of the President, in its own standing, has no legal or constitutional binding on future governments to continue the reforms.

Peculiarity of Tiered Structure

The reforms, presented through a presidential order, were never vetted by any legislative body and also without any debate on pros and cons of the initiative at any forum. There are some strange peculiarities in the reforms package where a Governor and Federal Minister would be working parallel: one as In-charge of the Gilgit-Baltistan Secretariat and the other as Deputy Chairman as well as head of the Government of Gilgit-Baltistan. In the past, during successive governments of Pakistan, the KANA ministers used to act as Governor GB, Deputy Chairman of Council as well as Executive head for administration at the same time. Although Gilgit-Baltistan has been governed by the Ministry of Kashmir Affairs for a long time but the new governance structure, with obscurities and inconsistencies in roles and responsibilities among different offices, would cause interruptions in delivery of services, which would eventually affect the performance of the government and efficiency of the reforms.

In this governance structure of GB, there would be dichotomy of two (legislative as well as executive) powers. GB Government and GB Council would start struggling for their due share of power and common people will suffer. If GB Council is confined to legislation only and that too on important subjects that would have been enough for the new government in GB. As for implementation of legislation, GB government already has a web of infrastructure that could have been enhanced with postings from federal government but controlling GB area affairs from GB Council's Islamabad office became an anomaly here as well. While the role of GBLA has now been changed from a developmental platform to a law making body, the members of GBLA are still perusing the agenda of development projects for the betterment of their constituencies. The paradigm shift for members from development of their constituencies to

policy making is a challenging task to make GBLA an effective legislative body.

Further, to transfer full autonomy to GB Government, some constitutional reviews are needed as well. New Governance Order should be renamed as Interim Constitution, just as fundamental law of AJK and that very constitution should be deliberated upon, approved and passed by GB Assembly instead of being promulgated through executive fiat. Furthermore, power to amend those constitutional provisions should lie with the GB Assembly. GB Council's legislative list also needs revision to transfer more power to GB Assembly so that concepts of self-governance and empowerment are fully materialized.

Parity with other Provinces

Like AJK, GB's status is also neither of a province of Pakistan nor of a completely independent entity. The government of Pakistan is taking some constitutional and legal measures to grant it internal autonomy and bring it at par administratively with the other provinces. These measures include voting rights of AJK state subjects living in other provinces of Pakistan, regular issuance of CNICs and passports by the government of Pakistan among many other practices.

Conclusion

Azad Jammu & Kashmir and Gilgit-Baltistan fall under the control of Pakistan, but their status is such that they are neither independent in their administrative affairs nor under direct administrative control of Pakistan unlike the other provinces. In addition to these external dimensions of the special status related to unresolved Kashmir issue, internally the constitutional development of these liberated territories faced a retarded growth because of the non-resolution of the question of final status and definition of the State. Following are some recommendations based on above analysis:

- In order to resolve ambiguities regarding its constitutional and administrative structure, AJK Council may continue only as legislative body for making laws which would be implemented/executed by Government of AJK, while Section 19 (2)(b) of Interim Constitution Act, 1974 be amended accordingly.
- The Council's Legislative List consists of 52 subjects need re-consideration as per the practical realities.
- The entrustment of Executive Authority to AJK Council Secretariat also be re-considered because under Section 19 of Interim Constitution Act, 1975, Government of AJK is obligated to implement and secure compliance with the laws made by AJK and there cannot be two parallel executive authorities or provincial

governments working at one and the same time.³⁷ Government of AJK is recognized as the only local authority, competent to exert executive control within AJK and also having Constitutional relationship with Federal Government (GOP). It is the Government of AJK (Executive) solely and not the Council, which is made responsible and accountable to the Assembly (chamber of the people) for exercising executive powers both in AJK or in the parliament of Pakistan.

The entire government setup and environment in Gilgit-Baltistan is very bureaucratic, as it does not have any exposure to working in a democratic atmosphere. Although through various reforms, the power was delegated to the GB Assembly for legislation but these powers were not really exercised because of a strong bureaucratic presence of the federal government in the area and also because of the low institutional capacity of the GB Administration. It is suggested that the capacity of the local institutions (GBLA) should be enhanced so that they could deliver according to the agenda of the new reforms. Secondly, legislative and executive authority of GB Council may also be shed off and transferred to the elected representatives of GB people i.e. GB Assembly. Third, the legislative lists of both GB Assembly and Council need to be revised as recommended for AJK. Finally, GB Assembly should be empowered to make amendments in the "Empowerment Order 2009" and this can be done only when this order is converted into an Interim Constitution passed by GB Assembly.

³⁷ Manzoor Hussain Gillani. *Discussion paper on Proposed Constitutional Amendments in The Constitution of Islamic Republic of Pakistan, 1973 for Empowerment of Azad Jammu and Kashmir and Gilgit-Baltistan*, (Islamabad: Pakistan Institute of Legislative Development and Transparency, May 2011).

