

Grant of Provisional Province Status to Gilgit Baltistan

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Jan 2023

POLICY BRIEF

Executive Summary

The demand for political rights and integration by Gilgit Baltistan (GB) population is genuine in view of past denial of constitutional rights that are enjoyed by rest of the Pakistanis. The grant of political rights as enjoyed by other provinces to GB is a requirement that needs to be fulfilled to assuage the feelings of political deprivation. Any alteration of the constitutional status of the GB needs to be undertaken through a consultative process with AJ&K. A similar set of political rights could be ensured for both AJ&K and GB emphasizing their unity as disputed areas instead of only granting a separate provisional status of a province to GB. Autonomy should be granted to AJ&K and GB on the principles that the UN Security Council Resolution based stance is not impacted adversely, the representation of AJ&K and GB in the Parliament of Pakistan, Electoral College for the election of President and federal constitutional bodies along with application of those parts of Pakistan's constitution which are acceptable to both. In this regard, following recommendations can be considered:

- A constitutional amendment in the constitution keeping Articles 1 and 257 intact and amending Articles 51 and 59 to give representation to residents of GB in National Assembly and Senate.
- A constitutional amendment in the constitution by amending Article 1, 51, 59, keeping Article 257 intact and applying these changes to both GB and AJ&K.

Action Matrix can be found at the end of document for specific recommendations.

Problem Statement

Gilgit Baltistan (GB) has been governed directly by the federal government after Karachi Agreement 1949.¹ The residents of GB have always felt part of Pakistan and had expressed their desire to be made part of Pakistan with equal rights as citizens of the country. The issue of grant of autonomy in the form of provisional province's status had gained traction before the elections held for Gilgit-Baltistan Legislative Assembly on 15 November 2020. The issue needs to be analyzed in the light of possible legal and diplomatic complications before making a final decision.

Overview of the Issue

The areas that constitute GB were part of Gilgit Agency as well as Gilgit Wazarat of pre-independence era. The lease of Gilgit Agency of British was abolished by the British in July 1947 and the areas that constituted the Agency were returned to the Maharaja.² The people however rose in rebellion against the Dogra ruler when he acceded to India. The revolt was led by Gilgit scouts and the area was liberated through an armed struggle. When India took the case to the United Nations (UN) in April 21, 1948, the ceasefire was effected and a plebiscite was directed by UN

¹ "Karachi Agreement of 28 April 1949 between Azad Kashmir and Pakistan government," Policy and Research Forum (PRF), April 28, 1949, <http://prfjk.org/wp-content/uploads/books/historical-doc/karachi%20agreement.pdf>, (accessed on October 17, 2020).

² "Hollow self-rule," *Dawn*, September 14, 2009.

through UN Resolution 47.³ The areas constituting Gilgit, Skardu, Nagar, Hunza, Diamer-Darel were constituted into Gilgit Agency by Pakistan in 1949 through Karachi Agreement.⁴ The federal government entered into an agreement with Muslim Conference of AJ&K and through Karachi Agreement dated 28 April 1949 according to which the Gilgit Agency was ceded to federal government for administrative control. Ever since then the areas constituting, GB though part of State of J&K have been ruled directly by the federal government.

In 1970, after abolition of West Pakistan Province the Agency was renamed Northern Areas. An Advisory Council for Northern Areas was constituted in 1970 and a Legal Framework order 1975 was promulgated by the then Prime Minister Zulfikar Ali Bhutto on 3rd July 1975.⁵ Later on, Prime Minister Benazir Bhutto introduced the Legal Framework Order (LFO) in 1994 converting Northern Areas Council into Northern Areas Legislative Council.⁶ In March 1990, Supreme Court of Pakistan ordered that the Northern Areas be given the same political, economic, and administrative rights as other provinces of Pakistan. President Musharraf amended the LFO of 1999 upgrading the Legislative Council to Legislative Assembly and making Deputy Chief Executive as the Chief Executive of Northern Areas.⁷ In 2009, the Gilgit-Baltistan Empowerment and Self Governance Order 2009 was announced and the term “Northern Areas” was replaced by “Gilgit-Baltistan”.⁸

In August 2015, Gilgit-Baltistan Legislative Assembly passed a unanimous resolution which asked federal government to declare the region as a constitutional province of Pakistan.⁹ In October 2015, Prime Minister Nawaz Sharif set up a committee to review the constitutional and administrative status of GB and recommended constitutional and administrative reforms keeping in view the UN Resolutions on Kashmir.¹⁰ The Committee after its deliberations recommended to give GB the provisional status of a province along with representation to GB in the National Assembly and Senate through constitutional amendments in articles 51 and 59 of the Constitution of Pakistan instead of amendments to Article 1.¹¹ GB’s representation in all constitutional bodies and bringing the GB Assembly at par with other provincial assemblies was also proposed.

³ “Kashmir Factsheet 1947-2020: The Indisputable Facts,” Islamabad Policy Research Institute, September 23, 2020, 11.

⁴ “Karachi Agreement of 28 April 1949 between Azad Kashmir and Pakistan government,” Policy and Research Forum (PRF).

⁵ Rafi Raza, *Zulfikar Ali Bhutto and Pakistan 1967-1977* (New York: Oxford University Press, 1997), 14.

⁶ Arhama Siddiq, “Reforms in Gilgit-Baltistan,” *Strategic Studies* 37, no. 1 (Spring 2017): 108-123, 112.

⁷ *Ibid.*, 113. See also; “Orders Affecting the Constitution (1999-2002),” Pakistani.org, http://www.pakistani.org/pakistan/constitution/musharraf_const_revival/, (accessed on October 17, 2020).

⁸ Government of Pakistan Ministry of Kashmir Affairs and Northern Areas, “Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009,” September 9, 2009, <https://webcache.googleusercontent.com/search?q=cache:2yqrt3k1hngJ:https://www.satp.org/Docs/Document/845.pdf+&cd=1&hl=en&ct=clnk&gl=pk>, (accessed on October 19, 2020).

⁹ “Legislators demand GB as province of Pakistan,” *Dawn*, August 12, 2015.

¹⁰ Sartaj Aziz, “Future Status of Gilgit-Baltistan,” *Friday Times*, September 27, 2020.

¹¹ “The Constitution of the Islamic Republic of Pakistan,” National Assembly of Pakistan, As modified up to the 28th February 2012, http://www.na.gov.pk/uploads/documents/1333523681_951.pdf, (accessed on October 20, 2020).

In July 2018, the federal government approved a new Gilgit-Baltistan Order 2018 replacing the GB Empowerment and Self Governance Order of 2009.¹² The Order was approved by the GB Legislative Assembly also. As per the Order, all powers exercised by GB Council were shifted to the GB Assembly. The role of Kashmir and Northern Areas Ministry was abolished and reforms like GB provincial Service Commission, appointment of local judges in High Court and civil service, and dismantling of all federal taxes were introduced. The order however fell short of expectations of people because of the overwhelming powers vested in the office of PM including powers to levy taxes. In July 2018, the GB Appellate Court set aside the GB Order 2018 and restored the GB self-governance Order 2009. This judgment was suspended by Supreme Court on 3rd December 2018.

Problems with Provisional Status of the GB

Diplomatic

Altering the constitutional status of GB which is still legally part of disputed State of Jammu and Kashmir might bring the same criticism on Pakistan as is being leveled on India after its illegal annexation of the Indian Occupied part of State of J&K on 5th August 2019. There is a need therefore to do a scenario analysis of the eventuality of granting a provincial status to the GB. Pakistan's traditional stance rooted in UN Resolutions 47, 51, 80, 91, 96, 98, 122, 123, 126, 209, 210, 211, 214, 215, 303 and 307 is based on the principle of self-determination for Kashmiris through a Plebiscite.¹³ When the status of the GB is changed even provisionally, the international community might view the concomitant changes in demography and politics as a regression from the moral and legal stand espoused by Pakistan since 1948.

Political

In order to understand the political ramifications of GB's grant of a provincial status, it is necessary to understand the constitutional status of the disputed areas in Pakistan's Constitution. The constitutional provision on Kashmir in Pakistan's constitution is Article 257,¹⁴ "which is not about its current relationship with Pakistan but about its future relationship with the country once the state decides to accede to Pakistan". The article reads, "When the people of the State of Kashmir decide to accede to Pakistan, the relationship between Pakistan and that state shall be determined in accordance with the wishes of the people of that state."¹⁵

When Pakistan adopted its first constitution in 1956, the Article 257 that pertained to relationship with the State of J&K reflected ground realities about the UN proposed Plebiscite. Therefore, there obviously was no compulsion to define Pakistan's relationship with GB and AJ&K before holding of plebiscite. The subsequent constitutions i.e., 1962 and 1973 contained the same language. Besides above, Pakistan did not want to alter the constitutional status of the

¹² "Government of Gilgit-Baltistan Order 2018 (Draft)," *Pamir Times*, May 3, 2018.

¹³ "Kashmir Factsheet 1947-2020: The Indisputable Facts," Islamabad Policy Research Institute, 11-14.

¹⁴ Association for the Rights of the People of Jammu and Kashmir, *Azad Jammu and Kashmir and Gilgit Baltistan: Proposals for enhanced autonomy and empowerment* (Islamabad, Pakistan: Printo Graphic, 2012), 52.

¹⁵ *Ibid.*, 53.

disputed areas so as not to allow India to resile from its commitments on any pretext. Pakistan also has been cautious so as not to take steps that might signify to India that occupation of two thirds of Kashmir was legal.

Any change in the constitutional status of GB or AJ&K should only be provisional and ensure that Pakistan's commitment to the Security Council resolutions is not compromised. This commitment should be in consonance with UN Security Council Resolutions 91 (1951) and 122 (1957), which declare that the "final disposition of the state would be made through a plebiscite, but does not prohibit any interim steps to enhance autonomy or to ensure full exercise of democratic rights."¹⁶ While altering the constitutional status of the GB, care should be taken to take the views of GB as well as AJ&K into consideration. There is a strong sentiment in both parts of the disputed territory of the State of J&K.

In GB, there is long standing sentiment that the areas were not geographically and ethnically part of the State of Kashmir and were forcible acquired by the Dogra Maharaja and that since after independence the area acceded voluntarily to Pakistan it should have been integrated in Pakistan much earlier. In AJ&K, there is a negative sentiment about GB's separation from AJ&K as a consequence of Karachi Agreement and the political leadership as well as population considers GB as a part of State of J&K. The people also resent Section 21 of Interim Constitution Act 1974 by virtue of which maximum legislative powers are vested in AJ&K Council headed by PM of Pakistan.¹⁷ People also resent reservation of senior bureaucratic positions for officers outside AJ&K. Any change therefore in the status of GB without accommodating the views of AJ&K would be detrimental to Kashmir's cause.

Legal

India has been selective and deceitful about the legal status of the State of J&K and has always changed the goal posts when confronted with the UN mandated solutions to the dispute. Pakistan therefore needs to be extra careful in adopting constitutional changes altering the constitutional status of the AJ&K and GB so as not to furnish excuse to India to mount a legal challenge.

Pakistan may opt for altering the constitutional status of the GB and AJ&K through amendments in constitution with the proviso that changes do not alter the permanent status of disputed areas. Article 6 of Sino-Pakistan Accord 1963 is an example where a provision has been kept for renegotiation of the boundary after settlement of the Kashmir dispute.

Major Conclusions

The demand for political rights and integration by GB population is genuine in view of past denial of rights enjoyed by rest of the Pakistanis. The grant of political rights as enjoyed by other

¹⁶ Ibid., 56.

¹⁷ "AJ&K Interim Constitution, 1974," Law Department AJ&K, August 31, 1974, <https://law.ajk.gov.pk/assets/lawlibrary/2019-02-13-5c645034ade141550078004.pdf> (accessed on October 20, 2020).

provinces to GB is a requirement that needs to be fulfilled to assuage the feelings of political deprivation.

Any alteration of the constitutional status of the GB needs to be undertaken through a consultative process with AJ&K. A similar set of political rights could be ensured for both AJ&K and GB emphasizing their unity as disputed areas instead of only granting a separate provisional provincial status to GB.

India should be surprised through grant of more autonomy to both AJ&K and GB instead of subsuming GB in Pakistan like Indian integration of disputed parts of the State of J&K through revocation of Article 370.

Autonomy should be granted to AJ&K and GB on the principles that the UN Security Council Resolution based stance is not impaired, the representation of AJ&K and GB in the Parliament of Pakistan, electoral college for the election of President and federal bodies along with application of those parts of Pakistan's constitution to the both to which they concur.

Recommendations

The process of constitutional reforms should not be hastened and should be undertaken through a deliberate consultative process between AJ&K and GB and government of Pakistan. Experts in international as well as constitutional law should be consulted along with all stakeholders instead of imposing a hasty solution that might be unacceptable to either parts of the disputed State of J&K i.e. GB and AJ&K. Following options are suggested for grant of autonomy/political rights to GB and AJ&K: -

Option 1

A constitutional amendment in the constitution keeping Articles 1 and 257 intact and amending Articles 51 and 59 to give representation to residents of GB in National Assembly and Senate. Article 142 can also be utilized to give GB legislative assembly the powers enjoyed by the provincial assemblies of other provinces. Extension of Pakistan's laws to GB should also be ensured along with the creation of a High Court like other provinces.

Advantage

Original constitutional structure of the Federation remains intact.

Disadvantage

- AJK government might have reservations on this option as public sentiment and government stance do not favour separation of GB from AJK.
- A certain measure of international concern due to provisional province status of GB may arise.

Option 2

A constitutional amendment in the constitution by amending Article 1, 51, 59, keeping Article 257 intact and applying these changes to both GB and AJ&K. Necessary amendments in AJ&K Interim Constitution Act 1974 and GB Order 2018 would also need to be made to extend the political rights to AJ&K and GB as enjoyed by other provinces. The modalities of having one or two legislative assemblies and a common Senate representation could also be considered as a part of constitutional package. This option might be more acceptable to AJ&K and defensible at international fora.

Advantage

Both AJK and GB could be on board and present a united front on J&K dispute.

Disadvantage

The change in fundamental stance of Federation even provisionally might be construed by international community and UNO as a dilution of UN Resolution based stance on Kashmir, which may be slightly more intense than Option 1.

Recommended Option: Option 2

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