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Abstract:

Powers, rights and empowerment have become buzzwords in Azad Jammu & Kashmir (AJK) and Gilgit-Baltistan (GB), two regions of Pakistan-Administered Kashmir, and recognized disputed territories by the United Nations. To empower local governance structure in AJK and GB several interventions mainly advanced by the local civil society and to some extent by the political parties have failed to convince policy-makers sitting in Islamabad. This paper is an attempt to examine the situation with the lenses of history and contemporary theories and stresses on the need of recognising internal self-determination for the people of AJK and GB.

Studies indicate that the existing power-sharing frameworks between AJK and GB with Government of Pakistan are highly imbalanced, and failed to provide sufficient space for building autonomous and democratic governance structure in these territories. In fact, since 1947 the Pakistan's policy towards AJK and GB has been heads I win, tails you lose'. Thus, the key problem of AJK and GB lies at their external power-sharing relationship with Government of Pakistan. Therefore, a new interim power-sharing framework, which could guarantee genuine autonomy to AJK and GB, is the need of the hour and long overdue. In this respect, autonomy is seen as the sine

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qua non for building autonomous and democratic governance structure in the disputed territories.

This paper suggests that until external self-determination is given to the Kashmiri people across the Line of Control (LoC), AJK and GB should be given an opportunity to recognise their right of internal self-determination through which people will freely determine what kind of temporal power-sharing relationship they want to maintain with the state of Pakistan, until the final disposition of the Kashmir conflict.

Key words: Azad Jammu & Kashmir, Gilgit-Baltistan, Power-Sharing, Autonomy, Internal Self-Determination

INTRODUCTION

Powers, rights and empowerment have become buzzwords in Azad Jammu & Kashmir (AJK) and Gilgit-Baltistan (GB), two region of Pakistan-Administered Kashmir. To empower local governance structure in AJK and GB several interventions mainly advanced by the local civil society and to some extent by the political parties have failed to convince policy-makers sitting in Islamabad. The geopolitical position of GB has risen to the surface once again precisely because it is one of the key determinants of the economic viability of China-Pakistan Economic Corridor (CPEC), which passes through GB. It further invokes the importance and existence of effective and empowered local governance structures in the region. The current debate under way on giving Gilgit-Baltistan a provincial status stimulate the essentiality to explore historical facts regarding the Kashmir conflict and the resolutions passed under the United Nations Security Council (UNSC) and UN Commission for India and Pakistan (UNCIP). It also demands to propose a viable interim solution to address the powersharing dilemma in AJK and GB without harming the geographical sovereignty of the erstwhile State of Jammu and

Kashmir and the cause of the right of the self-determination of the people of all the regions of this State including GB at the diplomatic front.

HISTORICAL CONTEXT: THE STATUS AND LEGITIMACY

The divided state of Jammu and Kashmir (J&K), either controlled by India or Pakistan, is a recognized disputed territory by the United Nations as it existed on August 15th 1947. Similarly, AJK and GB are recognized disputed territories and *de jure* part of the State of J&K and key stakeholders in the transformation of Jammu and Kashmir conflict. A general understanding is that GB had become part of J&K State through the Treaty of Amritsar (1846). However, Martin Sokefeld argued that through Treaty of Amritsar it 'inadvertently excluded a considerable part of Gilgit-Baltistan, as it referred to 'all hilly or mountainous country with its dependencies situated to the eastward of the River Indus and the westward of the River Ravi, including Chamba and excluding Lahul'² whereas 'yet Gilgit and the greater part of Baltistan are not situated east of the Indus but towards its west and north' (Martin Sökefeld 2015, 252). However, despite variant interpretations of Treaty of Amritsar, the noteworthy point is that on August 15th 1947 Gilgit-Baltistan, by and large, was under the control of Maharaja Hari Singh with his appointee Governor Ghansara Singh stationed in Gilgit thus become part of the larger Kashmir problem.

The boundaries of former princely State of Jammu & Kashmir are well-defined and never been questioned for the last 68 years. However, what is undefined and unrecognized is the sovereignty status of the State of J&K. Although, with the lapse of the British Paramountcy the State had become

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² Article 1 Treaty of Amritsar (1846) http://www.kashmirinformation.com/LegalDocs/TreatyofAmritsar.html

sovereign on August 15th 1947 and remained sovereign and independent for 73 days on its own right. However, the sovereignty of the rule of the Maharja Hari Signgh over entire State was partially suspended when a large section of the population in the areas now known as AJK and GB rabbled against his autocratic rule and announced establishment of a revolutionary peoples Government of the State of Jammu and Kashmir on 4th October 1947³ and subsequently reconstituted it as provisional government on October 24, 1947. This government with a transitional government structure has established in Juniaal Hill, Sudhnoti, Poonch on 24th October 1947. Sardar Ibrahim Khan, a member of the J&K Assembly (Parjah Sabha), assumed the role of the President and a Council of Ministers took the responsibility to manage the civil administration in the areas under its control (Nazir Gilani 2013; Korbel 1954; Lamb 1991; Schofield 2010; Snedden 2012).

There are contested historical narratives about the 'liberation' war of GB, which was fought in 1947. However, history demonstrates that the people in Gilgit Baltistan rebelled and established a local administrative by over throwing the administrative control of the Governor Ghansara Singh in the GB region and formed the new Republic of Gilgit, which could sustained itself for only 16 days (Zulfiqar Ali, Tariq Naqash 2015). This indigenous public revolts in AJK and GB against their ruler provided an opportunity for Pakistan and India to intervene in the internal affairs of the State by sending in their tribal forces and Armies in October 1947. Since then the sovereignty of the State is suspended and contested between India and Pakistan. Consequently, United Nations intervenient and the UNSC passed resolutions and established UNCIP to resolve Jammu and Kashmir dispute according to the

 $^{^3}$ There was an attempt to form a provisional government through a proclamation on October 4, 1947 but it couldn't be materialised on ground, however, later reconstituted on October 24th 1947.

wishes of the people of Jammu Kashmir.⁴ Subsequently, the UNCIP has recommended a mechanism for the administration of the governments in Srinagar, Muzaffarabad and Gilgit. This mechanism has not fully implemented. Henceforth, the J&K Dispute continue to affect the peace and stability in the South Asia.

The recent debate advanced by some commentators (Yaqoob Khan Bangash 2016; Mir 2016) on changing constitutional status of GB or making it a province of Pakistan with the argument that GB had allegedly acceded to Pakistan thus become part of Pakistan by choice in 1947 is misleading and in fact a rhetoric over reality. Amidst CEPEC project, it can be also seen an attempt to promote a specific narrative on GB. its history, and further divide the region of GB along with the CEPEC route. In reality, there was an attempt of accession by the rulers of two small fiefdoms Hunza and Nagar in isolation (without consultation or agreement of the local administrative Council) but there is no evidence to suggest that Government of Pakistan has ever accepted it. However, if Pakistan accepts alleged accession of these two small fiefdoms from within GB with Pakistan then question arises why she is adamant in rejecting the 'conditional' accession⁵ of J&K with India by the Maharaja.

The relevant and most accurate account is that GB was officially, politically and legally a part of the princely State of Jammu & Kashmir as it existed on August 15th 1947 and later

⁴ Under the UNCIP resolutions of August 13, 1948 and January 5th 1949 which were accepted by Pakistan and India, the people of Jammu and Kashmir (both Indian and Pakistani administered parts) have a mandate to decide which way they want their State to accede via a free and impartial plebiscite under UN auspices.

⁵ Historians (Lamb 1991; Schofield 2010; Korbel 1954) also raised concerns on the precise signature timing of the alleged instrument of accession, which they considered a contested document, thus, the authenticity of the Instrument of Accession has always been in question; there remains no scholarly consensus on this point.

UN resolutions also regarded it as 'disputed' territory in the framework of the Kashmir conflict. A recent study report (Syed Waqas Ali and Taqi Akhunzada 2015) indicates that overwhelming majority of GB inclined towards joining Pakistan either with a provisional provincial status or as a permanent province of Pakistan. However, wishes of the people can only be determined under the agreed framework of the UN resolutions and subject to the Kashmir conflict. Thus, one shouldn't try to escape from the historical realities.

THE CONSTITUTION OF PAKISTAN

The Constitution of Pakistan 1973 defines its relationship with the disputed State of Jammu & Kashmir in Article 257. It reads, 'When the people of the State of Jammu & Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with the wishes of the people of that State'. The Constitution of Pakistan 1973 under Article 1(2), unlike other autonomous areas under the purview of Pakistan, does not mention AJK and Gilgit-Baltistan as part of the territories of Pakistan. Manzoor Gillani (a retired chief justice of AJK High Court) argues that the territories of AJK and GB can be considered as 'otherwise' included in the light of Article 1(2) (d) of Pakistan's constitution (ARJK 2012). However, this is a misinterpretation as Article 1 (2) (d) does not make any reference to article 257, which talks about a 'prospective' relationship between State of Jammu & Kashmir when the Kashmir conflict will be resolved.⁶ It is noteworthy that the Government of Pakistan has 'assumed' a 'temporal' control and administration of AJK and GB under 'trust obligation' of UNSC/UNCIP resolutions. It is also its responsibility to provide 'better а governance and

 $^{^6}$ See, for example, The Constitution of Pakistan (1973) Article 257 and Introductory Part- The Constitution of Pakistan (1973)

administration' to these territories with whom it maintains a *de facto* link until the final disposition of the Kashmir conflict.

THE KARACHI AGREEMENT

The Karachi agreement (1949) which was signed between the then Government of AJK and Government of Pakistan has no locus standi given the fact that neither the leadership of AJK had any moral or political support from the people of GB to hand over GB under the direct administration of Pakistan nor Government of Pakistan can assert any legal claim on GB under this agreement. The people of GB fought for their 'liberation' against the autocratic regime of Maharaja and they never endorsed this agreement. In fact, the Karachi agreement laid the first power-sharing relationship between AJK and Pakistan. However, it had negative political repercussions on the governance of AJK and GB. It should be remembered that ultimate sovereignty and legitimacy rests with the people. Therefore, since the people of GB didn't recognize the Karachi agreement as legitimate by all means they have right to negotiate a new interim social contract with Government of Pakistan subject to the UN resolutions and the Kashmir conflict. In fact, GBians are in better position to negotiate with Government of Pakistan due to their strategic location and CPEC developments in the region.

GIVING VOICE AND RIGHTS TO AJK AND GB

The study of current power-sharing relationship between AJK and Pakistan based on Interim Act Constitution 1974 and GB and Pakistan based on Gilgit-Baltistan Ordinance for Empowerment and Self-Governance (2009) indicates that neither it provides genuine autonomy to these disputed territories nor it captures the letter and spirit of UNCIP mechanism, which emphasize on 'better governance and administration' in AJK and GB. Bushra Asif notes, 'Islamabad's relationship with Muzaffarabad is one based on control rather than autonomy, with negative consequences for AJK's political and economic development' (Bushra 2006, 34).

The dilemma of AJK and GB mainly exists at the external level of power-sharing between these territories and Pakistan, which not only puts a question mark on democratic norms and values but also it has negative impacts on the right to rule and ownership of the local people. Since 1947 the Pakistan's policy towards AJK and GB has been 'heads I win, tails you lose', which subsequently jeopardized the right of rule and ownership of the local people. A very good example of autonomy or self-government in the political and constitutional history of AJK was 'Azad Jammu & Kashmir Government Act 1970' through which a full democratic and empowered structure was given to AJK. This was the only Act, which tabled after the consultation of AJK leadership followed by their protests and political campaigning for political and constitutional empowerment. This Act, for the first time ever, provided considerable internal autonomy to the Azad Kashmir government, thus, captures the spirit of UNCIP mechanism. It may seem ironic that AJK received a quantum of autonomy and comparatively a better democratic framework, whilst Pakistan was being ruled by a military Dictator viz. Yahya Khan. Therefore, granting genuine autonomy to AJK and GB is the need of the hour and long overdue. In this regard, Act 1970 still provides a basic reference point to address the dilemma of AJK and GB though which a wide-reaching autonomy framework can resolve the emerging politico-legal conflict between these territories and Pakistan (Javaid Havat 2015).

WHY AUTONOMY MATTERS?

Contemporary scholarly debate demonstrates that the opportunities and pitfalls of establishing democratic and

autonomous governance structure in the territories with external control and influence are seen as problematic. The existence of lopsided power-sharing modes of governance between a central or external government and regional or territorial government not only causes conflict and fragility of governance but also undermines efforts to establish democratic rule and structure in a territory under external control. It is also observed that imbalanced power-sharing between a disputed territory and a controlling nation-state appears to be not only a primary obstacle in establishing a genuinely autonomous governance structure, but it also paves the way for violent insurgent movements. The highly uneven and imbalanced power-sharing relationship of AJK and GB with Pakistan resulted in weak institutional capacity and fragile governance processes, which subsequently failed to establish and undermines governance structures legitimate the governmental authority. Thus, the key problem of AJK and GB at their lopsided power-sharing relationship with lies Government of Pakistan (Javaid Havat 2014, 9-10).

Contemporary scholars are agreed with the fact that for building a democratic governance structure in the territories with disputed status. а well-negotiated power-sharing mechanism genuine territorial which could guarantee autonomy (or in other words domestic sovereignty-free from external control into governing affairs) is the sine qua non (Tansey 2011, 1535). 'The concept of self-government or selfrule closely resembles autonomy and it is generally believes that under internal self-government a territorial entity manages its own internal affairs by itself, without external intervention'. In Lapidoth's words, Autonomy stands for 'freedom from control or interference by the government of another State in respect of the internal government (legislature, executive, and judiciary) and administration of the territory' (Lapidoth Ruth 1997, 52-53).

In the contemporary world, there are examples of autonomy in order to address the political and legal conflict between Central and regional or territorial governments. For example, The Ålands Islands attained the most complete and far-reaching autonomy under Finland's Act of Self-government in 1991. It enjoys legislative and executive powers related to all political sectors for the people of this island. In the case of the United Kingdom, Scotland, Wales and Northern Ireland are examples of a high degree of self-governance. The Nordic islands, South Tyrol, and Spain's autonomous communities of Catalonia and the Basque Country can be regarded as the most advanced forms of autonomy (Thomas Benedikter 2008).

WIN-WIN INTERIM SOLUTION: RECOGNIZING INTERNAL SELF-DETERMINATION

The right to self-determination is a recognized right of people by the United Nations. Professor Salvatore Senese has provided very meaningful interpretations on the concept of selfdetermination by dividing the concept of self-determination into and internal self-determination. 'External external selfdetermination concerns the international status of a people. It can be summarized as the recognition that each people has the right to constitute itself a nation-state or to integrate into, or federate with, an existing state'. Internal self-determination 'is the right of peoples to self-determination once they have achieved statehood (or state-like formation). The right to internal self-determination means only that other states should not, through appeals or pressure, seek to prevent a people from freely selecting its own political, economic, and social system'(Salvatore Senese 1989, 19).

The people of divided and disputed State of J&K are waiting to exercise their external right to self-determination collectively across the Line of Control (LoC) as promised by the UN and agreed by the both India and Pakistan through

plebiscite under the UN auspices. However, they are not allowed to exercise their right to internal self-determination in the territories currently under the control of Pakistan and India. Despite the disputed status of J&K, a common understanding is that the legitimate fundamental rights of the people (state-subjects) living in these regions are not disputed. These rights including the right to life, liberty and security of person, the right to State Citizenship under State Subject Rule 20^{th} April 1927, the right to decentralised and democratic governance, the right to vote, the right of free speech and association, and the right of ownership over natural resources shouldn't be held hostage because of the Kashmir conflict.

Keeping in view the proposal that GB should be given a provincial status by amending the Constitution of Pakistan to secure Chinese investment for CPEC project is a step in wrong direction. In my opinion, issue is not whether to amend/change the Constitution of Pakistan to give provincial status to GB, which reportedly is being done under the guise of giving rights, rather issue is whether or not current power-sharing mechanisms of AJK and GB with Government of Pakistan sufficient space for building autonomous provides and democratic governance structures in these regions. Making GB a constitutional province of Pakistan will subsequently result in geographically submerge these areas into Pakistan. Any such action would create a new diplomatic quagmire for Pakistan and could be a serious threat to the viability of CPEC project because the Government of Pakistan cannot alter the status of GB under the commitments and obligations of UNCIP resolutions passed time to time on the Kashmir conflict. Another proposal came forward from some guarters that GB should be given a system similar to AJK (Mahmud 2016). Interestingly, proponents of this proposal are asking for a system, which is demonstrably failed to address the legitimate rights of the people of AJK. Therefore, those who believe that Azad Jammu & Kashmir enjoys autonomy or self-governance

under the Interim Constitution Act of 1974 and a similar system in GB will help resolve their problems are living in fool's paradise.

Against this backdrop, what needs to be changed or transform can be described into two levels: firstly, the 'carrot and stick approach' and the mind-set of the decision-makers sitting in Islamabad towards AJK and GB; and secondly, the power-sharing relationship between these lopsided two territories and Pakistan. The power-sharing framework between AJK-GB and Islamabad should be devised with the consultation of legitimate stakeholders of AJK and GB. The legislative assemblies of AJK and GB must be empowered by granting them 'genuine territorial autonomy' with full financial and legislative powers. The government of Pakistan should only keep the subjects of defence, currency and UNCIP obligations with the concurrence of respective legislative assemblies and remaining all powers currently enjoyed by the AJK and GB Councils should revert back to the respective assemblies and governments of AJK and GB.

It seems essential that any alternate formula for the empowerment of AJK and GB must entail six essential characteristics: (a) be in accordance with the spirit of UNCIP (b) be in accordance to the constitutional and mechanism historical context of the disputed state of Jammu and Kashmir and declaration of provisional government of AJK formed on October 24, 1947; (c) be in accordance with the free will of the people and able to address the legitimate rights of the AJK and GB as state-subjects; (d) be practicable, honourable, feasible and democratically equipped to address the prevailing lopsided power-sharing structure between Pakistan and AJK and GB; (e) be capable to grant complete internal autonomy or domestic sovereignty to AJK and GB; (f) be in accordance to the Act 1970 of AJK, which provided considerable internal autonomy to AJK thus captures the spirit of the UNICP resolutions 1948-9 (Javaid Hayat 2015, 166-199). Furthermore, the spirit of the

18th amendment in the Constitution of Pakistan through which powers were devolved and a wide-reaching provincial autonomy is granted to the provinces of Pakistan could be applied without jeopardizing the territorial status of GB in advancing new democratic and decentralised system of Governance in AJK and GB.⁷

LESSONS NEEDS TO BE LEARNT

The histories of conflict revealed that powers and rights are never given, they are always taken. The people of AJK and GB need to learn that merely demanding legitimate democratic rights is not enough. They need to realize that being citizens of the former princely state of Jammu & Kashmir, ultimate legitimacy and sovereignty vests with them. Therefore, if they decide to struggle democratically for their legitimate rights, they cannot be deprived of their fundamental rights. However, it requires a people's rights and civil resistance movement equipped with political strategy.

The leadership of AJK and GB must realize that it is too easy to point to the Ministry of Kashmir and Gilgit-Baltistan or to Government of Pakistan as being the origin of all evils in AJK and GB instead of identifying their own weaknesses. Similarly, the leadership of GB also should understand that blaming AJK's leadership for ineffective and powerless governance in GB and escaping from the political, historical and legal realities of the Kashmir conflict will not resolve their problems. The regions of AJK and GB are facing similar issues and challenges in terms of powerless assemblies and governance fragilities. It should be remembered that the blame game will not help to build a constructive relationship between AJK-GB and Pakistan rather will lead to confrontation, which

⁷ See, 18th amendment in the Constitution of Pakistan http://www.pakistani.org/pakistan/constitution/amendments/18amendment.ht ml

can further deteriorate the situation. The Government of Pakistan must recognize that the prevalent constitutional framework in AJK and GB is not good enough to satisfy the needs and legitimate rights of the people. The uncertainty of the timescale and lukewarm diplomatic progress on transforming J&K conflict exacerbate the situation further. Therefore, neglecting legitimate democratic rights of the people of AJK and GB will do more harm than good.

In the light of given background, it is suggested that until external self-determination is given to the Kashmiri people. AJK and GB should be given an opportunity to recognise their right of internal self-determination. While advocating for the right of self-determination of the people in Indian-Administered Kashmir, Pakistan should first provide a and free opportunity of exercising internal fair selfdetermination to the people of AJK and GB. Through internal self-determination the people will freely determine what kind of temporal power-sharing relationship they want to maintain with the state of Pakistan, until the final disposition of the Kashmir conflict. Paulo Freire said, 'sooner or later being less human leads the oppressed to struggle against those who made them so' (Freire 1970).

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