

Constitutional Developments and Challenges to Autonomous and Self-governing System of Gilgit-Baltistan

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ABSTRACT

Gilgit-Baltistan has an amazing history of governance due to multiple variations of geography, demography and economy. Historically, it was the part of Kashmir now it is semi-autonomous and not formally integrated in Pakistan. The region is not enjoying the constitutional status as other provinces of Pakistan. Federation of Pakistan has announced reform packages sometimes for the region but these reforms packages are not properly implemented and stirred a new debate. The paper addresses the pertinent question whether these reform packages could harmonize the constitutional issues of Gilgit Baltistan. The current setup is hybrid from the provincial setup in Pakistan with minimal powers of representatives and still has many challenges for the autonomy of Gilgit-Baltistan. The study is an attempt to analyze the constitutional development: the presidential Order 2009 and reforms package 2018 regarding the Gilgit-Baltistan Empowerment and Self-governance to the answer of the issue. The historical and descriptive approach is followed the consequences of Federal Government policies, constitutional development, and favorable political and peaceful atmosphere of new Gilgit-Baltistan Province.

Key Words: **Constitution, Political Parties, Legislative-Assembly, Empowerment and Self-governance**

Introduction

Retrospective Status of Gilgit-Baltistan

Gilgit-Baltistan lies in the Northern area of Pakistan with the border of Afghanistan, China and India via Vakhn Corridor. It is an intersection point of important mountain ranges of Himalayas, Hindukash and Karakorum. The world's second highest peak K-2 and the largest ice-mass out of pole in the world is present there. It covers about 72400 square kilometers area and is divided in to two units of Gilgit and Bultistan. It is also further divided in to seven districts of Astore, Diamer, Ghanche, Ghizer, Gilgit, Hunzanagar and Skardu. From the last two decades, its geo-strategic significance is growing rapidly (Ismail, 2003, p. 6). It is also emerging as the water, energy and trade corridor south to central and western area. This corridor would provide access to the largest oil reserves located in Central Asian States and is provoking new strategic debate in the world.

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At the time of independence, Gilgit-Baltistan was consisted upon Gilgit Agency, Baltistan District, State of Hunza, State of Nagar and Autonomous Principality of Punial (sometimes called Punial State). Historically, this region was remained independent even Mughal emperor Akbar occupied other regions of Kashmir. Similarly, during British Indian times, this region became an agency with appointing a political agent in the end of 19th century. Apparently, this agency was under lease agreement of the Maharaja Hari Singh of Kashmir but actually, he had no socio-political or economic control over this region. While, several historians claim that British government was forced to announce full autonomy of Gilgit Agency on March 29, 1935 when it observed that the common people including Gilgit Scouts in Gilgit Agency and Baltistan District had overthrown the forces of Hari Singh (Pardhan, May 5, 2015; Revolvy, November 5, 2018). On the other hand, Punial Autonomous Principality never experienced foreign rule since centuries. Even, British Indian government or State of Kashmir could not take any kind of political control over this territory since 1947. On November 3, 1947, the region of Gilgit agency and Baltistan district proclaimed as Islamic Republic Gilgit by Raja Shah Rais Khan who was its President. With the aim of joining to the federation of Pakistan the new government claimed the area of Baltistan District, Gilgit Agency, State of Kargil and the state of Ladakh and the flag of new state was raised over the former governor house. This new republic came to an end on November 16, 1947 with the affiliation of Pakistan. Government of Pakistan appointed Sardar Muhammad Aslam as a first political agent (Dad, 2016, p. 2).

In 1970, when the province of West Pakistan was abolished, Gilgit Agency and Baltistan District were merged into one single identity; called Northern Areas. On the other hand, States of Hunza and Nagar were remained autonomous since 1974. In 1974, Zulfikar Ali Bhutto forced Mirs' of Hunza and Nagar to abdicate because of political demonstrations for demanding civil rights from the states' rulers (Stellrecht & Winger, 1997, p. 72). This movement was initiated by a local activist and the first educated politician of the valley; Syed Yahya Shah in 1968. Since then, both states were merged into Northern Areas with designing a new district; called Hunza-Nagar District. At the same time, Punial Autonomous Principality merged into Ghizer District as one of its tehsils (Parashar, 2004, p. 201).

In 2010, 18th amendment in the Constitution of 1973 renamed the respective region as "Gilgit-Baltistan" with delivering province-like status while, the legislative assembly also passed a resolution for demanding the status of constitutional province from the Government of Pakistan. However, the region has been treated as an administrative unit of Pakistan since the UNCIP Resolutions. The main consequences of this situation are that Gilgit-Baltistan does not have any parliamentary seat for consultation, to help it in forming constitution and coordination with federation (Khan, 2017, p. 94). For example, Gilgit-Baltistan is not considered in National Finance Commission, Council of Common Interest and National Economic Council. It means all the stake holders of Gilgit-Baltistan are

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affected by the decision and policies of federation. Similarly, the people of Gilgit-Baltistan have no representative in IRSA (Indus River System Authority) as well and no share of profit from hydroelectric power stations located in the area. This denial of rights has created abomination in the area (Singh, 2013, p. 18).

Stakeholders and Political Parties of Gilgit-Baltistan

Although, the Gilgit-Baltistan reforms package for self-governance was appreciated by a large numbers of society segment including the political parties, media and civil society. Sardar Attiq Ahmad Khan the president of Jammu and Kashmir Muslim Conference welcomed the reforms package while the segment of right wing showed their reservations. Some nationalists Mr. Nadir Hassan, Professor Khalique, Ch. Munir Advocate and like the president of Jammu and Kashmir Liberation Front Syed Faisal Nazki said that the government of Pakistan did not take them on board when the package was formulated. Blour-Jammu and Kashmir All Parties National Alliance organized a press conference in National Press Club Islamabad for their reservation (Hussain, 2017, pp. 02-10). Pakistan Army is also one of the stake holders of the area in terms of deployment of soldiers and arms in the border area of Gilgit Baltistan and Siachen Galacier and establishment of Headquarter force Commander Northern Area in Gilgit Baltistan. Pakistan Army did not release any clear statement on the reforms package. In the area, the system of landline telephone communication is still under the control of Pakistan Army. The Indian government summoned Pakistani High Commissioner in Delhi Mr. Riffat Mahmood and registered the protest against the “Gilgit-Baltistan Empowerment and Self-governance Order 2009” by Pakistan. An Indian government stockman pronounced “Gilgit-Baltistan Empowerment and Self-governance Order 2009” is another cosmetic exercise intended to camouflage Pakistan’s ill-legal occupation on the area (Hussain, 2017, pp. 02-10).

Empowerment and Self-Governance Order 2009

Although the autonomous status of the territory is not expressed in the article 1 of Pakistan’s Constitution which defines the territory of the state, that forms the part of Pakistan under the clause “c” of article 1 (2) which states “the territory of Pakistan include such states and territory are or may be include in Pakistan whether by accession or otherwise” (Hong, 2012, p. 1; The Constitution of Islamic Republic of Pakistan 1973). Under the UNCIP Resolution Gilgit-Baltistan and Jammu and Kashmir are territories otherwise included. This position was accepted by India through the cease fire agreement 1949, Tashkand agreement 1966 and Shimla agreement 1972. (Gillani, May 2011, p. 9)

The reforms were adopted to improve the administration to accommodate the local population. The federal government started to formulate the status of the province to increase the administrative powers for them. The reforms package was

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offered for giving them full internal autonomy. According to the order, “Gilgit-Baltistan Assembly will formulate its own rules of procedures. The legislation upon internal matters will be done by a council and an assembly in their respective jurisdiction”. The next package was signed by President Asif Ali Zardari in September 2009. According to the president the objective is to obtain maximum administrative autonomy for the region.

Constitutional Framework of Governance of Gilgit-Baltistan

Gilgit-Baltistan is now being governed under the presidential Order 2009 of Empowerment and Self Governance that was issued after informal consultation with local leadership by the President of Pakistan. The presidential order 2009 “Empowerment and Self-governance” is similar to AJK interim Constitutional Order 1974. One expectation is that like the office of president and Prime Minister under the AJK interim Constitutional order 1974, the chief minister will work under the Gilgit-Baltistan “Empowerment and Self-governance order 2009”. Azad Jammu Kashmir Interim Constitution Act 1974 can be amended by the majority by the Legislative Assembly and AJK Council in the joint meeting”. (Gillani, May 2011, p. 10) As regards Gilgit-Baltistan, which is governed by the presidential “Empowerment and Self-governance order 2009” is vested with Government of Pakistan (Jang, Sep.10, 2009). The constitutional structure has three-tiers. The first tier is that all legislative and executive authority in the matter of foreign affairs, foreign trade, currency and defense including implementation of UNCIP resolutions lies with the federation. (Gillani, May 2011, p. 11) Second tier is the Azad Jammu and Kashmir Council and Gilgit-Baltistan Council. They have decision-making and exclusive legislative power over the items included in the List of Legislative Council. The third tier is legislative Assembly and the Government of Gilgit-Baltistan. “The Gilgit-Baltistan Assembly has the legislative power over the Assembly Legislative List with all residuary powers belonging to the Government of Pakistan”. (Gillani, May 2011, p. 11)

The Executive and legislative power over the council of legislative list is vested formally to the council. But the Presidential Order 2009 of Empowerment and Self Governance for Gilgit-Baltistan especially states that the executive power of the council lies with the chairman, the Prime Minister of Pakistan. (Senge, 2010, p. 354) The Prime Minister of Pakistan appoints six members out of the fifteen members Gilgit-Baltistan Council from amongst the federal minister and member of the Parliament of Pakistan. None of them takes the oath under the Gilgit-Baltistan “Empowerment and Self-governance order 2009”. Therefore, they are not answerable before the council and legislative assembly of Gilgit-Baltistan and also before The Parliament of Pakistan. Moreover the powers are vested to the Pakistan Government indirectly and directly through the council and the Presidential Order 2009 of Empowerment and Self Governance for Gilgit-Baltistan stipulates that the Government of Gilgit-Baltistan will use their authority.

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The six members elected by the Gilgit-Baltistan Legislative Assembly practically have no role in decision making, policy making and in any matter on the Council Legislative List. The council is manned by bureaucracy of Federal Government and is dealt from Islamabad. The powers are given to the ministry of Kashmir and Gilgit-Baltistan affairs under the rule 9 (4) schedule 2 of the rules of Business of 1973 of Government of Pakistan. That ministry controls and regulates the administration of the territory directly. If the matter falls within the responsibility of the government of Gilgit-Baltistan, then effective authority is exercised by the senior member of civil services such as chief secretary, additional chief secretary, secretary of finance and secretary of health, DIG police and Auditor general.

In February 2018, Prime Minister of Pakistan announced the withdrawal of Gilgit-Baltistan Council which was created in Empowerment and Self-governance Order 2009. In this decision, powers of Gilgit Baltistan are transferred to Gilgit Baltistan Legislative Assembly. Apparently, there is no role of Kashmir Affairs Ministry as it is with the power of legislation. The chief court was renamed as High Court of Gilgit Baltistan comprising of seven judges. There will be Gilgit Baltistan provincial Service Commission and a provincial Auditor General. The jurisdiction of Islamic Ideology Council has been extended to the area. Although, Gilgit Baltistan is being given the status of nominated membership of all constitutional bodies like National Finance Commission and the Council of Common Interest, The Economic Coordination Committee and Indus River System Authority, but, is not part of order.

Gilgit-Baltistan Council

The council of Gilgit-Baltistan is comprised of the following members.

1. Chairman/Prime Minister of Pakistan.
2. The Governor of Gilgit Baltistan.
3. Six members from the federal ministers and Parliament of Pakistan which are selected by PM of Pakistan.
4. The minister for Kashmir Affairs and Gilgit-Baltistan is an ex office member and Minister in charge of the council.
5. The Chief Minister of Gilgit-Baltistan.
6. Gilgit-Baltistan Assembly elects six members in accordance to the proportional representation means by single transferable vote.
7. The minister of state of Kashmir affairs and Gilgit-Baltistan is ex officio non-voting member of the council (Hussain, Gilgit-Baltistan Empowerment and Self Government Order 2009, 2009, p. 14).

The Prime Minister of Pakistan is the Chairman of the council whereas the governor is the Deputy Chairman and the Federal Minister of the Kashmir Affairs and Gilgit-Baltistan is non-voting member of the council. The council can

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constitute on 55 subjects which are mentioned in the third schedule of the presidential “Empowerment and Self-governance order 2009”.

Gilgit Baltistan Legislative Assembly

Gilgit-Baltistan Assembly is comprises of thirty three (33) representatives from the public.

1. Twenty four members are directly elected by the adult franchise.
2. Six members are elected on the pattern of reserve seats in Pakistan and one more seat is newly created for the Hunzanagr District (Total 7).
3. Three members of professional and technocrats are elected on the pattern of reserved seats in Pakistan (Hussain, 2017, p. 13).

The members of Gilgit-Baltistan assembly elect speaker, deputy speaker and chief minister with majority votes. The members of house can do legislation for 61 subjects who are given in the fourth schedule of the Presidential Order 2009 for Gilgit-Baltistan Empowerment and Self Governance.

Feelings of the People of Gilgit-Baltistan

The people of Gilgit-Baltistan have high expectations with Federation of Pakistan. The people think that they have larger area than KP and the territory awarded by the Redcliff Boundary Commission is not the real one. According to them, they were freed from foreign tribe but had not got freedom as in the case of AJKs. The people of Gilgit and Baltistan argue that they got independence from the Dogra Raj as a result of spontaneous local revolt and then the public were chosen to be a part of Pakistan. Now the majority of people are ambitious of autonomy as the status of province of Pakistan (Dawn, November 9, 2009). The general elections of Gilgit-Baltistan and mass participation of people are a proof of their determination. But some people were divided on the reforms package of Gilgit-Baltistan by the Pakistan. There was no opposition and disagreement on the contents, language and proposal of the reforms package 2009 for Gilgit-Baltistan. That’s why the package in the terms of implementation has no difficulties and challenges (Hussain, 2017, pp. 02-10).

Challenges to the Autonomy of Gilgit-Baltistan

Although Gilgit-Baltistan achieved autonomous status by the Presidential Order (Gilgit-Baltistan Empowerment and Self Governance Order 2009) and by the prime minister order 2018 but there are still many challenges for autonomy of Gilgit-Baltistan. The current setup is hybrid from the provincial setup in Pakistan with minimal powers of representatives. The new order is prime minister of Pakistan centric. The prime minister is a final authority on legislation and the policies of the government of Gilgit Baltistan. He will levy taxes and no decree or order can be issued against it. Furthermore, no one can challenge the validity of his

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order. He is enjoying power in Gilgit Baltistan as he cannot exercise power in other provinces. According to article 41 of new order “the executive authority of the government shall extend to the matter with respect to which the assembly has power to make law, provided that in any matter with respect to which both prime minister and the assembly has the power to make laws, the executive authority expressly conferred and this order by law made and by the prime minister”. The article 60 (4) of the new order says that “any laws which the prime minister is competent to enact then the law made by prime minister, whether passed before or after the act of the assembly shall prevail and the act of the assembly shall to extent of the repugnancy, be void”. According to the article 65 the prime minister has the power of levy taxes in the area.

After the approval of Federal Cabinet, Gilgit-Baltistan reforms package has been promulgated by the Presidential Order 2009 (Gilgit-Baltistan Empowerment and Self Governance). “The package was not discussed in the parliament. According to the constitution the President of Pakistan can issue the ordinance and parliament can approve with simple majority as the Act in 120 days after issuing.... That’s why this presidential order has no constitutional and legal bindings for the upcoming governments to continue workings autonomously”. (Gillani, May 2011, p. 11)

The status of Gilgit-Baltistan has been changed and upgraded gradually since creation of Pakistan. All reforms were out of framework and extra constitutional. There is no representation of this territory in the legislative bodies. After the election, once the chief minister of Gilgit-Baltistan demanded interaction in top decision making process. The representation in NFC and other forums where all chief ministers of federating units sit and decide about their reservations is yet to be considered (Ali, Naqash, & Nagri, January 19, 2017). The representation is not equal it is said in the forum, here the decisions are made on majority basis.

The reforms package does not define the roles and responsibilities of the offices and secretariats of Gilgit-Baltistan because the package was not discussed in the Parliament of Pakistan (Dawn, May 28, 2018). Governor and the Federal Minister of Kashmir and Gilgit affairs are working parallel. The new structure of governance has differences and elusiveness in roles and responsibilities of offices and institutions which are causing delay in services delivery. (Shahnawaz, Sep. 13, 2009) It ultimately affects the fruit of reforms and performance of the Government of Gilgit-Baltistan.

Gilgit-Baltistan Government generates its financial resources to make budget and is based on its resources beside the Consolidated Funds from the Federation of Pakistan. The future governments of Gilgit-Baltistan will increase tax that will be unpopular in public (PAMIR TIMES, October 26, 2012). That’s why the tax imposition and revenue generating is making the reforms package unpopular. The Gilgit-Baltistan Government seems unwilling to impose wealth tax, sale tax, income tax and property tax. There is also a desire of removal of tax on importing

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goods from China. The department of excise and taxation has been established under the finance department of Gilgit-Baltistan. Now this department is collecting vehicle tokens which were collected by traffic police in past (TIMES, October 25, 2012) . The opposition of Gilgit Baltistan Assembly rejected the prime minister centric order on May 12, 2018. They think that the earlier Presidential Order 2009 allowed the Gilgit Baltistan Council dealt 54 subjects per legislation according to the schedule 3 and 61 subjects by the Gilgit Baltistan Assembly. According to the new reforms 2018, schedule 3 and 4 has been mixed to make 62 subjects which are under the Prime Minister of Pakistan. But the popular demand of the people of Gilgit Baltistan is to its merger as the fifth province of Pakistan. In August 2015, the Provincial Assembly has passed unanimous resolution which demanded federation of Pakistan to declare constitutional province.

Conclusion

In the political terms Gilgit-Baltistan has less autonomy than the provinces of Pakistan. Moreover, the liberated territory has been kept out from the national mainstream and has no representation and opportunities in Federal Government and decision making process. Therefore the policies of Federal Government of Pakistan are for developing infrastructure, favorable political and peaceful atmosphere of new Gilgit-Baltistan Province. The balance and right linkages of new Gilgit-Baltistan province and other federal units will facilitate to design the policies and decisions to maximize the protection of dignity of rights and solidarity. The people of the Gilgit-Baltistan always have raised their voice regarding their deprivation in decent and peaceful manners but the Government of Pakistan remained indifferent to their demands. (ExpressTribune, November 14, 2010) It does not solve the issues of Gilgit-Baltistan and put them under the carpet as the government has done from the Empowerment and Self Governance Ordinance 2009 that is providing fuel to the flame of nationalism in the region. Practical measures of transferring powers to the representatives of the Gilgit-Baltistan should be taken. There is a need of consultation with political parties, civil society and other stakeholders of Gilgit Baltistan to avoid confusion on the new order.

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