

**GOVERNING LAWS IN GILGIT-BALTISTAN BEFORE  
AND AFTER PARTITION OF SUB-CONTINENT:**

**AN ANALYTICAL STUDY**



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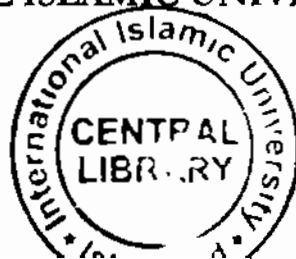
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AND AFTER PARTITION OF SUB-CONTINENT:  
AN ANALYTICAL STUDY**

**By**

**Dilshad Ali Haideri**

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
**MASTER OF LAWS**  
(Faculty of Shari'ah and Law)  
In The International Islamic University

2014

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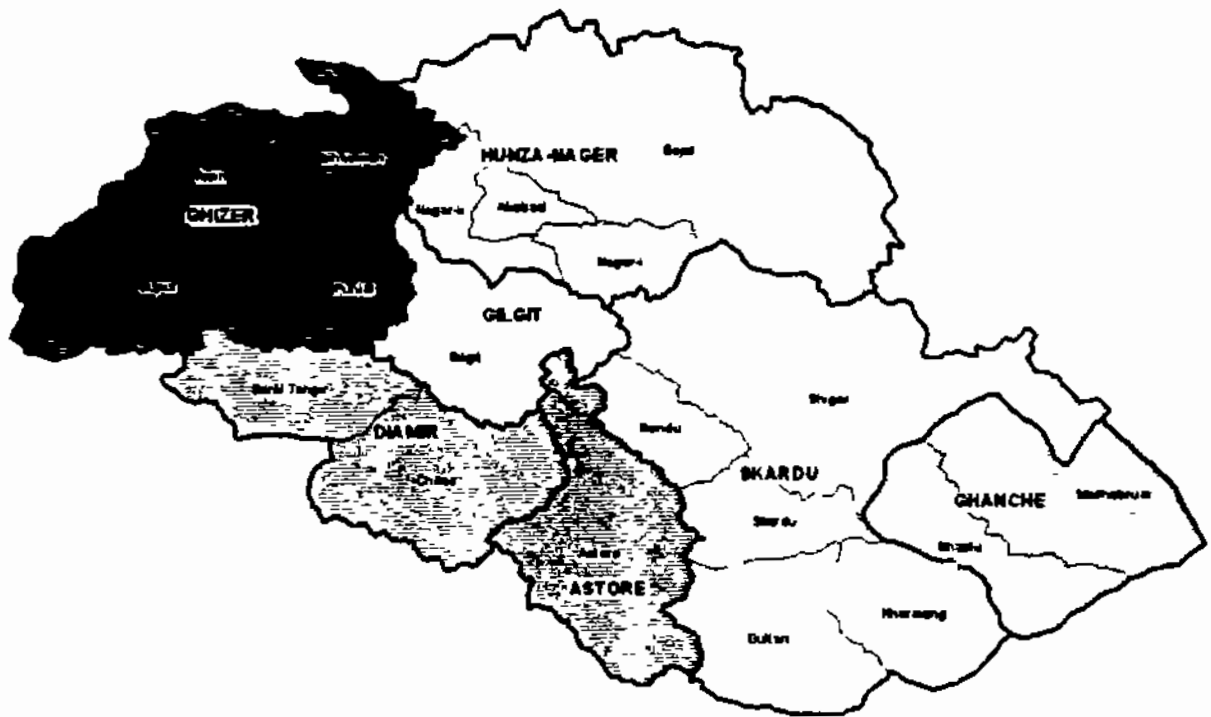
**MAP OF DISPUTED TERRITORIES  
OF  
FORMER PRINCELY STATE OF JAMMU AND KASHMIR**



Map courtesy Muhammad Irfan Chorbati

Cultural Ambassador of Pakistan in United States

## MAP OF GILGIT-BALTISTAN



Map courtesy Muhammad Irfan Chorbat

Cultural Ambassador of Pakistan in United States

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## FINAL APPROVAL

It is certified that we have read the dissertation submitted by **Mr. Dilshad Ali Haideri**, Registration No 42-FSL IIMHRL F10 on "Governing Laws of Gilgit-Baltistan before and after partition of Sub-Continent: An analytical study" in Department of Law, Faculty of Shariah & Law. We have evaluated the dissertation, and found it upto the requirements in its scope and quality by the International Islamic University, Islamabad for award of LL M Human Rights Law Degree

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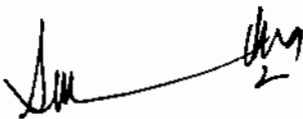
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## DECLARATION

I, **Dilshad Ali Haideri** hereby declare that this thesis is original and has never been presented in any other institution. I moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

Student: Dilshad Ali Haideri

Signature 

Date 15-04-2015



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## ACRONYMS

<b>AFSPA</b>	Armed Forces Special Power Act
<b>AJ&amp;K</b>	Azad Jammu and Kashmir
<b>CFL</b>	Cease Fire Line
<b>FATA</b>	Federally Administrated Tribal Areas
<b>FANA</b>	Federally Administrated Northern Areas
<b>FCR</b>	Frontier Crimes Regulations
<b>G-B</b>	Gilgit-Baltistan
<b>GBLR</b>	Gilgit-Baltistan Law Reports
<b>HQ</b>	Head Quarters
<b>ICCPR</b>	International Convention on Civil and Political Rights
<b>ICSECR</b>	International Convention on Social, Economic and Cultural Rights
<b>ICT</b>	Islamabad Capital Territory
<b>IBWT</b>	Indus Basin Water Treaty
<b>ICG</b>	International Crisis Group
<b>J&amp;K</b>	Jammu and Kashmir
<b>KPK</b>	Khyber Pakhtunkhwa
<b>KKH</b>	Karakoram Highway
<b>KANA</b>	Kashmir Affairs and Northern Areas
<b>KA&amp;GA</b>	Kashmir Affairs and Gilgit-Baltistan
<b>KIU</b>	Karakoram International University
<b>LFO</b>	Legal Framework Order
<b>LOC</b>	Line of Control
<b>LAC</b>	Line of Actual Control
<b>MBE</b>	Member of the Order of the British Empire
<b>NALC</b>	Northern Areas Legislative Council

<b>NALA</b>	Northern Areas Legislative Assembly
<b>NFC</b>	National Finance Commission
<b>NWFP</b>	North West Frontier Province
<b>NA</b>	Northern Areas
<b>NAAC</b>	Northern Areas Advisory Council
<b>NAC</b>	Northern Areas Council
<b>PATA</b>	Provincially Administrated Tribal Areas
<b>PPP</b>	Pakistan People's Party
<b>PML (N)</b>	Pakistan Muslim League (Nawaz)
<b>UN</b>	United Nations
<b>UNCIP</b>	United Nations Commission for India and Pakistan
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNMOGIP</b>	United Nations Military Observer Group in India and Pakistan
<b>USSR</b>	Union of Soviet Socialist Republics
<b>USA</b>	United States of America
<b>UNSC</b>	United Nations Security Council
<b>UNSCR</b>	United Nations Security Council Resolution
<b>UNGA</b>	United Nations General Assembly
<b>UK</b>	United Kingdom

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*(PLD 1995 SC (Jc-K 1)*

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*(2010 GBLR 160)*

*Dedicated to*  
*my*  
*Beloved Parents*

## ACKNOWLEDGEMENTS

Thanks to Almighty Allah for this countless blessings I would like to express warm gratitude to my Supervisor Mr. Attaullah Khan Mehmood Asst. Professor, Faculty of Shariah and Law, International Islamic University, Islamabad for his friendly attitude, which turned every difficult task into a pleasure for me. I am indebted to Mr. Zakir Hussain Zakir Asst. Professor (Karakoram International University, Gilgit) and my uncle Mr. Muhammad Ibrahim Sanai former Advisor of Gilgit-Baluchistan Legislative Council (GBLC) for their sincere guidance and precious ideas at very initial stage of proposal writing.

I am immensely indebted to Mr. Zaheer Abbas Tarar, Mr. Aziz Ahmed, Mr. Ilyas Hussain, Mr. Bilal Iraqi and Mr. Shujaat Hussain Mesum for their assistance at every moment of my study. I would also like to thank to my senior Mr. Sardar Abdul Sami Advocate and colleagues from legal fraternity Mr. Zamin Ali, Mr. Muazzam Ali, Mr. Israr Hussain, Mr. Haroon Sami, Mr. Zaheer Nawaz and others who enriched my understanding of the legal issues and its complexities.

Every single word's credit goes to my family, who made it possible for me to write this paper and have contributed in all respect. My siblings Mr. Shujaat Ali, Mrs. Rehana Gul, Mrs. Farzana Gul, Mr. Shahid Ali, Ms. Ammarah Gul have always been the emotional anchor of my life. Lot of love to my little lovely nephews and niece Zeeshan Ali, Ayan Ali, Shazil Abbas and Haniya Gul who are source of smile and make the life colorful, charming and lively. It was respect, care and hummer of my optimistic Brother-in-laws, Sister-in-law, cousins, uncles and aunts who directed me towards the paper amidst distraction.

I highly acknowledge all my old and new friends who are too numerous to name, colleagues from legal fraternity for their respect, love and attention during my research work. Finally I must thank all the well-wishers who indirectly helped me through their sincere prayers and well-wishes.

**Dilshad Ali Haideri**



## PREFACE

*“And why should you not fight in the cause of Allah and of those who, being weak are ill-treated and oppressed men, women and children who say, “Our Lord, take us out of this city of oppressive people and appoint for us from Yourself a protector and appoint for us from Yourself a helper ””*

*Al-Quran (Surah An-Nisa 4: 75)*

The curiosity of exploring the historical, cultural, social, political, geographical features and significance of Gilgit-Balustan was in my mind for long time I got an opportunity to get in to the research in my LLM (HRL) study and there I opted for a topic related to Gilgit-Balustan which was my area of interest As a matter of fact there were many questions that always intrigued me related to Gilgit-Balustan, its relation with the other disputed territories of former princely state of Jammu and Kashmir and specifically with the issue of Kashmir Though the issue of Kashmir with its enormous complexities and its relation with Gilgit-Balustan demands deep study and discussion and I have tried to justify with the topic in the best possible way Initially I found it very hard to collect material related to my topic due to inexperience in research, scarcity and scattered material on the topic I learn a lot from this academic research and in fact it inspired me to learn more

It is tried to meet the standards of research and mostly used resources were library Books, Articles, Journals, Reports, Discussion papers, Newspapers and Internet This thesis tries to through light mainly on political and legal development in the Gilgit-Balustan before and after partition of Indian sub-continent with its analysis under International and Human Rights laws Some other details are also added for general interest in the introduction chapter regarding geography features, natural resources and strategic importance

## ABSTRACT

Gilgit-Baltistan is naturally beautiful and bountiful piece of land lies in the extreme north of Pakistan. This region is controlled by Pakistan and internationally recognized as a part of disputed territory of former princely state of Jammu and Kashmir, which is a bone of contention since partition of Indian sub-continent between two neighboring countries i.e. India and Pakistan. There are many questions regarding its past and present political, legal, social relation with the other disputed territories of former Princely State of Jammu and Kashmir.

This thesis is intended to clear those ambiguities and complexities which arise in the mind of a person who is interested or linked with this region in some way or other. An effort has been made to construct a background of the constitutional and legal complexities faced by the Gilgit-Baltistan with historical facts and figures. Undoubtedly, the effect of these ambiguities and complexities are severe on the lives of the people of Gilgit-Baltistan.

An analytical research method of study is adopted by using mainly the library books, articles, journals, reports, court judgments, newspapers and internet. It is tried to compress general information, historical events as much as possible in this thesis in order to draw a clear picture of this region and its position at different point in history.

Chapter one of the thesis begins with the introduction of Gilgit-Baltistan, describing its geological, strategic and economic significance and then analytical discussions are carried out on the pre and post partition historical facts of Indian sub-continent along with governance modes adopted by different rulers and governments in later chapters.

In the chapter two the pre-partition developments related to the former princely state of Jammu and Kashmir and some peculiar arrangements made for the region of Gilgit-Baltistan

under Dogra and British rule are described. After the treaty of Amritsar in 1846 the state of Jammu and Kashmir was sold out to the Dogras. The suzerainty of Dogra's remained over this largest princely state of India for almost a century. The British reforms in shape of the Government of India Act 1935, the Partition Plan, the Indian Independence Act 1947, the Boundary Commission report and Radcliffe Award brought long lasting severe impact on the state of Jammu and Kashmir. At the end of this chapter the local liberation struggle in Gilgit-Balistan which ended in constitution of revolutionary interim government and then control of Pakistan over the region is critically analyzed with facts and figures.

It is also intended to analyze in the chapter three the post partition reforms brought in this region by different rulers and governing parties of Pakistan in the light of demands and rising needs of the local people of the region. Furthermore, the level of satisfaction by the governance reforms which are said to be brought according to the aspirations of the people of Gilgit-Balistan is explained in short possible way.

Chapter four is about the International as well as domestic laws related to this region and its effect on the local inhabitants is discussed and analyzed. Furthermore, this chapter deals with the relation of Gilgit-Balistan with the issue of the state of Jammu and Kashmir in legal arena along with the International Instruments. The United Nations resolutions, basic international laws and norms which give a way to settle the unresolved partition issue of Indian sub-continent after British withdrawal are also mentioned. All those rights which are available to the people of this internationally disputed region under the UN Charter, International Conventions and Human Rights Laws regime are analytically discussed. At the same time the domestic laws in the form of different reform packages are also discussed and analyzed, whether or not these reforms meet the aspirations of the people of Gilgit-Balistan. A number of cases under Pakistan's judiciary are also discussed in order to understand the Status of the Gilgit-Balistan and its relation with the federation of Pakistan.

In the last chapter conclusion is drawn after the whole discussion around the topic and some recommendations are also made for the peaceful settlement of long pending unresolved issue of the partition of Indian sub-continent to all the parties related to the issue. It is also suggested to all the stake holders to provide all rights to the people of Gilgit-Balistan which are enshrined in the International Instruments as well as in the Constitution.

## CHAPTER I

### INTRODUCTION OF GILGIT-BALTISTAN

#### 1.1 INTRODUCTION

In this introductory chapter basic information about Gilgit-Baltistan will be discussed briefly, its geographic and natural resources significance. This wonderful land possesses unique, diversified nature and culture. The mighty mountain ranges, gigantic glaciers, amazing lakes and beautiful landscapes of Gilgit-Baltistan are a source of attraction for nature explorers and researchers. Gilgit-Baltistan is almost isolated from rest of the world, its untouched beauty and unexploited nature resources catches everyone. In this chapter foundation will be laid by introducing the region, highlighting its strategic importance as well as interest of regional and world powers in the region.

#### 1.2 GEOGRAPHIC IMPORTANCE OF GILGIT-BALTISTAN

Gilgit-Baltistan is one of the most diversified geography in the world, including socio-cultural and geo-physical. Gilgit-Baltistan is known to the world with its numerous attributes, the most frequent attributes attached with this region are, *Roof of the World*,<sup>1</sup> the *Wonderland of Asia*<sup>2</sup> and the *Jewel of Pakistan*<sup>3</sup>, that are in fact not out of exaggeration. Gilgit-Baltistan including other parts of former princely State of Jammu and Kashmir is situated almost in the middle of Asia.

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<sup>1</sup> Major Sikandar Khan, *Liberation of Northern Areas Gilgit & Baltistan* (Army Education Press Rawalpindi 1975) 1, Bng Ghansara Singh, *Gilgit 1947 C E Sa Pablay* (Sherbaz Ali Khan Barcha tr, Hanu Sara Publishing Network Gilgit 2002) 32

<sup>2</sup> G M Mir, *Jammu wa Kashmir ke Jughrajyae Haqiqatein* (Royal Publishing Company Rawalpindi Pakistan 2011) 32

<sup>3</sup> Kurt Schwitters, 'Gilgit-Baltistan-Jewel of Pakistan' *Pamir Times* (Online E-paper Gilgit, 13 March 2013) <<http://pamirtimes.net/2013/03/13/gilgit-baltistan-the-jewel-of-pakistan/>> accessed 12 September 2013

and lies in the North of Sub-Continent Therefore, this region is also known as *Heart of Asia* and *Crown of Sub-Continent*<sup>4</sup>

The Gilgit-Baltistan is geo-strategically important area In the past great Eastern and Western powers competed to attain the control of this region At present this region is completely under the control of Pakistan As a matter of fact these eastern and western powers haven't withdrawn from their interest in the region<sup>5</sup> The regional powers as well as the International powers are getting much interest in the affairs of this region, which obviously highlights the importance of these areas in the eyes of world

Gilgit-Baltistan is geographically positioned in the extreme north of Pakistan, formerly known as *Northern Areas*<sup>6</sup> of Pakistan. This region was known as the strategic *Northern Frontier* under the British rule owing to its geographical location in the *Heart of Asia* The area spread over 72,496 square kilometers nearly the size of Ireland and larger than many Independent States of the World such as Sri-Lanka, Croatia, Bosnia, Switzerland, Denmark etc<sup>8</sup> and populated over 1.5 million people (census 1991) indicating population density of over 20 persons per sq kilometer.<sup>9</sup> Recent careful estimation tells that the population has reached 2.024 Million

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<sup>4</sup> G M Mir, *Jammu wa Kashmir ki Jughrafiyae Haqiqatein* (Royal Publishing Company Rawalpindi Pakistan 2011) 32

<sup>5</sup> M. Amir Rana & Muftaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Niganshat Publishers 2007) 8

<sup>6</sup> *Gilgit-Baltistan* was formally known as *Northern Areas of Pakistan* or *Northern Pakistan* before the enforcement of "The *Gilgit-Baltistan Empowerment and Self-Governance Order 2009*" The Order substituted the former name of this region with *Gilgit-Baltistan* *Gilgit-Baltistan*, *Northern Areas of Pakistan* and *Northern Pakistan* are alternatively used for the same region

<sup>7</sup> Priyanka Singh, *Gilgit Baltistan Between Hope and Despair* (Institute for Defense Studies and Analyses, New Delhi 14 March 2013)10

<sup>8</sup> G M Mir, *Jammu wa Kashmir ki Jughrafiyae Haqiqatein* (Royal Publishing Company Rawalpindi Pakistan 2011) 36

<sup>9</sup> *ibid* 34

by 2012<sup>10</sup> The majority of its population is widely scattered in more than 650 villages and the rest dwells in some towns

In the northwest, it borders Afghanistan's Wakhan Strip, this 60 mile strip separates the region from Tajikistan and in the northeast, it borders China's Xinjiang province<sup>11</sup> In the southeast, it borders the Indian administered state of Jammu and Kashmir<sup>12</sup> It borders Pakistan's Khaybar Pakhtunkhwa (KPK) in the west The Wakhan Strip was given to Afghanistan by an agreement between British and Russian in 1890 A D and formed a Buffer Zone preventing Russian extension in Indian Sub-Continent<sup>13</sup>

It is here that the three great, lofty and spectacular mountain ranges, Karakoram, Hindukush and Himalayas meet<sup>14</sup> Mighty 'Chogho-Re'<sup>15</sup> (8,61m) also known as K-2 and Godwin-Austen is the world's second highest mountain and the mighty Nanga Parbat (8,126m), is amongst one of the world's most dangerous mountains (also famous as killer-mountain) Gilgit-Baltistan in whole is a paradise for mountaineers, climbers, trekkers and anglers

### 1.3 ADMINISTRATIVE DIVISIONS

Gilgit-Baltistan is administratively divided into two divisions and seven districts Two divisions are namely Gilgit division and Baltistan division Baltistan Division has two districts District

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<sup>10</sup> Muhammad Fevaz, *Sectarian Conflict in Gilgit-Baltistan* (PILDAT Islamabad 2011) 10

<sup>11</sup> Major Sikandar Khan, *Liberation of Northern Areas Gilgit & Baltistan* (Army Education Press Rawalpindi 1975) 1

<sup>12</sup> M. Amir Rana & Muftaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Niganshat Publishers 2007) 12

<sup>13</sup> *ibid*

<sup>14</sup> Major Sikandar Khan, *Liberation of Northern Areas Gilgit & Baltistan* (Army Education Press Rawalpindi 1975) 3

<sup>15</sup> *Chogo-Re* means Mighty Mountain It is a word of Tibetan Balti Local Language of the people of Baltistan region

Skardu and District Ghanche whereas Gilgit Division has five districts where includes Districts of Gilgit, Hunza-Nagar, Diamir, Ghizar and Astore <sup>16</sup> Gilgit town is administrative capital of Gilgit-Baltistan, having under construction secretariat and head-offices of different departments. Gilgit and Skardu towns are the main political and trade centers <sup>17</sup>

#### 1.4 STRATEGIC IMPORTANCE OF GILGIT-BALTISTAN

Gilgit-Baltistan is considered one of the most spectacular areas with immense strategic significance for Pakistan. Gilgit-Baltistan is known as axis of Asia due to its key location where three major parts of Asia converges i.e. South Asia, Central Asia and South East Asia <sup>18</sup> Though the mountainous region of Gilgit-Baltistan which is known as *Roof of the World* got so much importance for the protection of British Empire of Sub-Continent in 19<sup>th</sup> and 20<sup>th</sup> Centuries but still this region possesses very significant strategic location and importance for the all neighboring Countries <sup>19</sup>

It is undeniable fact that this area holds a highly sensitive geographical location strategically and position at the threshold of the High Asia passes through India <sup>20</sup> This region is probably the sole political region in the entire world, which have been divided in three nuclear-armed states i.e. China having Aksai Chin area of Ladakh, India holding the Valley of Jammu, Kashmir and some part of Ladakh and Pakistan administrating Gilgit-Baltistan, portion from the vale

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<sup>16</sup> Muhammad Feyyaz, *Sectarian Conflict in Gilgit-Baltistan* (PILDAT Islamabad 2011) 11

<sup>17</sup> Major Sikandar Khan, *Liberation of Northern Areas Gilgit & Baltistan* (Army Education Press Rawalpindi 1975) 5

<sup>18</sup> Pallavi Singh, 'Gilgit-Baltistan: A question of autonomy' *The Indian Express* (29 April 2010) <[http://archive.indianexpress.com/news/gilgitbaltistan-a-question-of-autonomy\\_519428/0](http://archive.indianexpress.com/news/gilgitbaltistan-a-question-of-autonomy_519428/0)> accessed 10 January 2013

<sup>19</sup> Brig Ghansara Singh, *Gilgit 1947 C.E. Sa Pahlay* (Sherbaz Ali Khan Barcha tr, Hanu Sara Publishing Network Gilgit 2002) 32

<sup>20</sup> Suddepto Adhikari and Mukul Kamle, 'The Kashmir: An Unresolved Dispute Between India and Pakistan' (Geopolitics Quarterly, Winter 2010) Volume 6, No. 4, 71



of Jammu named as Azad Kashmir after separation<sup>21</sup> Besides its physical importance this region has got immense strategic importance as well, not for now but from centuries. It has been even more important to Pakistan and China after the Russian invasion. World three largest economies and atomic powers China, India and Russia are in its neighboring<sup>22</sup>

The geo-strategic significance of Gilgit-Baltistan has grown in the perspective of Pakistan and neighboring states to a point where the region couldn't be offered to any other country. The construction of Karakoram Highway and the present crisis of the energy and water in Pakistan have attracted the Policy makers towards the importance of this naturally potential area that can open new venues in the fields of trade, energy, water. After closing the chapter of Kalabagh Dam construction Pakistan is in severe need of new water projects for the survival and development<sup>23</sup>

To get access to the largest reservoirs of the world in Central Asia by the energy-starved world states is provoking new strategic thinking in many important capitals. The policy makers and economists of different states are getting interest in the Gilgit-Baltistan. Emergence of new dynamics in the regional and international politics has impliedly started a new era of Great Game. Peter Hopkirk seems to be true in saying that "the Struggle for Empire in Central Asia that not much has changed in the last hundred years," furthermore "the Great Game is still ominously topical"

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<sup>21</sup> ibid 59

<sup>22</sup> M.Amir Rana & Mustafa Rathore, *Northern Areas: Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Nigarshar Publishers 2007) 8

<sup>23</sup> M.Ismail Khan, 'Gilgit-Baltistan autonomy' *Dawn Newspaper* (Karachi, 09 September 2009) <<http://www.dawn.com/news/843990/gilgit-baltistan-autonomy>> accessed 05 June 2013

In this era of “New Great Game” new players and added along with old ones India, Pakistan and United States of America USA are directly and indirectly involved in the game <sup>24</sup>Historically, these areas remained as a flash point between the old political and military rivals’ i.e Great Britain, China and Russia

#### 1.4.1 BRITISH AND RUSSIAN INTERESTS

This region was in focus during the Great Game between Britain and Russia in nineteenth century. The Great game is stretched on centuries old rivalry between Russia and Great Britain for control over Central Asia <sup>25</sup> This region is part of the Great game because of its unique location, for instance,

- i. It has the most challenging terrain and highest plateaus of the world
- ii. The unique strategic location, bordering Afghanistan, British India, China and Russia
- iii. Its secret and short passes attracted the world powers for their dominance over Central Asia

In late nineteenth century the British were feeling uneasy due to the prospects of Russian political penetration in the region by seeking friendly relation with the small northern states in order to lay path for their military advancement <sup>26</sup> To keep an eye on the possible threat of Russian military advancement the British Government started keen interest in these areas and appointed an Agent Captain John Badllif in Gilgit in 1877 C.E. <sup>27</sup> He was called back after four

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<sup>24</sup> Aziz Ali Dad, “Still ominously topical” *The News* (Islamabad, 16 October 2010)

<<http://www.thenews.com.pk/Todays-News-9-10360-Still-ominously-topical>> accessed 1<sup>st</sup> March 2013

<sup>25</sup> Peter Hopkirk, *The Great Game* (John Murray, 2006) 450

<sup>26</sup> M.Amir Rana & Muftaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Nigarishat Publishers 2007) 63

<sup>27</sup> Major Sikandar Khan, *Liberation of Northern Areas Gilgit & Baltistan* (Army Education Press Rawalpindi 1975) 19

years but the British Agency was restored in 1889 C.E. after a short interval. This time the British political Agent was empowered with Military, Civil and Administrative powers unlike previous one and soon the rulers of Hunza and Nagar accepted the allegiance of British Government.<sup>28</sup>

Kipling used this theme in his classic spy story *Kim*, in which Tsarist agents posing as hunters are sent to infiltrate and suborn the 'five kingdoms of the north'. John Buchan used it too, in his Great Game Novel, *The Half-Hearted*, written in a year earlier, in 1901. In this the hero dies a lonely death in the Hunza region, defending with his rifle and a large boulder a secret pass which the Russians have discovered and are swarming through.<sup>29</sup>

British used Gilgit Mountains and its Hindukush passes as a base for control of Central Asia, but unfortunately they could not capture Central Asia. On the other hand, British Government was of the opinion that the Pamir was any longer a suitable route for an all-out invasion of India. When the strategy failed they turned it into a buffer zone proposed to avoid concentration in Central Asia. W. H. Murray, a British officer, narrated a phrase 'to lock the door on our side', which was precisely what the British set out to do, beginning with Hunza, which was regarded as the most vulnerable of the small northern states. From that very moment British went over on offensive mode in this region. The Viceroy didn't have to look far for an excuse to remove him from his throne.<sup>30</sup> This buffer zone was created in the name

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<sup>28</sup> Brig. Ghansara Singh, *Gilgit 1947 C.E. Sa Pahlay* (Sherbaz Ali Khan Barcha tr, Hans Sara Publishing Network Gilgit 2002) 35,37

<sup>29</sup> Peter Hopkirk, *The Great Game* (John Murray, 2006) 450

<sup>30</sup> *ibid* 472

of Russian threat to British India. It served as a military base to dominate Russian and China in Asia.<sup>31</sup>

These Areas of Gilgit-Balistan had great strategic importance that's why British as well as Russian rulers took great interest in these areas.<sup>32</sup> British Government under its rule over sub-continent got Gilgit and its surrounding areas on lease in 1935 for 60 years. The sole purpose of leased agreement was to keep an eye on the possible advancement of the Russian Empire.<sup>33</sup>

#### 1.4.2 INDO-PAK INTERESTS

Internationally Gilgit-Balistan is a part of "Disputed Territory of Jammu and Kashmir" which is bone of contention between India and Pakistan. Since inception of two nations India and Pakistan in 1947 three bloody wars have been fought and this deputed territory remained highly sensitive and of military importance. In 1971 war India captured a part from this region and in 1984 again violating the Shimla pact India Captured some areas of Siachen. Siachen is considered as world's highest battle field an ice-packed glacial area 20,000 ft above sea level with military base campus of both countries India and Pakistan. The Siachen issue is still unresolved despite huge loss of lives and resources. In 1999 a devastating Kargil war was fought again between the two rival nations in this area losing thousands of lives across Line of control (LOC).<sup>34</sup>

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<sup>31</sup> M. Amir Rana & Muftaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Niganshat Publishers 2007) 63

<sup>32</sup> Frederic Drew, *The Jummoo and Kashmir Territories. A Geographical Account* (E Stanford London 1875) 288, 289

<sup>33</sup> Maj William Alexander Brown, *Baghawat-e-Gilgit* (Zafar Hayat Paal tr, North publications Gilgit 2009) 35

<sup>34</sup> Muhammad Yousuf Hussainabadi, *Tareekh-e-Balistan* (Balistan Book Depot, Nava Bazar Skardu 2009) 316,317

Pakistan and India both largely depend on their agriculture and the water is life line for their agriculture lands<sup>35</sup> The issue of water is as old as the birth of India and Pakistan and it is still there, though there is a treaty between the two known as Indus Basin Water Treaty (IBWT)<sup>36</sup> This treaty doesn't allow any party to change the course of River flow or create any hurdle in it Pakistan has complaint to the mediator of the treaty i.e World Bank on the construction of Dams and power stations in Kashmir that hits badly the Pakistan agro-economy and energy production The huge glacier resources and streams of Gilgit-Baltistan are the sources of the great river Indus on which much of Pakistan's irrigation of agricultural land and energy plants depend Pakistan to meet its energy crisis has started work on Diamir-Bhasha Dam despite Indian reservations on it<sup>37</sup>

According a statement of Quaid-e-Azam the former Princely State of Jammu and Kashmir including Gilgit-Baltistan is considered "Jugular Vein of Pakistan" which is indeed a very realistic statement The State of Pakistan is surviving for more than Six decades without its jugular vein but if the federation of Pakistan is getting its control loose over the GB it mayn't survive for more time<sup>38</sup>

### 1.4.3 POST USSR SCENARIO

In 1992, when the former USSR (Union of Soviet Socialist Republics) collapsed and new states emerged in this region opening their borders to China, Iran, Afghanistan and Pakistan. The

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<sup>35</sup> M.Amir Rana & Mujtaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Niganshat Publishers 2007) 59

<sup>36</sup> In 1960 the Indus Basin Water Treaty was signed between Pakistan and India through the mediation of World Bank It is a water sharing treaty concluded due to Pakistan's apprehension of potential Indian threat in the shape of droughts and famines that India has all the river sources in its territory

<sup>37</sup> M.Amir Rana & Mujtaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Niganshat Publishers 2007) 65

<sup>38</sup> Nazir Nan, '64 Sal mazed nahi' *Daily Jang Urdu* (Karachi, 7 April 2012)

great powers once again look towards this region to control Central Asia finding vacuum after USSR. The regional and international actors and their interest in the region have made the game more complex ever in the history. At global level USA has taken the role of past Great Britain and Russia and its allies are there, beside this China, India, Iran, Pakistan and Turkey have jumped into the ring. The economics and strategic interests of these nations have twisted the regional scenario and their relations.

In this New Great Game the Gilgit-Balistan got a significant place in the before the International players. Pakistan and China are more focused in this region because of the presence of famous silk route to develop trade routes to Central Asian States and to the Middle East via Arabian Sea establishing Gawader Port. To meet the energy requirements gas and oil pipeline projects from the energy rich Central Asian countries are under consideration by the neighbor states, which is possibly not acceptable to the great powers. Therefore keeping this region as a buffer zone serves the interest of the world powers and they can play their role more easily. USA is interested to establish its military camp in this region because of these reasons.<sup>39</sup>

#### 1.4.4 POST 9/11 SCENARIO

Pakistan has played a vital role in the ongoing "*War against Terror*" with USA and its western allies soon after the attacks of 9/11. Pakistan was expecting high assistance military as well as economical from the Western countries but did not receive that sort of help, on contrary United States of America USA extended good relations with Pakistan's rival country India

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<sup>39</sup> M.Amir Rana & Muftaba Rathore, *Northern Areas: Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Niganshat Publishers 2007) 8

signing Civil Nuclear programs and many <sup>40</sup> This twisted Pakistan's policy towards Western countries and now Pakistan look at China and other regional powers for its military and economic development. As now there are five countries that touch the Gilgit-Baltistan borders Afghanistan, China, India, Pakistan and Russian<sup>41</sup> which shows distinctly the strategic importance of this region because via this region the relations could be strengthened with neighboring States to fulfill military and economic needs

## 1.5 CONCLUSION

Gilgit-Baltistan is geographically located in the extreme North of Pakistan, famous for its magnificent natural beauty. This region is considered heaven for natural lovers. The geographic and strategic position of Gilgit-Baltistan further enhances its importance in the region and also at the world level. With the passage of time the importance of this region is rising to meet economic as well political ends of world powers. In past this region remained as an important strategic area for the "Great Game" of world powers and it is presumed that Gilgit-Baltistan is still very important region for the "New Great Game" of the world powers

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<sup>40</sup> ibid 66

<sup>41</sup> Dr. Ahmed Hasan Dani, *History of Northern Areas of Pakistan* (Sang-e-Meel Publications Lahore, 2001) 11

## CHAPTER II

# GILGIT-BALTISTAN BEFORE THE PARTITION OF SUB-CONTINENT

### 2.1 INTRODUCTION

In this chapter mostly the historical facts and status of the Gilgit-Baltistan before the partition of Indian sub-continent will be discussed. The historical account of G-B will be discussed in short and the recent historical developments from the emergence of former Princely State of Jammu and Kashmir to the division of this princely state into pieces will be discussed at length. The Sikh, Dogra and British rule arrangements and the legal developments which effected the status of former princely state of Jammu and Kashmir that includes the Act of 1935, Partition Plan, Radcliffe Award and the Independence Act 1947 will be discussed. At the end of this chapter the rule of British on some parts of this region, to safe guard their vested interests will be explained.

### 2.2 BRIEF HISTORICAL ACCOUNT

The pre-historic account of Gilgit-Baltistan traced back to the 5<sup>th</sup> millennium BC where the earliest inhabitants were known as Rock Art people, hunters used to live in rocks. The history of Gilgit-Baltistan has deep traces of the conquerors, aggressors, traders, preachers and the travelers because it lies at the junction point of big powers. Successors of different dynasties ruled the Gilgit-Baltistan which includes Trakhans ruled Gilgit, the Avasho ruled Hunza, the



Maghlots ruled Nagar, the Maqpoons ruled Skardu, the Amacha ruled Shigar, the Yabgos ruled Khaplu and the Burshai ruled Panyal from 7<sup>th</sup> to early 19<sup>th</sup> century<sup>42</sup>

In 1530 a Mughal general Mirza Muhammad Haidar Dughlat attacked Kashmir on behest of Mughal Emperor Humayun. Kashmir came under the direct rule of Mughals in the reign of Mughal Emperor Akbar. In 1587 King Akbar annexed it to Mughal Empire<sup>43</sup>. Throughout the Mughal period (1587-1752) Kashmir acquired the status of a province. After the decline of Mughal Empire in India, they lose influence and control over Kashmir<sup>44</sup>.

Some parts of Gilgit-Baltistan remained under Kashmir Sultanate until Mughal Empire took them in the mid of 16<sup>th</sup> century. Some areas of Gilgit-Baltistan remained out of Mughal's authority even though Kashmir was controlled by them and these areas preserved the independent position during this period.

### 2.3 EMERGENCE OF THE PRINCELY STATE OF JAMMU AND KASHMIR

The recent history of Gilgit-Baltistan starts from the Sikh rule, the Dogras and later on the rule of British on some of the areas of Gilgit-Baltistan<sup>45</sup>. After the invasion of 1819 the areas of Jammu and Kashmir came under the Sikh Empire that extended the Sikh Raj from Afghanistan to Punjab and Punjab to Kashmir<sup>46</sup>. The Ranjeet Singh became the ruler of the erstwhile princely state of Jammu and Kashmir. It was the then largest of the Princely States in the India. Initially Gulab Singh was placed as a Jagirdar of Jammu then in 1820 for his great

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<sup>42</sup> Dr. Ahmed Hasan Dani, *History of Northern Areas of Pakistan* (Sang-e-Meel Publications Lahore, 2001) 166

<sup>43</sup> Major Sikandar Khan, *Liberation of Northern Areas Gilgit & Baltistan* (Army Education Press Rawalpindi 1975) 14

<sup>44</sup> Sardar M. Abdul Qayyum Khan, *The Kashmir Case* (Al-Mujahid Academy, Rawalpindi Oct. 1992) 38

<sup>45</sup> Nazir Naj, '64 Sal mazeed nahi' *Dauh Jang Urdu* (Karachi, 7 April 2012)

<sup>46</sup> *The Encyclopaedia Britannica* <<http://www.britannica.com/EBchecked/topic/167993/Dogra-dynasty>> accessed 7 July 2013

services to the Sikh Durbar he was title as Raja of Jammu <sup>47</sup> He used to pay allegiance to the Maharaja Ranjeet Singh the Dogra (Sikh ruler of Punjab) He was permitted to collect tax and manage the entire region by the orders of Maharaja Ranjit Singh

### 2.3.1 GULAB SINGH'S EXTENSION IN THE STATE

Gulab Singh extended considerably the borders of the Sikh Realm beyond the boundaries of Jammu and Kashmir Vale He included western territory of Tibetan Buddhist Ladakh as well as Gilgit, Hunza and Nagar Emirates In 1840 CE Zorawar Singh a general of Gulab Singh attacked Baltistan and imprisoned the Raja of Skardu in punishment of his favoring the Ladakhis and annexed the Baltistan with Kashmir <sup>48</sup> In 1841 AD Zorawar Singh, in his way to raid on Tibet was overtaken by Cold weather of winter and destroyed with his entire force <sup>49</sup>

In 1845-46 when first Anglo-Sikh War was fought, Gulab Singh held himself neutral and pretended as a mediator The British as a reward of rendering valuable and strategic services during the war in knelling down the Punjabi rulers bestowed the State of Jammu and Kashmir to the Gulab Singh Dogar

At the end of Anglo-Sikh War on 16 March, 1846 a treaty known as Amritsar treaty was formalized between the Gulab Singh Dogar and East India Company Under Article 3 of the

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<sup>47</sup> Major Sikandar Khan, *Liberation of Northern Areas Gilgit & Baltistan* (Army Education Press Rawalpindi 1975) 15

<sup>48</sup> M.Amir Rana & Mujtaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Niganshat Publishers 2007) 9

<sup>49</sup> Kashmir and Jammu, *Imperial Gazetteer of India* (V 15) 95

treaty<sup>50</sup> Gulab Singh was to pay 75 Lakhs (75 millions) of Nanank Shahi Rupees the than currency of Punjab to the British Government along with other annual tributes<sup>51</sup>

According to the treaty Article 1, "all the hilly or mountainous country with its dependencies situated to the eastward of the River Indus and westward of the river Ravi" was handed over to Maharaja Gulab Singh. This treaty included Gilgit but its claim came to Dogras after Gilgit Conquest not by the Treaty and then the Dogras took place of Sikh forces in Gilgit and Astor. However Ladakh and Baltistan weren't under the pervue of the Treaty. Later on the Hunza and Nagar and its surroundings territories were added to the state<sup>52</sup>

As a matter of fact the Treaty of Amritsar of 1846 is the start of Dogra Rule in the State of Jammu and Kashmir<sup>53</sup>. The Dogra rule is marked as cruelty and brutality in the history of Gilgit-Baltistan.

### 2.3.2 STATES OF HUNZA & NAGAR

Both States of Hunza and Nagar remained independent till 1881 C.E. and had nominal relation with Kashmir till 1947. Maharaja of Kashmir attempted many times to control over Hunza

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<sup>50</sup> Sardar M. Abdul Qayyum Khan, *The Kashmir Case* (Al-Mujahid Academy, Rawalpindi Oct 1992) 40, The Article 3 of the Amritsar Treaty says, "In consideration of the transfer made to him and his heirs by the provisions of the foregoing articles, Maharaja Gulab Singh will pay to the British Government the sum of seventy five Lac of Ruprees (Nanak Shahi) fifty Lac to be paid on the ratification of this treaty and twenty five Lac on or before the 1<sup>st</sup> of October of the current year 1846 A.D."

<sup>51</sup> Bng. Ghansara Singh, *Gilgit 1947 C.E. Sa Pahlay* (Sherbaz Ali Khan Barcha tr, Hanu Sara Publishing Network Gilgit 2002) 40, Sardar M. Abdul Qayyum Khan, *The Kashmir Case* (Al-Mujahid Academy, Rawalpindi Oct 1992) 42, The Article 10 of Amritsar Treaty says, "Maharaja Gulab Singh acknowledges the supremacy of the British Government and will, in token of such supremacy, Present annually to the British Government one horse twelve goats of approved breed (six male and six female) and three pairs of Kashmiri shawls."

<sup>52</sup> Kashmir and Jammu, *Imperial Gazetteer of India* (V' 15) 72

<sup>53</sup> Mndu Rai, *Hindu Rulers, Muslim Subjects: Islam, Rights, and the History of Kashmir* (Princeton University Press 2004) 27

and Nagar States but failed. People of Hunza and Nagar became more active to protect their independence rather aggressive because they attacked on Gilgit many times<sup>54</sup>

The British encouraged the Maharaja to invade and get control over the different small autonomous states of Gilgit-Baltistan headed by local leaders<sup>55</sup>. The Viceroy dispatched an experienced political officer to Gilgit Colonel Algernon Durand, brother of Sir Mortimer Durand the then foreign Secretary to the Government of India. He had to monitor any Russian movements to the North and at the same time try to establish good relations with local rulers there<sup>56</sup>. The Commander-in-Chief, General Roberts visited Kashmir in person to advise the Maharaja to strengthen and modernize his armed forces, expecting that the Maharaja would be able to hold the passes against the Russians until help could arrive in the form of Imperial Service troops or Indian Army units<sup>57</sup>.

In 1852 Gaur Rahman of Yasin exterminated the Dogra forces in Gilgit and then for eight years Maharaja's territories were separated by Indus<sup>58</sup>. After the demise of Gulab Singh in 1857 his son Ranbir Singh planned to recover Gilgit to expand the states border line. In 1860 a column of force under Devi Singh crossed the Indus to assault at Gilgit fort a strong hold of Gaur Rahmans. Before the arrival of Dogras the Gaur Rahman had passed away the Gilgit fort was recovered and remained under the rule until 1947<sup>59</sup>. After Gilgit fort the Maharaja moved further and captured the forts of Yasin and Puniyal. Lack of resources and for some

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<sup>54</sup> Brig Ghansara Singh, *Gilgit 1947 C E Sa Pahlay* (Sherbaz Ali Khan Barcha tr, Hanu Sara Publishing Network Gilgit 2002) 28

<sup>55</sup> M. Amir Rana & Muftaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Nigamshat Publishers 2007) 9

<sup>56</sup> Peter Hopkirk, *The Great Game* (John Murray, 2006) 450

<sup>57</sup> *ibid*

<sup>58</sup> Kashmir and Jammu, *Imperial Gazetteer of India*, (V 15) 96,

<[www.dsai.uchicago.edu/reference/gazetteer/html/pager](http://www.dsai.uchicago.edu/reference/gazetteer/html/pager)> accessed 15 July 2013

<sup>59</sup> *ibid*

other reasons like building a strong blockade against Invaders the Maharaja turned back to Gilgit and until the partition of Indian Subcontinent and Liberation from British Rule kept control of Gilgit <sup>61</sup>

Maharaja Ranbir Singh emerged as a successful administrator introducing many reforms in the old agricultural system and established permanent judicial institution, enforced laws based on equality among subjects and establishment of postal system on advance lines. He also brought Modern western educational system and specially focused on the development of infrastructure in the State. Local body system and systematic irrigation was initiated in his period <sup>61</sup>. In 1891 Pratap Singh overpowered Chitral's ruler and he forced Hunza and Nagar rulers to acknowledge the suzerainty of the Kashmir and Jammu state.

The internal weakness and mutual rivalries among the princes in the Gilgit-Balistan gave the advantage to the Dogras and in mid of 19<sup>th</sup> Century they succeeded in annexing some areas in the State of Jammu and Kashmir. The administration of Balistan was under Wazarat Laddakh with headquarters at Leh and the administration of Gilgit and its surrounding areas were under Gilgit Wazarat <sup>62</sup>. Last ruling Maharaja of the state of Jammu and Kashmir was Maharaja Hari Singh, his son Karan Singh is titular Maharaja of the State of Jammu and Kashmir at present.

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<sup>61</sup> Amar Singh Chohan, *Gilgit Agency 1847-1935* (Atlantic Publishers & Dist, 1997) 203-205

<sup>61</sup> Bng Ghansara Singh, *Gilgit 1947-CE Sa Pablon* (Sherbaz Ali Khan Barcha tr, Hami Sara Publishing Network Gilgit 2002) 43

<sup>62</sup> Dr. Ahmed Hasan Dani, *History of Northern Areas of Pakistan* (Sang-e-Meel Publications Lahore, 2001) 271

## 2.4 GILGIT-BALTISTAN UNDER THE PRINCELY STATE OF JAMMU & KASHMIR

It is very relevant to know the administrative, political and geographic status of Gilgit-Balistan before the emergence of India and Pakistan in the Sub-Continent. Areas of Gilgit-Balistan remained under the direct and indirect authority of formerly Princely State of Jammu and Kashmir.<sup>63</sup> At the time of Partition of Sub-Continent and prior to 15 August, 1947, the State of Jammu and Kashmir was administratively divided into following entities,

- 1 Jammu
- 2 Kashmir
- 3 Ladakh
- 4 Gilgit

The State of Jammu and Kashmir allowed appointment of a political agent to the British Government of India under an accord in 1877 A.D. This accord was executed in order to safeguard the possible threat of aggression and Russian advance in the region. This Political agent was withdrawn in 1881 A.D. then in 1889 A.D. agency was re-established and handed over its control to the British Resident. The areas under this agency were, Wazarak Gilgit, State of Hunza, Nagar, Punial, Yaseen, Koigaz, Ashkoman and Chilas.

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<sup>63</sup> Nazir Naji, '64 Sal mazeed nahi' *Daily Jang Urdu* (Karachi, 7 April 2012)

Gilgit was granted to the British for 60 years under a lease deed signed on 26<sup>th</sup> March 1935 by the State Maharaja Hari Singh. The administration of the areas was controlled by the British Government in terms of the said lease-deed<sup>64</sup>

On 1<sup>st</sup> August 1947 after the partition decision of Indian sub-continent into two new dominions of Pakistan and India, these areas were restored to the Government of the State of Jammu and Kashmir and resultantly the areas of Gilgit-Baltistan was made the third province of the state named as "*Frontier Province of the State of Jammu and Kashmir*". Then Gilgit-Baltistan was divided into Wazarat Gilgit and Wazarat Ladakh for administrative purposes. Brigadier Ghansara Singh of the State Army was appointed as Administrator<sup>65</sup>

In the joined rule of British and Dogras, Gilgit Wazarat had no representation in the Jammu and Kashmir state Assembly, while Ladakh Wazarat had five representatives<sup>66</sup> in the State Assembly. The state Assembly held elections in following years 1934, 1937 and 1941. At last the State Assembly was terminated in year 1947. Under Maharaja Hari Singh in 1934 the representatives of Northern Areas were included in the State Legislative Assembly (Parjha Sabha). The members from Northern Areas were Raja Fateh Khan from Skardu, Mr Ahmed Ali Khan from Kargil, Raja Raza Ahmed of Gilgit Wazarat and Muhammad Jawwad Ansari from Shumali Wazarat<sup>67</sup>

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<sup>64</sup> Brig. Ghansara Singh, *Gilgit 1947 CE Sa Pablay* (Sherbaz Ali Khan Barcha tr, Hami Sara Publishing Network Gilgit 2002) 38

<sup>65</sup> [1993] PLD 14 Azad J&K 1

<sup>66</sup> Engr. Wazir Qalba Ali, *Qadam Qadam Baltistan* (K-2 group of publications 2002) 66

<sup>67</sup> Saahm Aslam Ansari, 'Gilgit has remained part of Kashmir' *Dawn Newspaper* (Karachi, 4 March 2006)

According to the censuses of Indian Government in 1911, 1921, 1931 and 1941 the District Gilgit, District Ladakh, and Political Agency of Gilgit are reported and mentioned as administrative units of the State of Jammu and Kashmir<sup>68</sup>

It is also clear from the first ever land revenue record of the State of Jammu and Kashmir in 1935 that Baltistan, Diamir and Gilgit sub-Division were under the administration of the State of Jammu and Kashmir<sup>69</sup>

According to the Survey of Pakistan maps and the one printed by the Oxford Atlas/World Atlas Bartholomew, 1985 also from the Historical Atlas of World (1965 USA) under the Mughal, Durrani, Sikhs and Dogra rules the vicinities of the Gilgit and Baltistan have been shown as a component of the State of Jammu and Kashmir. Furthermore, the Encyclopedia Britannica as well as World Bank and UNO official maps too demarked these areas in the State of Jammu and Kashmir<sup>70</sup>

Following the lease deed of 29<sup>th</sup> March 1935 with British Government the Jammu and Kashmir State withdrawn the state forces from Gilgit. The Gilgit Scouts under British officers were recruited and took the responsibility of law and order and security of the Gilgit Agency.<sup>71</sup>

After the announcement of partition plan of united India and before the emergence of new dominions of India and Pakistan the above mentioned lease agreement was cancelled and British government handed over the leased territories to the Maharaja of the State. The Maharaja Hari Singh Dogra sent his governor Ghansara Singh to this third province of the

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<sup>68</sup> [1993] PLD 20 Azad J&K 1

<sup>69</sup> *ibid*

<sup>70</sup> Saalim Aslam Ansari, 'Gilgit has remained part of Kashmir' *Dawn Newspaper* (Karachi, 4 March 2006)

<sup>71</sup> Dr. Ahmed Hasan Dani, *History of Northern Areas of Pakistan* (Sang-e-Meel Publications Lahore, 2001) 290, 294



State of Jammu and Kashmir Ghansara Singh was from the family of Maharaja Hari Singh who later wrote a book compiling the historical accounts Gilgit Liberation struggle with a title 'Gilgit before 1947'<sup>72</sup>

Bakrami Calander was introduced and the Statute regarding Gilgit Souts 'Gilgit Scout Law (Act No XVI) of 2004 Bakrami was promulgated and Rambhur Penal Code (R P C) was enforced for the prosecution of GB citizens under the rule of Rambhur Singh of Jammu and Kashmir<sup>73</sup>

## 2.5 GILGIT-BALTISTAN UNDER THE BRITISH GOVERNMENT

In the wave of colonialism under the flag of East India Company the British India government extended its colonial arms to this region realizing its strategic importance. The political and economic development in the Russia and China in 19<sup>th</sup> century twisted British India ruler's interest in the region<sup>74</sup>. They attracted towards this region to check their political, military and economic rivals from this very important junction point. Following the pattern of North-Western Frontier Region (Tribal Areas) the British rulers wanted to make this region another Buffer Zone.

In 1877 under the charge of British political agent the political agency of Gilgit was established, which was withdrawn after couple of years on the condition of paying allegiance to the British agent. The local Rajas, Princes including Chieftains of Hunza, Nagar, Yasin, Punyal, Ishkoman and Gupis were made nominally independent for paying allegiance. All those areas of Gilgit-

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<sup>72</sup> Saalim Aslam Ansan, 'Gilgit has remained part of Kashmir' *Dawn Newspaper* (Karachi, 4 March 2006)

<sup>73</sup> *ibid*

<sup>74</sup> M. Amir Rana & Mujtaba Rathore, *Northern Areas: Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Niganshat Publishers 2007) 8

Balistan which remained under the British rule were isolated from the affairs of rest of the State of Jammu and Kashmir. The local Rajas, Princes and Chieftains administered their areas.<sup>75</sup> However, the 1935 lease agreement of Gilgit Agency for 60 years was cancelled on the departure of Colonial rulers from the sub-continent.<sup>76</sup>

## 2.6 THE GOVERNMENT OF INDIA ACT 1935

This Act was considered one of the most important and comprehensive piece of legislation. This Act was meant for granting provinces autonomy of British India and establishing Federation of India including both British India and princely states. It was proposed that a bicameral legislation system would be adopted constituting the Council of States (Upper House) and the Federal Assembly (Lower House). The Act introduced direct election system through adult franchise.<sup>77</sup>

Dyarchy was maintained in the center and a federal court of India was also established. The autonomy of provinces of British India was subject to the limitations in shape of important powers vested in Governor of the province and the power of suspension of provincial government by the British Authorities. The theme of establishment of Indian Federation didn't implement in physical due to opposition of princely states. The Act of 1935 failed in satisfying the political leaders of India. Indian National Congress opposed the Act because they wanted a unitary government system instead of a federation and that all the powers were

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<sup>75</sup> Korbelt Josef, *Danger in Kashmir* (Princeton University Press, USA 1966) 9

<sup>76</sup> M. Amir Rana & Mujtaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Nigarishat Publishers 2007) 9

<sup>77</sup> Hamid Khan, *Constitutional and Political History of Pakistan* (Oxford University Press, 2001) 31

concentrated in the hands of British appointed Viceroy and governors of the provinces Individual Liberties and a workable dominion status were not guaranteed in the Act

It was expected that the princes would join the Federation on following terms, that the Prince would select his state's representative for the federation and there would be no pressure on Princes to democratize their states organs and allow elections within for state representatives The Princes would enjoy more weightage The upper house of the federal legislature, the Council of State would consist of 60% elected from British India and 40% nominated by the rulers of the princely states The lower house of the federal legislature would consist of 67% elected by the legislative Assemblies of the British Indian provinces and 33% nominated by the rulers of the princely states<sup>78</sup>

Though the Government of Indian Act didn't come in to force in full however, it provided a base to the future constitutions of the two Dominions

## 2.7 PARTITION PLAN

The division plan of Indian sub-continent in to two new dominions was announced on 3 June 1947 by the then viceroy Mountbatten and 15 August 1947 was also pronounced to be the day of partition

Initially the political leaders of the India accepted the plan which hadn't decided the fate of princely states On 3<sup>rd</sup> June the Lord Mountbatten suggested the Indian princely states to join any of the two newly formed dominions and opposed the idea of remaining independent<sup>79</sup>

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<sup>78</sup> Hamid Khan, *Constitutional and Political History of Pakistan* (Oxford University Press, 2001) 35

<sup>79</sup> Sankar Ghose, *Jawaharlal Nehru, A Biography* (1993) 181

There were 560 Princely States in the Indian sub-continent and their fate was hanging in the balance. All of these princely states were autonomous internally while the defense and foreign affairs were in the hands of central British Government. The latter was entitled to control and command the internal affairs of any state in case of huge mismanagement and incapacity.<sup>80</sup>

## 2.8 ANALYSIS OF PARTITION PLAN

### 2.8.1 RESTORATION OF THE RIGHTS OF STATES

In 1946 the statement of cabinet mission affirmed that "paramountcy can neither be retained by the British Crown nor transferred to the new Government."<sup>81</sup> Consequently, the question regarding the paramountcy ended with "The Indian Independence Act 1947" of which the Article 7 laid down that "suzerainty of His Majesty over the Indian States lapses." The impact of this legal proposition after the British withdrawal from India was that the Princely States became independent, free and sovereign under "*stricto sensu*" and retained no legal compulsion for joining any of the two new Dominions.<sup>82</sup>

Demands of the both Muslim League and Congress were taken into account. Thus separate states were planned looking at Muslim League wishes and the unity of India was preserved by making Pakistan small as much as possible. The Lord Mountbatten suggested the following guiding principle "Normally geographical situation and communal interests and so forth will be the factors to be considered."<sup>83</sup>

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<sup>80</sup> Ijaz Hussain, *Kashmir Dispute: an International Law Perspective* (Chair on Quaid-i-Azam and Freedom Movement, NISP, Quaid-i-Azam University Islamabad, 1998) 4

<sup>81</sup> Sardar M. Abdul Qayyum Khan, *The Kashmir Case* (Al-Mujahid Academy, Rawalpindi Oct. 1992) 48

<sup>82</sup> Government of India Publication, *Indian States* (White paper 1948) 160

<sup>83</sup> K. Sarwar Hassan, *Pakistan and the United Nations* (Manhattan Publishing Co. New York, 1960) 80

A commission under the Sir Cyril Radcliff was sanctioned to bring a report of borders between the two dominions. Two non-contiguous territories of the East Pakistan (present Bangladesh) and West Pakistan alienated geographically by India give birth to a new dominion of Pakistan while with Hindu majority regions of British India and large new dominion of India was framed. Both the new dominions of India and Pakistan adopted "The Government of India Act 1955" as legal framework.

### 2.8.2 THE CASE OF JUNAGADH & HYDERABAD

By 15 August 1947, all princely States excluding few states like Hyderabad, Junagadh and Kashmir decided to accede of the dominions Pakistan or India according to British partition plan. The Hindu majority State of Junagadh had 80% Hindu population with Muslim ruler. The State of Junagadh announced state's accession to Pakistan which was accepted positively.<sup>44</sup> Lord Mountbatten the then first Governor General of India warned Mohammad Ali Jinnah regarding the acceptance of accession of Junagadh. He stated it was "utter violation of principles on which the Partition of India was agreed upon and affected."<sup>45</sup>

The Government of India denounced the accession specifically on the ground that Junagadh was geographically contiguous to India and that the majority of Junagadh's population was Hindu.

The cases of Jodhpur and Hyderabad were similar to the Junagadh, where the rulers of the states wanted to go opposite to the principle of Partition but they were restrained from doing

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<sup>44</sup> Ijaz Hussain, *Kashmir Dispute: an International Law Perspective* (Chair on Quaid-i-Azam and Freedom Movement, NISP, Quaid-i-Azam University Islamabad, 1998) 5

<sup>45</sup> K.Sarwar Hassan, *Documents on the Foreign Relations of Pakistan, The Kashmir Question* (ed. Karachi Institute of International Affairs, 1966) 17

so. Another loss was that the Muslim League wanted to annex the entire state with Pakistan which had predominantly Muslim majority for instance, the provinces of Punjab and Bengal were predominantly Muslim majority provinces but they were divided according to Partition principle rejecting desires of Muslim Leaders <sup>86</sup>

### 2.8.3 THE CASE OF KASHMIR

The case of the State of Jammu and Kashmir was dealt arbitrarily, ignoring the principle of partition altogether. This State had Muslim majority comprised of 78% of total population. There are multiple factors which beside regional linkage, religious attachments, geographic and natural bondage with the state of Pakistan <sup>87</sup>. Historically, Muslims had governed Kashmir from 14<sup>th</sup> century onward till early 19<sup>th</sup> century.

Under geopolitical compulsion the ruling class of Kashmir preferred to remain independent without acceding to any of the new dominions following the lapse of British Paramountacy <sup>88</sup>. The Maharaja's opinion was right to some extent that with the termination of British paramountacy Indian States are legally independent in all respect <sup>89</sup>.

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<sup>86</sup> Ijaz Hussain, *Kashmir Dispute: an International Law Perspective* (Chair on Quaid-i-Azam and Freedom Movement, NISP, Quaid-i-Azam University Islamabad, 1998) 6

<sup>87</sup> *ibid*,

<sup>88</sup> N D Palmer, *The Indian Political System* (Houghton Mifflin Co Boston, 1961) 88-89

<sup>89</sup> Suddepto Adhikan and Mukul Kamle, 'The Kashmir: An Unresolved Dispute Between India and Pakistan' (Geopolitics Quarterly, Winter 2010) Volume 6, No. 4, 71

## 2.8.4 GEOGRAPHICAL CONSIDERATIONS & ACCESSION

The viceroy in his address to the representative conference of the States on July 25, 1947 said, *“Though the rules of the States are legally at liberty to link up with either of the Dominions, there are certain geographical compulsions which cannot be avoided”*<sup>80</sup>

The State of Jammu and Kashmir was geographically inclined towards West Pakistan. It was linked to the rest of the world through West Pakistan's territory. The Cultural affinity, linked economic and communication means as well as overwhelming Muslim majority of the State wanted accession to Pakistan.<sup>81</sup> The Maharaja offered Standstill Agreement to Pakistan and India the former signed it on 16<sup>th</sup> August 1947. It was for provision and continuance of commercial and economic activities in addition to link Kashmir with the outside world.<sup>82</sup>

The Maharaja had tried and urged the Indian leaders to sign the Standstill Agreement but they rejected it and forced him to accede to India. On the other hand there was clear apprehension in the mind of Maharaja that the Muslim population of the State would revolt. The people Northern Kashmir comprising Gilgit-Baltistan had stated revolt and some part of the state gone out of control of the state police.<sup>83</sup>

The Muslim Rule over Kashmir extends over 500 years. The State of Jammu and Kashmir in whole never integrated into the British Indian Empire and was among 560 Princely States. They were to decide upon the transfer of power in 1947, whether to join India or Pakistan.

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<sup>80</sup> Sardar M. Abdul Qayyum Khan, *The Kashmir Case* (Al-Mujahid Academy, Rawalpindi Oct. 1992) 51

<sup>81</sup> Banat Gul Afridi, *Baltistan in History* (Emjay Books International Peshawar, 1988) 223

<sup>82</sup> R.C. Mayfield, *The Geographical Review: A Geographical Study of Kashmir Issue* (1955), Vol. 45, No. 2, 178-179

<sup>83</sup> Suddepto Adhikari and Mukul Kamle, 'The Kashmir: An Unresolved Dispute Between India and Pakistan' (Geopolitics Quarterly, Winter 2010) Volume 6, No. 4, 72

<sup>94</sup>Before the partition the then Indian Congress president went to Kashmir to persuade the Kashmiri ruler to join Indian Legislative Assembly moreover, the Maharajas of Kapurthala, Patiala, Faridkot and leaders of Hill States tried to convince the Maharaja of Kashmir but all failed. The Viceroy Lord Mountbatten paid visit to Kashmir in the last days of partition and apparently he suggested the Kashmiri leader to join one of the two dominions according to the wishes of Kashmiri people. Gandhi also had a successful visit to Kashmir following the Mountbatten visit <sup>95</sup>

In July Muslims of the State were ordered to deposit all the arms in their possession to the State and later in mid of August the bloodshed started on the patterns of ethnic-cleansing similar to the East Punjab. On 21<sup>st</sup> October 1947 the pro-Indian Sheikh Abdullah spell out the truth in his New Dehli statement that,

*"The present trouble in Poonch, a territory of Kashmir was caused by the unwise policy adopted by the state. The people of Poonch had started a people's movement for the redress of their grievances."*

The Poonch and Jammu Muslim had been ordered to abandoned their homes many people were cold-bloodedly massacred even entire villages were set on fire. Commenting on the situation of Muslims of Jammu Ian Stephens stated that,

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<sup>94</sup> Ijaz Hussain, *Kashmir Dispute: an International Law Perspective* (Chair on Quaid-i-Azam and Freedom Movement, NISP, Quaid-i-Azam University, Islamabad, 1998) -

<sup>95</sup> *ibid*



*" half a million or so, had almost totally disintegrated in the autumn of 1947. About 200,000 simply vanished being presumably butchered or killed by epidemics and exposure while seeking to get away, the rest had fled into Pakistani Punjab."*<sup>96</sup>

It is alleged that the partition of Indian sub-continent was done in so haste by the British which cause drastic effect on the entire region even today the unsolved partition issues are faced by the two countries i.e India and Pakistan. British rush led to cruelties, violations and disaster. The new dominions were left to control the law and order issues beside the issue of refugees, governance and due to collapse of law and order situation in the region people died in riots even massacre took place at large scale.<sup>97</sup>

In England the Conservative lobbies believe the moment of partition of Indian sub-continent was the cessation of British Empire as a world power. As Curzon's maxim,

*"The loss of India would mean that Britain drop straight away to a third rate power."*<sup>98</sup>

## 2.9 THE RADCLIFFE BOUNDARY COMMISSION

The Radcliffe Boundary commission was named on its chairman named Sir, Cyril Radcliffe. When British had considered withdrawal from India, transferring power, they concluded that in order to define new international entity a new boundary was necessary. To meet the political interest of the British rulers coupled with immense political pressure of Congress Leaders the Radcliffe Commission failed to draw a geographical sound line delineated and demarcated.

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<sup>96</sup> Ian Stephen was an editor of a prestigious New paper "The Statesman", Ian Stephen, *Horned Moon* (London, Chatto and Windus 1953) 138

<sup>97</sup> Richard Symonds, *The Making of Pakistan* (London, 1950) ~4

<sup>98</sup> Dennis Judd, *The Lion and the Tiger: The rise and Fall of the British Raj 1600-1947* (Oxford University Press New York 2010) 138

according to accepted international procedure. This resulted in series of wars after partition of Indian sub-continent i.e in 1948, 1965, 1971 and 1999

In the aftermath of World War Two British India had become a political and symbolic liability as well as an economic problem. These factors combined with domestic political considerations

### 2.9.1 BOUNDARY COMMISSIONS PROCEDURE

The boundary commission started working seriously in the summer of 1947 with the Indian leaders. Two commissions were made one for Bengal and one for Punjab both were chaired by the Sir Cyril Radcliffe himself. Each commission was comprised of four Judges, two from Congress side and two from Muslim league side. This commission ended up in deadlock due to strong political biases leaving Radcliffe sole responsible to make this difficult task over. The commission's term of reference directed it to "demarcate the boundaries of the two parts of the Punjab on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslim. In doing so, it will also take into account other factors."

Soon after the announcement of Radcliffe Award all parties complaint that Sir Radcliffe had not taken the right "other factors" into account.<sup>99</sup> Sir Radcliffe arrived India on 8<sup>th</sup> July and met with Mountbatten and other Indian leaders there he learned that he had to complete the task of boundary commission before 15 August. He protested and warned that such a restricted time could wreck the end results. Furthermore, he was completely ignorant of

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<sup>99</sup> Lucy Chester, 1947 Partition. Drawing the Indo-Pakistani Border  
[http://www.unc.edu/depts/diplomat/archives\\_roll/2002\\_01-03/chester\\_partition/chester\\_partition.html](http://www.unc.edu/depts/diplomat/archives_roll/2002_01-03/chester_partition/chester_partition.html),  
accessed 14 October 2014

information and procedures necessary to draw a boundary that were well established by 1947. There was no such expert advisor available to him, it was also impossible to gather the survey and other information vital to a well-informed decision.

The Radcliffe Award, started from the border of Kashmir State south along the Ujh River, leaving on tehsil of Gurdaspur District to Pakistan and awarding the rest to India. Where the Ujh met Ravi the boundary followed it southwest until it met the existing administrative line dividing Amritsar District from Lahore District. Then drawing a line from Ferozepore, Montgomery Districts the Radcliffe line ended to the border of Princely state of Bahawalpur. The two most controversial elements of this line involved Gurdaspur and Ferozepore. Pakistani critics interpreted Radcliffe's decision to grant most of Gurdaspur District which was Muslim Majority District to India as an attempt to provide India with a land link to Kashmir. This had huge implications as two out of the three roads leading to Kashmir cross through Gurdaspur District and was shortest route to Kashmir. The third way was from Leh which was hard and long route. In early August leaks Gurdaspur and Ferozepore were going to Pakistan but the Radcliffe allotted them to India.<sup>100</sup>

Radcliffe submitted his award to Mountbatten on 12 August as demanded by the Nehru and Jinnah that it should be announced before August 15. Mountbatten had his way choosing not to release the award until August 16, when he discussed it with the Indian and Pakistani leaders.

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<sup>100</sup> Lucy Chester, 1947 Partition: Drawing the Indo-Pakistani Border  
[http://www.unc.edu/depts/diplomat/archives\\_roll/2002\\_01-03/chester\\_partition\\_chester\\_partition.html](http://www.unc.edu/depts/diplomat/archives_roll/2002_01-03/chester_partition_chester_partition.html),  
accessed 14 October 2014.

at a meeting in New Delhi Pakistani leadership leveled accusations on Nehru and Mountbatten had pressured Radcliffe to change his line <sup>101</sup>

## 2.9.2 IMPACT ON THE AWARD

The partition of Indian sub-continent brought extreme violence and one of the largest migrations in the human history. Violence was the most dramatic repercussion of partition but the boundary award contributed to other disruptions like long-term border tension, infrastructure problems and the lasting conflict over Kashmir. The boundaries turned out to be restless divisions and in both the 1965 and 1971 wars India and Pakistan. The Radcliffe Award cut Punjab's well-developed infrastructure systems, disrupting road, telephone and communications and vital irrigation system.

In 1947 Kashmir was a princely state, whose ruler was entitled to choose between India and Pakistan. Radcliffe had no mandate over the Kashmir state. However there are many links between Radcliffe and Kashmir. It is alleged that Radcliffe awarded India certain areas of Northern Punjab as a strategic corridor to Kashmir <sup>102</sup> He is reported to have confessed later that he could have done a better job had he been given two years, Mountbatten gave him forty days <sup>103</sup>

## 2.10 THE INDIAN INDEPENDENCE ACT 1947

Before withdrawal of British from India some 40% of the areas were covered by the Princely States which were in alliance with the British Government in India. These Princely States were

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<sup>101</sup> *Jinnah Papers*, Appendix 1, Vol. 5, 378

<sup>102</sup> Lucy Chester, *The 1947 Partition: Drawing the India-Pakistan Boundary*, [www.unc.edu/depts/diplomat/archives\\_roll/2002\\_01-03/chester\\_partition\\_chester\\_partition.html](http://www.unc.edu/depts/diplomat/archives_roll/2002_01-03/chester_partition_chester_partition.html)

<sup>103</sup> Andrew Roberts, *Eminent Churchillians* (London: Widenfeld & Nicolson, 1994) 91

responsible for their internal affairs and their external affairs were dealt by British Government. Due to certain arrangements with these Princely States British couldn't partitioned them nor grant them independence. Therefore, with the enforcement of Indian Independence Act 1947 British abandoned the suzerainty of the British Crown over the Princely States and the rulers of these states were left fully independent to decide about their future.<sup>104</sup>

Indian Independence Act was promulgated in July 1947 to shape the 3<sup>rd</sup> June Partition Plan. The main provision of this Act was establishment of two Dominion States on 15<sup>th</sup> August, 1947. The dominion status means both the states would enter into commonwealth system, the states owe their allegiance to the British Crown though the British Crown cannot interfere in day to day affairs of the states.<sup>105</sup> The legislatures of both the states will have all powers to make laws for the respective states and the Government of India Act 1935 was adopted as an interim constitution of these states subject to changes due to Indian Independence Act 1947.

The princely states and their arrangements with the British was said to come to an end and they were set free to have new arrangement with any of the two Dominions. They shall be released from their official commitments and treaty relationships with the British Empire.<sup>106</sup>

## **2.11 END OF THE PRINCELY STATE OF JAMMU AND KASHMIR**

The occupation of Kashmir by the Sikhs and then rule of Dogras after a notorious Amritsar Sale deed or Treaty the Muslim population caught by a great tragedy. A long era of slavery and

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<sup>104</sup> Hamid Khan, *Constitutional and Political History of Pakistan* (Oxford University Press, 2001) 68

<sup>105</sup> *ibid* 67

<sup>106</sup> Hamid Khan, *Constitutional and Political History of Pakistan* (Oxford University Press, 2001) 69

misfortune shadowed Muslims majority of the state under this political change. So many religious and social restrictions, heavy financial burdens have been witnessed in the virtual bondage for this period of their history. The year 1931 proved to be the starting point of Kashmiris revolt against Dogra rulers<sup>107</sup>

From the very beginning since March 16, 1846 the State of Jammu and Kashmir has remained a “*ramshackle State*”, facing huge political instability because the Muslim community and the autonomous entities ruled by the local Mir, Rajas etc within the State had never accepted the rule of Maharajas<sup>108</sup>

In 1946 when the Muslim League’s decided of not joining the Constituent Assembly, almost all the Muslim Rulers, Nawabs and Dewans got divided with the Princes of the different States<sup>109</sup>. Maharaja Hari Singh of the Jammu and Kashmir state was silent on the accession issue in the beginning due to vulnerable position of his state having Muslim in majority and other ethno-territorial dynamics. The Maharaja sought recognition of his state as a neutral independent state between India and Pakistan like Switzerland<sup>110</sup>. As a matter of fact his Excellency the Maharaja had lost his authority and had nominal control over the entire Northern Frontier areas of the State including present day Gilgit-Baltistan region<sup>111</sup>

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<sup>107</sup> Sardar M. Abdul Qayyum Khan, *The Kashmir Case* (Al-Mujahid Academy, Rawalpindi Oct. 1992) 42

<sup>108</sup> *ibid*

<sup>109</sup> Sardar M. Abdul Qayyum Khan, *The Kashmir Case* (Al-Mujahid Academy, Rawalpindi Oct. 1992) 46

<sup>110</sup> Meht Chand Mahajan, *Looking Back Bombay* (Asia Publishing House, Digitalized by Google at the University of Michigan 1963) 162

<sup>111</sup> Mindu Rai, *Hindu Rulers: Muslim Subjects: Islam, Rights and the History of Kashmir* (Princeton University Press 2004) 69

### 2.11.1 DIVISION OF THE PRINCELY STATE OF JAMMU & KASHMIR STATE

Soon after the withdrawal of British from the throne of Indian sub-continent developed severe political crisis in the whole region. In the princely State of Jammu and Kashmir the Muslim majority subjects were unhappy with the decision of Hindu Maharaja therefore, they revolted against the state and state authority<sup>112</sup>

The former State of Jammu and Kashmir divided by the "*Line of Control*" (LOC) formerly named as "*Cease-Fire Line*" (CFL) between State of Pakistan and India. This line was drawn soon after the cessation first war of 1948 over Kashmir between India and Pakistan. This cessation took its effect from 1<sup>st</sup> January 1949 under the auspices of UN. Later, another essential part from the Ladakh district of the former princely State of Jammu and Kashmir was captured by the China which came in to the notice Indians in 1955. In 1959 China further advanced in the Ladakh district which ended in India-China war of 1962. The boundary line between China and India across Ladakh is called "*Line of Actual Control*" (LAC)<sup>113</sup>

A pro-Pakistan rebellion, organized successful revolt against tyrant Dogras and overthrew the Dogra Governor Ghansara Singh on 1<sup>st</sup> November 1947. The region remained under local Interim Azad Government for sixteen days and then Pakistan took over the control the administration of the region<sup>114</sup>. In history the region of G-B remained for some time under the

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<sup>112</sup> ibid 60

<sup>113</sup> ibid 61

<sup>114</sup> Brig Ghansara Singh, *Gilgit 1947 C.E Sa Pablay* (Sherbaz Ali Khan Barcha tr, Hami Sara Publishing Network Gilgit 2002) 58

Dogra Raj. Therefore, it looks exceedingly illogical to tie up the fate of Gilgit-Baltistan and its entire population with the long pending Kashmir dispute <sup>11></sup>

## 2.12 CONCLUSION

The known history of Gilgit-Baltistan traced back to Stone Ages, when people used to live in rocks. There are many sample of rock arts scattered in this region. The neighboring powerful rulers attracted towards this region and brought it under their Empire for different causes. Mughals, Afghan Durranis, Sikhs, Dogras and British ruled over this region for different period in history. The Modern history of G-B is well compiled by the Dogra rules, British agents and travelers. In the time of rise of the Great British Empire this region gained much attraction for the world powers for the dominance over one another, especially the old rivals' i.e. British and Russians. Gilgit Agency was taken on lease by the British rulers twice in the history from the Maharaja of the State of Jammu and Kashmir but with the withdrawal from the Indian sub-continent the British also withdrawn from this region. The independence Act 1947, Boundary Commission and Radcliffe award seriously affected the position of former princely state of Jammu and Kashmir that resulted in division of the state with bloody catastrophes.

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<sup>11></sup> Syed Ansar Hussain, 'Gilgit-Baltistan in limbo' *Dawn Newspaper* (08 January 2013)  
<<http://www.dawn.com/news/777135/gilgit-baltistan-in-limbo>> accessed 20 August 2013



## CHAPTER III

# GILGIT-BALTISTAN AFTER THE PARTITION OF SUB-CONTINENT

### 3.1 INTRODUCTION

In this chapter facts regarding the Gilgit-Balistan after the partition of Indian sub-continent with other related topics will be analyzed. The development in the region in the year 1947 with the independence struggle of Gilgit-Balistan will be described. The formation of interim government in Gilgit-Balistan after successful freedom struggle and the developments related to accession with Pakistan will be critically analyzed. Furthermore, the position and governance mode after 1947 of the government of Pakistan on Gilgit-Balistan will be elaborated.

### 3.2 YEAR 1947 SCENARIO

In 1947 the ruling Maharaja of Kashmir was Maharaja Hari Singh, who got the throne in 1925 and he was reigning when the partition of British India was concluded. Kashmir was at fire and the internal revolts had been stated in different parts of the State. Poonch, Wazarat Gilgit, Wazarat Balistan and Muslim majority areas stood against the oppressive actions of the Maharaja.<sup>116</sup> The movement took speed after the incident of August at Poonch when Maharaja's army opened fire on the demonstrators who were gathered for joining Pakistan.

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<sup>116</sup> B. Stein, *A History of India* (1st ed., Wiley Blackwell Oxford, 1998) 368

Eventually, the movement took the shape of Liberation movement and on 24 October an independent government of "*Azad Kashmir*" was formed

The Muslim majority population of 78% with a Hindu ruler was reluctant to join either of the two new dominions but according to the partition plan it had to join one to the two dominions taking care of geographical contingencies and wishes of people<sup>117</sup> Maharaja's "standstill agreement" was signed by the Pakistan but not by the India. This agreement was executed with the former to protect and continue the trade, travelling, communication, postal service and similar other services<sup>118</sup>

In October Muslims of the State with the Tribal forces started a full fledged revolution against the Maharaja. The State police failed to stop the revolutionary forces and they reached to the capital Srinagar. The Maharaja Hari Singh feeling the imminent fall of Srinagar fled to India for some sort of military help from Indian Government but the Governor-General of India Mountbatten linked his assistance with the condition of accession with India. When the Maharaja of Kashmir executed the Instrument of Accession on 26<sup>th</sup> October 1947 the Indian army landed in Kashmir and forced the tribal Muslims forces to withdraw from the liberated areas of the State<sup>119</sup>. On 27<sup>th</sup> October 1947 the Governor-General of India Lord Mountbatten stated that, "*as soon as the law and order have been restored in Kashmir and her soil cleared of the invaders.*" On the other side Pakistan condemned the accession and disapproved it challenging the authenticity of the accession with India<sup>120</sup>. Pakistan declared the accession a

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<sup>117</sup> Banat Gul Afridi, *Babistan in History* (Emjay Books International Peshawar, 1988) 222

<sup>118</sup> Victoria Schofield, 'Kashmir: The origins of the dispute' *BBC News* (UK Edition, 16 January 2012)

<sup>119</sup> Suddepto Adhikan and Mukul Kamle, 'The Kashmir: An Unresolved Dispute Between India and Pakistan' (Geopolitics Quarterly, Winter 2010) Volume 6, No. 4, 73

<sup>120</sup> *ibid*

fraudulent deal and under duress Maharaja's signs were obtained, also in the presence of "The standstill agreement" with Pakistan Maharaja had no right to sign an agreement with India

### 3.3 LIBERATION STRUGGLE IN GILGIT-BALTISTAN

The area of Gilgit-Baltistan remained a flash point to the world powers for their political, military and economic interest throughout in history. Until the pronouncement of 1946 cabinet mission plan the region was under the control of Dogra ruler. When the Great Britain started withdrawn from the Indian sub-continent indigenous populace of Gilgit-Baltistan also decided to liberate themselves from the tyrant ruler, sighting the wave of change and to secure their future. When lease agreement was terminated just before the independence in 1947 and these regions returned back to the Maharaja. The Brigadier Ghansara Singh was appointed as a Governor of Gilgit by the Maharaja. Local Rajas and Mirs rejected him together with the Muslim Officers Gilgit Scouts of the State Army and other forces and they took arms against the Dogras and started liberation struggle. They themselves set a popular revolt against the tyrant ruler of that time and this struggle ultimately got succeed. It was the people of Gilgit-Baltistan, who had fought themselves for the liberation from tyrant Dogras and to become a part of Pakistan like the people of East Pakistan.<sup>121</sup> Gilgit-Baltistan having cent percent Muslim population stood up willingly sensing religious attachment to accede Pakistan.

The Liberation struggle of G-B is somehow similar to the struggle of East-Pakistan. It is well known historical fact that East-Pakistan had played key role in creation of Pakistan and had sacrificed the most for this cause. Like East-Pakistan the people of G-B had sacrificed a lot to get independence from the tyrant Dogra rule and to accede to Pakistan. The story of sacrifices

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<sup>121</sup> Nazir Naji, '64 Sal mazeed nahi' *Daily Jang Urdu* (Karachi, 7 April 2012)

is not over yet, G-B is still sacrificing for the state of Pakistan and its causes. Unfortunately, the way G-B is handled is similar to the case East-Pakistan, the power of decision about the future of this region is in the hands of the people who haven't sacrificed or less sacrificed for the creation and cause of Pakistan.<sup>122</sup>

This territory was as large as the province of Khyber Pakhtun Khwa (KPK) but was not awarded to Pakistan by the Radcliffe Boundary Commission even these areas were not freed by the foreign tribes men as like AJ&K. The struggle of people of Gilgit-Baltistan was purely indigenous in nature.<sup>123</sup>

### 3.3.1 GILGIT REVOLT

Gilgit had a garrison with less than two companies at the time of partition while the Head Quarters (HQ) was 54km from Gilgit at Bunji. The Battalion Commander was Lieutenant Colonel Abdul Majid Khan. The Gilgit Liberation struggle was led by the local officers and Soldiers of Gilgit Scouts. Among those liberation heroes Captain (Late Colonel) Mirza Hassan Khan, Major Ehsan Ali, Major (later Brigadier) Mohammad Aslam Khan, Subedar Major (later Captain) Babar Khan, Subedar (later Group Captain) Shah Khan, Subedar Sher Ali, Subedar Safi ullah and Bakhtawar Shah are well known for their heroic acts and courage.<sup>124</sup>

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<sup>122</sup> *ibid*

<sup>123</sup> M. Ismail Khan, 'Gilgit-Baltistan autonomy' *Dawn Newspaper* (Karachi, 09 September 2009) <<http://www.dawn.com/news/843990/gilgit-baltistan-autonomy>> accessed 05 June 2013

<sup>124</sup> Engr. Wazir Qalba Ali, *Qadam Qadam Baltistan* (K-2 group of publications 2002) 74

In late July 1947 C E Brigadier Ghansara Singh arrived as a new Governor by the Maharaja to the region had no idea of the serious situation. After a dreadful revolt against the Dogars, the locals took control of the areas and compelled the governor Ghansara Singh to surrender.<sup>125</sup>

It was 1<sup>st</sup> of November 1947 when the local liberation army announced the Independence and since then every year this day is celebrated with high zeal and spirit. After the Independence the local supreme council of elders decided to accede to Pakistan and asked the Government of Pakistan to their representative to take control these areas and protect the territory. Sardar Muhammad Alam Khan (Naib Tehsildar) was sent by the Pakistan after acknowledging the situation, Sardar Muhammad Alam reached Gilgit as a first Political Agent representing Pakistan to these areas on 16<sup>th</sup> of November, 1947.<sup>126</sup>

An English Officer William Alexander Brown, known as Major Brown and a Captain Matheson of the Gilgit Scout played an important role in liberation of Gilgit-Baltistan. He wrote an autobiography titled as 'the Gilgit Rebellion' and terms the liberation of Gilgit as rebellion in his book. Major Brown was awarded (Member of the Order of the British Empire) MBE Military by the British government in July 1948 and posthumously awarded highest civilian award Sitara-e-Pakistan for his remarkable services on 23 March 1998. He had written many letters to Pakistani Authorities in Peshawar to take the control of newly liberated territory of Gilgit-Baltistan. He was present in the Pakistan's flag hoisting ceremony on 3<sup>rd</sup> November

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<sup>125</sup> Brig. Ghansara Singh, *Gilgit 1947 C E Sa Pablay* (Sherbaz Ali Khan Barcha tr, Hanu Sara Publishing Network Gilgit 2002) 57, 58

<sup>126</sup> Brig. Ghansara Singh, *Gilgit 1947 C E Sa Pablay* (Sherbaz Ali Khan Barcha tr, Hanu Sara Publishing Network Gilgit 2002) 61

1947 at Gilgit Scout Garrison. All the State officers were invited in the ceremony and were asked to salute the flag.<sup>127</sup>

### 3.3.2 SIEGE OF SKARDU FORT

Skardu was one of the large Tehsil headquarters of Ladakh district. It was comprised of territories of different Rajas including Skardu, Kharmang, Rondu, Toln and Shiger. These territories or Jagirs were managed by the Rajas even in the rule of Dogras in Kashmir and they had respected and influence over their subjects.

In Baltistan the resentment against the Dogra rule was already in existence among the locals but following the successful Gilgit revolt the people of Baltistan got strength and raised their arms. In summer 1948 Gilgit Scouts merged with "*Azad Forces (Freedom Fighters)*" advanced towards Baltistan via Himalayan passes and with the help of local people succeeded in pushing the State forces towards Ladakh.<sup>128</sup> In Skardu Azad Forces besieged the Dogra forces within cantonment and Kharpocho Fort Skardu.<sup>129</sup> The Dogras were killed at various places in Baltistan in the conflict with the freedom fighters and the left were besieged in the Skardu Fort. This siege prolonged and the reinforcement from the Maharaja was caught iron handily in the way to the Fort by the freedom fighters. Almost 600 besieged Dogras headed by Lieutenant Colonel Sher Jang Thapa understanding the seriousness of situation and rare chance of survival surrendered themselves and subsequently they were given safe passage to

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<sup>127</sup> Major Sikandar Khan, *Liberation of Northern Areas Gilgit & Baltistan* (Army Education Press Rawalpindi 1975) 35

<sup>128</sup> Banat Gul Afridi, *Baltistan in History* (Emjay Books International Peshawar, 1988) 224

<sup>129</sup> Engr. Wazir Qalba Ali, *Qadam Qadam Baltistan* (K-2 group of publications 2002) 101

leave the area. In 1948 on 14<sup>th</sup> August Independence Day was celebrated in Baltistan, coincidentally the same day of Independence of Pakistan<sup>130</sup>

### 3.4 GILGIT-BALTISTAN AS A LIBERATED TERRITORY

The population of Gilgit-Baltistan comprised of collection of various tribes and ethnic factions. These clusters of diversified groups despite lack of fundamental human amenities and severe geographical conditions were living in harmony. After the successful revolt of Gilgit on 1<sup>st</sup> November 1947 they collectively fought against cruel Dogra rule forgetting all other bondages and affiliations<sup>131</sup>

Under the Presidency of Raja Shah Rais Khan of Gilgit and Hassan Khan as Commander in Chief of an Interim Azad Government was framed for the nascent liberated territory of Gilgit-Baltistan<sup>132</sup>. This self-liberated government of Gilgit-Baltistan survived for sixteen days and then the local princes with the Gilgit Scout executed instrument of unconditional accession with the State of Pakistan<sup>133</sup>

They also asked for the immediate assistance from Pakistan for operating and managing the affairs of this fresh liberated Government of Gilgit-Baltistan. A junior non-commissioned officer Sardar Muhammad Alam (Naib Tehsildar) reached Gilgit on 16<sup>th</sup> November 1947 from Pakistan as a Pakistani Political Agent. Initially the impression was given that with the independence of this region local people would be given complete right of governance and

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<sup>130</sup> Banat Gul Afandi, *Baltistan in History* (Emjay Books International Peshawar, 1988) 232

<sup>131</sup> Muhammad Fevzaz, *Sectarian Conflict in Gilgit-Baltistan* (PILDAT Islamabad 2011) 10

<sup>132</sup> Dr. Ahmed Hasan Dani, *History of Northern Areas of Pakistan* (Sang-e-Meel Publications Lahore, 2001) 349

<sup>133</sup> Justice Syed Manzoor H Gilani, 'Gilgit-Baltistan and Azad Jammu and Kashmir Vis-a-vis UN Resolutions and India Pakistan Constitutions' (South Asian Pulse 2009)

<[http://www.sapulse.com/new\\_comments.php?id=1397\\_0\\_1\\_0\\_C](http://www.sapulse.com/new_comments.php?id=1397_0_1_0_C)> accessed 18 September, 2013

there would be no external interference. Later the people of Gilgit-Baltistan found that the entire administration and government officials were brought from Peshawar and the Dogra's State government was replaced by the Pathans.<sup>134</sup>

Critics say that this Independent "Islamic Republic of Gilgit" or "Interim Revolutionary Government" or "Interim Azad Government" of 1947 was not recognized by anyone, neither by the Government of India nor by the Government of Pakistan nor by the Maharaja of the State. Rather it was argued by a fraction of people that on temporary basis Gilgit-Baltistan was handed over to Government of Pakistan by the Government of Azad Kashmir under 1949 Karachi Agreement.<sup>135</sup>

## UO

The Maharaja of Jammu and Kashmir sought support from the Governor General of India for support against local uprising and to retain the territory. On 26<sup>th</sup> October 1947 C.E. the Maharaja wrote to the Governor General of India whether to accede India or Pakistan. The State has borders with both countries. Maharaja sought time to decide about the future of the State. He decided that the State should remain Independent and be wished to build a friendly relationship with both countries. In order to retain the past position, the Maharaja signed a Standstill Agreement with Pakistan. The agreement provided for continuation of Telegraph and Postal Services of the State by the Government of Pakistan on the same terms as in the virtue of the Standstill Agreement.

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<sup>134</sup> Brig Ghansara Singh, *Gilgit 1947 C.E. Sa Pahlaj* (Sherbaz Ali Khan Barcha tr, Hami Sara Publishing Network Gilgit 2002) 74

<sup>135</sup> Saalim Aslam Ansan, 'Gilgit has remained part of Kashmir' *Down Newspaper* (Karachi, 4 March 2006)

<sup>136</sup> Brig Ghansara Singh, *Gilgit 1947 C.E. Sa Pahlaj* (Sherbaz Ali Khan Barcha tr, Hami Sara Publishing Network Gilgit 2002) 78



Maharaja was losing the control over the State and situation for his government was getting worse day by day. He asked Indian government support and end up with accession to India in desperate circumstances because he knew Indians' support is not possible without accession to it.<sup>137</sup> In response of Maharaja's letter, on 27<sup>th</sup> October 1947 the Indian Governor General accepted the accession and stated that the matter of this accession should be treated similar to the policy of accession of any other State and the will of people should also be considered.<sup>138</sup>

When local uprising started in the State and tribal men came to their help the Indian Government knocked the United Nations to mediate the quarrel. The United Nations pushed to ascertain the will of Kashmiris first. In this regard the then Prime Minister of India urged before the United Nations of free poll in Kashmir to ascertain the will of people and to decide the matter of accession accordingly. However, Indian insisted withdrawal of all forces (Tribal forces as well as Azad Forces) from the state prior to referendum.<sup>139</sup>

Under UN auspices ceasefire took place between the two dominions on 1<sup>st</sup> January 1949 and the well accepted plebiscite never materialized rather the relations soured to the extent that both the States faced three wars in 1965, 1971 and in 1999 after the early conflict of 1948. According to Encyclopedia Britannica, "Although there was a clear Muslim majority in Kashmir before the 1947 partition and its economic, cultural, and geographic contiguity with the Muslim-majority area of the Punjab (in Pakistan) could be convincingly demonstrated, the political developments during and after the partition resulted in a division of the region. Pakistan was left with territory that, although basically Muslim in character, was thinly

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<sup>137</sup> *ibid* 79

<sup>138</sup> *ibid* 80

<sup>139</sup> Burton Stein, *A History of India* (Oxford University Press 2010) 358

populated, relatively inaccessible, and economically underdeveloped. The largest Muslim group situated in the Vale of Kashmir and estimated to number more than half the population of the entire region, lay in Indian-administered territory, with its former outlets via the Jhelum valley route blocked<sup>140</sup>

### 3.6 ANALYSIS OF FATA, PATA & FANA (G-B)

Federal Islamic Republic of Pakistanis comprised of four provincial units and the Federally Administered Tribal Areas (FATA) and some other territories which may be integrated with Pakistan

According to the Article 1(2) of “the Constitution of Islamic Republic of Pakistan 1973” describes the territories of Pakistan as, *“The territories of Pakistan shall comprise,*

*(a) The Provinces of Balochistan, the Khyber Pakhtunkhwa, the Punjab and Sindh*

*(b) The Islamabad Capital Territory, hereinafter referred to as the Federal Capital*

*(c) Federally Administered Tribal Areas and*

*(d) Such States and territories as are or may be included in Pakistan, whether by accession or otherwise ”<sup>141</sup>*

Article 1(3) of 1973 Constitution of Pakistan, *“Majlis-e-Shoora (Parliament) may by law admit into the Federation new States or areas on such terms and conditions as it thinks fit ”*

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<sup>140</sup> *Encyclopedia Britannica online* 'Kashmir' (2007)

<<http://www.britannica.com/EBchecked/topic/312908/Kashmir>> accessed 27 March 2013

<sup>141</sup> The Constitution of Islamic Republic of Pakistan,

<<http://www.pakistan.org/pakistan/constitution/part1.html>> accessed 20 November 2013

By virtue of Article 246 of Pakistan's Constitution the tribal areas are an integral part of the State of Pakistan still retaining confederate position partially due to Pakistan's policy or failure to integrate them in the main stream of its polity and partially due to some historical reasons. These areas are still maintain the status of administered territories by the federation and are probable hang on the balance since the Constitution of Pakistan doesn't recognize them as a provincial or merger them into any existing provinces. FATA people don't enjoy the equal status and privileges similar to other provinces.<sup>142</sup> Pakistan instead of upgrading the status of these areas and integrating them with the other units and federation continues to inherit the colonial legacy since partition and patronize these areas via executive fiat.<sup>143</sup>

There exists no such conditional instrument of accession with Pakistan in the case of Gilgit-Balistan like FATA. Tribal Areas acceded to Pakistan with a condition to hold the political autonomy of their region. They only permitted to Pakistan the administration shaping a semi-autonomous status of these areas. There is nothing in the Constitution of Pakistan regarding this conditional instrument of accession therefore, Peshawar High Court has directed to merge these areas in the jurisprudential framework of Pakistan's polity.<sup>144</sup>

The federation of Pakistan exercises its executive authority over FATA, PATA and G-B. The President of Pakistan has been vested immense powers for the administration of FATA, PATA and G-B by the provisions of Pakistan Constitution. The President issues directions to the governor and he is bound to abide by his directions. The President has power to abolish the basic shape and policy towards tribal areas however, before doing so the president must

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<sup>142</sup> Dr Tanq Hassan, 'Regions with constitutional drawbacks' *The News International* (Karachi, 24 March 2009)

<sup>143</sup> *ibid*

<sup>144</sup> *Muhammad Saif-ul-Mulk Nasir Vs Govt of NWFP*, 1990 CLC 560

ascertain the views of the local tribal people as represented in a tribal Jirga and as he considers appropriate<sup>145</sup>

The Constitution speaks less about the political character and participation of tribal areas via their representatives in the parliament. Special reserved seats are there in National Assembly (NA) for FATA. At present FATA has 12 seats in the NA and possess 8 seats in Senate.

The Constitution of Pakistan demands consent and direction of the president to extend any enacted law by the Parliament to FATA, PATA & GB. In this way federal and provincial laws are extended to the tribal areas for the purpose of administration. In order to maintain law and order and peace in the region governor is empowered to make regulations with the consent of the President. The Executive Officers of respective areas fully enjoys the authority and exercises its power over tribal areas. Pakistan's higher judicial forums the Supreme Court and High Courts have no jurisdiction over these areas. It requires special orders by the President or Constitutional reforms for to change the current shape of these areas.

The case of FANA Federally Administrated Northern Areas (Gilgit-Baltistan), FATA and FANA are almost similar both come under the direct control of federal authority through a Federal Minister of Kashmir Affairs and Northern Areas (GB), who is unelected nonlocal having immense powers in the affairs of G-B<sup>146</sup>

Human Rights Commission report pointed out the dual standard and dichotomy of the federation in handling Tribal Areas in comparison to the Northern Areas. Tribal Areas are not

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<sup>145</sup> The Constitution of Islamic Republic of Pakistan,

<<http://www.pakistan.org/pakistan/constitution/part1.html>> accessed 20 November 2013

<sup>146</sup> Dr. Tariq Hassan, 'Regions with constitutional drawbacks' *The News International* (Karachi, 24 March 2009)

completely integrated despite constitutional recognition and political participation through representatives in the parliament and provincial assembly <sup>147</sup>

In a way, since partition of the Subcontinent more or less both regions (FATA & FANA) are being treated in the same way by the federal government. Though Pakistan controlled the administration of G-B at once in 1947, yet the hereditary Mirs or Rajas of the areas were running the administration in practice till 1974 <sup>148</sup>

The Mirs and Rajas of Hunza, Nagar, Skardu, Khaplu, Shigar, Kharmang, Rondu etc had more or less autonomy till 1974 and had control over the administration, judiciary as well as police of their territories. The federal Government of Pakistan keeping in mind the strategic importance of the region kept tight federal control over these regions but until 1974 formally or informally Gilgit-Baltistan was not integrated or allowed to participate in the National forums <sup>149</sup>

Soon after the abolishment of the Mir System the Federal Government of Pakistan started direct administration by enforcing different laws of Pakistan in the region and introducing various reforms in the old system of governance <sup>150</sup>

Under the State of Jammu and Kashmir an independent judicial System was in operation before the partition in G-B regardless of expensive justice system people have right to appeal

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<sup>147</sup> Human Rights Commission of Pakistan, Report 2005

<sup>148</sup> IUCN, *Customary Law in Pakistan: Governing Natural Resources and the Processes and Institutions that Affect Them Northern Areas* (IUCN Pakistan Karachi, 2003) xi

<sup>149</sup> Manzar Shigri, 'Pakistan's disputed Northern Areas go to polls' *Reuters* <<http://www.reuters.com/article/2009/11/12/us-pakistan-election-idUSTRE5AB1ZE20091112>> accessed 24 February 2013

<sup>150</sup> IUCN, *Customary Law in Pakistan: Governing Natural Resources and the Processes and Institutions that Affect Them Northern Areas* (IUCN Pakistan Karachi, 2003) xi

before the Kashmir High Court and local people were given right to represent in the State Assembly via their representatives <sup>151</sup>

### 3.7 28<sup>th</sup> APRIL 1949 KARACHI AGREEMENT

Many Writers have mentioned the controversial agreement which was signed by the representatives of Government of Pakistan, the Government of Azad Jammu and Kashmir (AJK) and the All Jammu and Kashmir Muslim Conference. This agreement was to sanction the administrative control of Pakistan over G-B not involving any leadership or taking will of the people of those areas in 28<sup>th</sup> April 1949 <sup>152</sup>

By virtue of aforesaid accord Gilgit-Baltistan was handed over to Pakistan by the Kashmir Leadership on temporarily basis <sup>153</sup>. Factually Pakistan had taken control of Northern Areas (GB) prior to the 1949 Karachi Agreement. This agreement further enhanced the control over Gilgit-Baltistan through appointment of a Political Agent. This agreement morally and legally justifies the administrative control of Pakistan over the Gilgit-Baltistan. But this agreement creates a doubt about the Instruments of Accessions forwarded by the Mirs of Hunza, Nagar and by Gilgit Scouts because in the presence of Instrument of Accession there was no need of April 28, 1949 'Karachi Agreement'.

On the other hand the "Karachi Agreement" reverses the status of 'Liberated Gilgit-Baltistan' and unconditional accession with Pakistan. In this way Gilgit-Baltistan appeared as a disputed territory of the Jammu and Kashmir State at United Nations and all International forums and

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<sup>151</sup> Engr. Wazir Qalba Ali, *Qadam Qadam Baltistan* (K-2 group of publications 2002) 66

<sup>152</sup> Syed Ansar Hussain, 'Gilgit-Baltistan in limbo' *Dawn Newspaper* (08 January 2013)

<<http://www.dawn.com/news/777135/gilgit-baltistan-in-limbo>> accessed 20 August 2013

<sup>153</sup> Federation of Pakistan vs. Malik Muhammad Miskeen, PLD [1995] SC (AJ&K) 1

Pakistan has repeatedly admitted and taken a stand that Gilgit-Baltistan is included in a disputed part of the Jammu and Kashmir State

In view of Pro Pakistan leaders the Federation of Pakistan could use the Instruments of Accession of Hunza and Nagar as base for extending this region as its constitutional part

It is an unfortunate historical mistake that the territory of Gilgit-Baltistan was attached with the issue of Kashmir against their will and aspirations. Practically since partition this region was kept apart from the Kashmir Issue and was treated in a unique way, though there were UN Resolutions which give guidelines for the governance of the disputed territory

The Karachi agreement draws a picture of dual standard of Pakistani and Kashmiri elite and makes the legality of the agreement doubtful. People of Gilgit-Baltistan keep reservations on the policy of treating them like a colony by the federation and also they are not happy on depriving of fundamental rights.<sup>154</sup> Agreements concluded without obtaining the consent of people later were not welcomed in the history. Either it was Dogras agreement with departing British or Maharaja's accession to India against the will of people. Furthermore, the Kashmiri leadership never took interest in improvement of living standards of people of G-B

In 1972 a resolution regarding the return of other parts including G-B was passed by the Azad Kashmir Assembly which clearly shows the double standard of Kashmiri leadership.<sup>155</sup>

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<sup>154</sup> Aziz Ali Dad, 'The case of GB is different' Dawn Newspaper (28 February 2006)

<sup>155</sup> *ibid*

### 3.8 IMPOSITION OF FCR

After taking the control of Gilgit-Baltistan by Pakistan in 1947, a highly discriminatory colonial dark law known as Frontier Crimes Regulations (FCR)<sup>156</sup> was imposed on Gilgit-Baltistan under the dictatorial rule of the Political Agent and also in all agencies which annexed with the Pakistan including Federally Administrated Tribal Areas (FATA)<sup>157</sup> Under the ever bad reputed English Law FCR a Political Agent exercised and enjoyed immense administrative and judicial powers without fear of question and checked by anyone Under FCR a Political Agent was appointed and placed in Gilgit under the Political Resident of the then NWFP North West Frontier Province (KPK), which was an attempt to administratively control the area by a Province of Pakistan

### 3.9 DEVELOPMENTS AND REFORMS IN GILGIT-BALTISTAN

Gilgit-Baltistan is entirely separate from the rest of federation units with unique political setup under Pakistan In 1970 a single administrative unit was created by the amalgamation of the Gilgit Agency, entire Baltistan, Hunza, and Nagar with surrounding areas

Pakistan ceded Raskam of Hunza Valley and Shaksgam Valley of Baltistan region to China in 1963 disregard of the pending dispute of Kashmir without the consent of local people<sup>158</sup> The region ceded to China is also known as the "Trans-Karakoram Tract "

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<sup>156</sup> Frontier Crimes Regulations (FCR) 1901 was first drafted by British Rulers for subjugating the tough Tribal Areas People residing at the borders of present Pak-Afghan Text of FCR from official website of HRCP <<http://hrcp-web.org/publication/book/fcr/>> accessed 14 April 2013

<sup>157</sup> M.Amir Rana & Muftaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Niganshat Publishers 2007) ---

<sup>158</sup> Nazir Naji, '64 Sal mazeed nahi' *Dauh Jung Urdu* (Karachi, ~ April 2012)



Democratic as well as Military Regimes brought in many reforms in the governing laws of this region with different Order, Ordinance, Package, Act, Notification, Rules and Regulations, etc in order to align it with the rising economic and political needs of the Pakistan

### **3.9.1 YEAR 1950 TO 1972**

In year 1950 the federal Government established the Ministry of Kashmir Affairs and Northern Areas (KANA) and transferred the affairs of the Northern Areas to the Ministry. In year 1952 a Joint Secretary of the Ministry of Kashmir Affairs was chosen as Resident of Northern Areas, who had immense administrative and judicial powers

In year 1967 the Ministry of KANA brought in improvement by investing powers of High Court and Revenue Commissioner in the seat of Resident also appointed two Political Agents one for Gilgit and another for Baltistan. Political Agent was empowered to work as District and Session Judge, Revenue Collector, Commissioner for FCR, Chief of Police and Controlling Officer of Cooperative Society by vesting District level powers in him

In year 1970 for the first time ever in the history a representative body was established and elections were held for sixteen 16 members of Northern Areas Advisory Council (NAAC)<sup>159</sup>. This Advisory Council could approve limited developmental Schemes and beyond this it had no power. In year 1972 the position of Resident was re-designated as Resident Commissioner. Deputy Commissioners were appointed in Gilgit and Baltistan after declaring those as a District with a new Diamer District in the region

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<sup>159</sup> M. Amir Rana & Muftaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Niganshat Publishers 2007) 77

change the demography of the Gilgit-Balistan resultantly increasing the law and order situation. People from other regions with different ideologies and beliefs settled in towns of GB and the government encouraged it.<sup>163</sup>

The Karakoram Highway (KKH) completed in year 1978 after twenty 20 years with the help of Chinese Government. The then President of Pakistan Zia-ul-Haq inaugurated the 885 Km long Karakoram Highway (KKH) which connects Islamabad and China through Gilgit.<sup>164</sup> G-B was isolated and disconnected from the rest of Pakistan and the world before construction of KKH in 1978.<sup>165</sup>

In year 1977 when Martial Law was imposed by General Zia throughout the Pakistan the G-B came under the Zone-E.<sup>166</sup> Treating the G-B similar to the rest of Pakistan was clear variation in the stance of Kashmir by the Government of Pakistan.

In year 1985 after a high level meeting and deliberation for bringing reforms in G-B it was decided to appoint an advisor to the Minister of Kashmir Affairs and Northern Areas (KA&NA).

### 3.9.4 BANAZIR BHUTTO REGIME

In year 1988 Benazir Bhutto chose an advisor to the PM equal to the State Minister in status among the chosen representatives of G-B Council. In her second term Benazir Bhutto brought

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<sup>163</sup> Muhammad Fevaz, *Sectarian Conflict in Gilgit-Balistan* (PILDAT Islamabad 2011) 13

<sup>164</sup> G M Mir, *Jammu wa Kashmir ki Jughrafiya Haqiqatein* (Royal Publishing Company Rawalpindi Pakistan 2011) 125

<sup>165</sup> Major Sikandar Khan, *Liberation of Northern Areas Gilgit & Baltistan* (Army Education Press Rawalpindi 1975) 8,13

<sup>166</sup> Dr. Ahmed Hasan Dani, *History of Northern Areas of Pakistan* (Sang-e-Meel Publications Lahore, 2001) 412

reforms package as LFO 1994 (Legal Framework Order) First time elections were held on political party basis and number of council seats was increased Two more districts Ghanche and Ghuzar were formed with the package <sup>167</sup>

### 3.9.5 PERVAIZ MUSHARAF REGIME

When Pervaiz Musharaf came into the power the development activities started with full speed in this ignored region In year 1999 Northern Areas Legislative Council (NALC) was empowered by amending the 1994 LFO of Banazir regime and under this the NALC could legislate on 49 matters according to the schedule II of the amended LFO1994 <sup>168</sup> Women seats were increased from 2 to 5 and first time development funds were increased from Rs 860 million to Rs 45 billion <sup>169</sup> General Pervaiz Musharaf in 2007 introduced a provisional LFO to deal with the issues lifted in Al-Jehad Trust case of 1999 It upgraded the Legislative Council and empowered them to make their own budget and chose a head In Pervaiz Musharaf's regime more financial and administrative powers were transferred from the Ministry of KANA to this region <sup>170</sup>

The government led by the General Pervaiz Musharaf took great steps in the development under privileged areas like GB, Chitral This increased his popularity among the masses of these regions Large scale projects were launched, budgerary allocations were raised to considerable level, which helped the majority of the population that living below the poverty

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<sup>167</sup> M. Amir Rana & Muftaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Niganshat Publishers 2007) 78

<sup>168</sup> The Northern Areas Council Legal Framework Order, 1994, Hafiz-ur-Rehman (Secretary NALC Gilgit) 5 November 2003

<sup>169</sup> M. Amir Rana & Muftaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Niganshat Publishers 2007) 78

<sup>170</sup> Cavlee Hang, *Liminality and Resistance in Gilgit-Baltistan* (Centre for International Sustainable Development Law, Mc Gill University Canada, June 2012) 8

line Establishment of Karakoram International University (KIU), Sadpara Dam projects and many more goes to his credit

In 2005 Apex Court was established in NA. The Appellate Court was formed beside six reserved seats for technocrats and one extra seat for women in Northern Areas Legislative Council (NALC)

In year 2007 change of names took place the former "Northern Areas Legal Framework Order 1994" was renamed as "Northern Areas Governance Order 1994" with amendments similarly NALC was renamed as "Northern Areas Legislative Assembly "

### **3.9.6 ASIF ALI ZARDAI REGIME**

In 2009 a package of self-governance and empowerment was given by the PPP government under the presidency of Asif Ali Zardari which has considerably elevated the status of GB<sup>171</sup>. It expanded the powers allocated to the region by the former government. Northern Areas name changed to Gilgit-Baltistan and a setup identical to a province was introduced first time in this region.

The package of empowerment and self-governance was designed to redress the deep root sense of deprivation and alienation of the residence of Gilgit-Baltistan which also gained the support of the then strong opposition party Pakistan Muslim League PML(N)<sup>172</sup>.

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<sup>171</sup> Syed Ansar Hussain, 'Gilgit-Baltistan in limbo' *Dawn Newspaper* (08 January 2013)

<<http://www.dawn.com/news/1135/gilgit-baltistan-in-limbo>> accessed 20 August 2013

<sup>172</sup> Pallavi Singh, 'Gilgit-Baltistan: A question of autonomy' *The Indian Express* (29 April 2010)

<<http://archive.indianexpress.com/news/gilgitbaltistan-a-question-of-autonomy/519428/0>> accessed 10 January 2013

Notwithstanding, high claims of mainstream parties political leadership that they have increase the budget and brought development in the G-B these unfortunate areas remained in state of ignorance, negligence and poverty. It is reported in the World Bank survey that the three-fourth of its total population live below poverty line<sup>173</sup>

### 3.10 CONCLUSION

The inclination and favor of last Viceroy Lord Mountbatten was with Indian Union therefore the issue Kashmir state which was the largest princely state of Indian sub-continent was dealt without due care. Soon after the withdrawal of the British rulers from the region local uprising started and the people of Gilgit-Baltistan who were unhappy with the Dogra rule challenged their authority. The freedom fighters of this region planned and executed skillfully the liberation plan and then turned it to a movement and with a handful of skilled soldiers having insufficient arms and ammunitions successfully liberated a large area of former Gilgit Wazarat and Ladakh Wazarat. The liberated areas were mostly Muslim dominating areas which offered unconditional and willful offer of accession to the State of Pakistan. The Government of Pakistan instead of integrating these areas decisively against the will of local people linked this region with the pending Kashmir issue in the UN. Since then Gilgit-Baltistan is considered as disputed territory in the eyes of world and the Government of Pakistan is administrating this region by introduced many reform packages time to time for better governance and to maintain law and order.

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<sup>173</sup> World Bank Report 2010

## CHAPTER IV

### INTERNATIONAL & DOMESTIC LAWS

#### 4.1 INTRODUCTION

In this chapter the case of Gilgit-Balistan which was tied up with the Kashmir issue will be analyzed in the arena of International and Domestic Laws as well as the issue of Kashmir as presented and perused before the United Nations' main bodies will be discussed. In the light of International Instruments the issues of fundamental civil, political and right of self-determination with regard to the Kashmir and Gilgit-Balistan will be discussed. Then the issue of status and other relevant topics about Gilgit-Balistan will be analyzed in the Judicial and Constitutional regimes. Finally, at the end the Governance Order 2009 to Gilgit-Balistan will be discussed in detail.

#### 4.2 UNITED NATIONS & THE CASE OF JAMMU & KASHMIR STATE

India had promised the right of self-determination to the Kashmir's when it knocked the UN to mediate the issue raised after the partition of Indian sub-continent. This pledge was reiterated by the 47<sup>th</sup> United Nations Security Council Resolution of 1948 and 80<sup>th</sup> UNSCR of 1950. The control of the state of J&K was presumed to be a provisional arrangement till the fate of the State to be settled according to the wishes of people by free, transparent and neutral plebiscite.<sup>174</sup>

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<sup>174</sup> Lt. Gen. Talat Masood, 'Pakistan's Kashmir Policy' (China and Eurasia Forum Quarterly, Central Asia-Caucasus Institute & Silk Road Studies Program, 2006) Volume 4, No 4, 45

The matter of appeal to the UN by the Prime Minister of India was strongly condemned even by the Congress leaders. In their opinion India had internationalized the issue of Kashmir accession to India and vulnerable to international discourses and it was a strategic as well as diplomatic loss for India.<sup>175</sup>

#### 4.2.1 UNITED NATIONS CHARTER

Indian and Pakistani delegates traded charges against each other in the United Nations Security Council. It is pertinent to know that the objection of India before UN was made under Article 35 of Chapter VI of the UN Charter which deals with "*peaceful settlement of disputes*" and not Chapter VII which relates to "*acts of aggression*".<sup>176</sup>

Article 35 of the UN Charter provides as follows,

1. *Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly*
2. *A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of peaceful settlement provided in the present Charter*
3. *The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12*<sup>177</sup>

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<sup>175</sup> Sudipto Adhikari and Mukul Kamle, 'The Kashmir: An Unresolved Dispute Between India and Pakistan' (Geopolitics Quarterly, Winter 2010) Volume 6, No. 4, 74

<sup>176</sup> Ijaz Hussain, *Kashmir Dispute: an International Law Perspective* (Chair on Quaid-i-Azam and Freedom Movement, NISP, Quaid-i-Azam University Islamabad, 1998) 180,181

<sup>177</sup> United Nations Charter <<http://www.un.org/en/documents/charter/chapter6.shtml>> accessed 23 November 2013

The basis of Kashmir issue rests in application of right of Self-Determination While considering the basic principle behind right of self-determination cleared by the Article 1(2) of the United Nations Charter of year 1945 which says,

*“The purposes of the United Nations are to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace ”*

In relevance to the implementation of the UNSC resolutions it is pertinent to know that the Article 25 of the UN Charter imposes an obligation upon the members to accept and implement the resolutions of the UN Security Council<sup>178</sup>

The Article 2 of the UN Charter speaks about the principles of the United Nations and the paragraph 2 says,

*“Members . Shall fulfill in good faith the obligations assumed by them in accordance with the present Charter ”*

This principle is more specifically explained in the Article 103 of the UN Charter which says,

*“In the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under the present Charter shall prevail ”*

There is a doctrinal divergence that the resolutions adopted under Chapter VI of the UN Charter are not binding in its nature and are not similar to the resolutions adopted under

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<sup>178</sup> Ijaz Hussain, *Kashmir Dispute an International Law Perspective* (Chair on Quaid-i-Azam and Freedom Movement, NISP, Quaid-i-Azam University Islamabad, 1998) 182



Chapter VII of the same Charter. The UN laws interpreters further classifies the nature of resolutions in recommendations or plan etc.<sup>179</sup>

#### 4.2.2 UNITED NATIONS RESOLUTIONS

The resolutions by the United Nations Security Council (UNSC), United Nations General Assembly (UNGA) and United Nations Commission for India and Pakistan (UNCIP) had given full mandate to the United Nations for the peaceful settlement of the long persistent dispute of the former Princely state of Jammu and Kashmir including Gilgit-Baltistan between India and Pakistan.<sup>180</sup> The 13<sup>th</sup> August 1948 Resolution of the UN Commission on India and Pakistan (UNCIP) was a call for both India and Pakistan of cease fire and withdrawal of their forces from the State for the purpose of plebiscite under UN to determine the future of the State.

The cease-fire went into effect on 1<sup>st</sup> January 1949 the Monitoring Group for India and Pakistan (UNMIGIP) was sent by UNCIP to the State to supervise the position of the 840 km Cease-Fire Line. Later in 1972 after the Shimla Agreement the Cease-Fire Line was replaced by the Line of Control (LOC).<sup>181</sup>

On 5<sup>th</sup> January 1949 a free and impartial plebiscite was promised to the Kashmiris by the resolution of UNCIP (United Nations Commission for India and Pakistan).<sup>182</sup> In December 1949 Pakistan agreed on the simultaneous demilitarization process from the State on UN

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<sup>179</sup> Ibid

<sup>180</sup> Caylee Hang, *Liminality and Resistance in Gilgit-Baltistan* (Centre for International Sustainable Development Law, McGill University, Canada, June 2012) 5

<sup>181</sup> Suddepto Adhikan and Mukul Kamle, 'The Kashmir: An Unresolved Dispute Between India and Pakistan' (Geopolitics Quarterly, Winter 2010) Volume 6, No. 4, 75

<sup>182</sup> UNCIP Resolution 5 January 1949 (Mount Holyoke College, 10 January 1949)  
<<https://www.mtholyoke.edu/acad/intrel/uncom2.htm>> accessed 21 April 2013

Security Council proposal but India rejected<sup>183</sup> declaring the accession of the State of Jammu and Kashmir with India was legally justifiable. India argued that the Maharaja signed the Instrument of accession on 26<sup>th</sup> October 1947 at that time he was sovereign and legally competent to conclude accession with India. Therefore, India had not accepted the demilitarization plan of UNSC resolution.

#### 4.3 UNIVERSAL DECLARATION OF HUMAN RIGHTS

Universal Declaration of Human Rights UDHR 1948 Article 21 says,

*"1 Everyone has the right to take part in the government of his country, directly or through freely chosen representatives*

*2 Everyone has the right of equal access to public service in his country*

*3 The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures "*

#### 4.4 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 1 (1) of the International Convention on Civil and Political Rights (ICCPR) states that,

*"all peoples have the inalienable right of self-determination"*

as well as Article 1 (3) which says,

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<sup>183</sup> Ijaz Hussain, *Kashmir Dispute an International Law Perspective* (Chair on Quaid-i-Azam and Freedom Movement, NISP, Quaid-i-Azam University Islamabad, 1998) 93,94

“all parties to the covenant to promote the realization of the right of self-determination”<sup>184</sup>

#### 4.5 RIGHT OF SELF-DETERMINATION & GILGIT-BALTISTAN

Gilgit-Baltistan and territories of Azad Kashmir was also subject of former princely State of J&K which remained bone of contention since partition of Indian sub-continent between Pakistan and India<sup>185</sup> The matter of this disputed region comes under UN and international laws and norms should prevail to settle this issue peacefully

The right of self-determination suggests right of choice and ascertain the wishes via plebiscite or referendum of every nation to which state it wishes to live. It also gives right to every nation to be a sovereign and independent state. The right of self-determination has granted the small ethnic fractions the right to materialize their aspirations by joining any larger state or reject any sovereignty.

According to number of commentators of International Law the right of self-determination has assumed the status of “*Jus Cogens*”<sup>186</sup> and in the light Article 53 of “the Vienna Convention on the Law of Treaties” it has become a peremptory norm of International law of Treaties from which no derogation is possible<sup>187</sup>

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<sup>184</sup> European Parliament Committee on Foreign Affairs, *Report on Kashmir- Present Situation and Future Prospect* (Nicholson report, A6-0158/200 24, April 2007) para 12

<sup>185</sup> Barbara A Weightman, *Dragons and Tigers: A Geography of South, East, and Southeast Asia* (John Wiley & Sons 2nd ed) 193

<sup>186</sup> It is vested in the Article 53 of the Vienna Convention on the Law of Treaties “a treaty is void if at the time of its conclusion, it conflicts with a peremptory norm of general international law.”

“Peremptory Norm” could be described as “a norm accepted and recognized by international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”

<sup>187</sup> Ijaz Hussain, *Kashmir Dispute: an International Law Perspective* (Chair on Quaid-i-Azam and Freedom Movement, NISP, Quaid-i-Azam University Islamabad, 1998) 191

Two well-known International Instruments, one the International Covenant on Civil and Political Rights (ICCPR) and other the International Covenant on Social, Economic and Cultural Rights (ICSECR) both have Article 1 and paragraph 1 in common which says,

*"All people have the rights of self-determination, by virtue of that right they freely determine their political states and freely determine their economic, social and cultural development "*

The people of G-B, AJ&K and Indian held Kashmir reserves right of self-determination to determine their own political future because historically and internationally the issue of Kashmir is a matter of establishing right of self-determination. In this regard issue of Kashmir's right of self-determination has been practically negated by the both states of India and Pakistan.

The only shortest and peaceful solution of this issue would be the enforcement of UN resolutions in true letter and spirit. The UN resolution of 1948 has clearly directed to resolve his unresolved partition issue through plebiscite under international community.<sup>188</sup> The most recent example to resolve the issue of Kashmir's right of self-determination is of East Timor before the world.

All grounds and justifications are same and available to the UN to enforce the right of self-determination in Kashmir like East Timor. In East Timor the United Nations Security Council used its authorities under chapter VII of the UN charter and sanctioned an International Force for getting free will of the people of East Timor. It is agreed that the threats to international

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<sup>188</sup> Kashmir and Self-Determination: International Law as a way Forward (Briefings)  
<<http://www.ohrc.org.uk/publications/briefings/5419-kashmir-and-self-determination-international-law-as-a-way-forward>> accessed 20 July 2013

peace in greater in Kashmir as compare to East Timor. Three conventional wars have faced by two nations India and Pakistan and now the Nukes of these states is alarming and hanging sword on the head of world peace <sup>189</sup>

#### 4.6 SINO-PAK BORDER AGREEMENT

Chinese Government had not accepted the early 20<sup>th</sup> Century agreement regarding eastern borders of the State of J&K of Britain, Russia and Afghanistan. Chinese official stance didn't change even after 1949 communist revolution about these areas. In year 1950 Chinese military forces crossed Ladakh borders of western Tibet and developed a road. India discovered belatedly these developments in the Ladakh region and in year 1962 war broke out between India and China on border issue <sup>190</sup>

In year 1962 China got complete control over Aksai Chin and via Pak-Sino agreement in year 1963 Pakistan ceded the Trans-Karakoram Tract region neighboring to Aksai Chin. It is pertinent to mention that Article 6 of the Agreement says that, "*after the Kashmir dispute is resolved, the Government in Power of the region and the People's Republic of China will renegotiate the agreement*" <sup>191</sup>

On 16<sup>th</sup> March, 1963 India strongly condemn the Sino-Pak Border agreement declaring it was against the Security Council and UNCIP resolutions. In response of Indian Protest Pakistan justified its stance that the Trans-Karakorum Tract of Gilgit-Baltistan is linked with the resolution of Kashmir issue and the aforesaid agreement had expressed provision on it <sup>192</sup>

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<sup>189</sup> ibid

<sup>190</sup> *Encyclopedia Britannica online* 'Kashmir' (2007)

<<http://www.britannica.com/EBchecked/topic/312908/Kashmir>> accessed 27 March 2013

<sup>191</sup> Saalim Aslam Ansari, 'Gilgit has remained part of Kashmir' *Dawn Newspaper* (Karachi, 4 March 2006)

<sup>192</sup> Institute of policy studies, *Pakistan policy perspective*, Volume 1, No 1

#### 4.7 STATUS OF AZAD JAMMU AND KASHMIR & GILGIT-BALTISTAN

The State of Azad Jammu and Kashmir is a semi-autonomous state having parliamentary form of Government with President as a head of the State and Prime Minister as a Chief Executive backed by team of Ministers. In year 1970 a presidential democratic setup was introduced and in year 1975 a parliamentary setup was brought with a Prime Minister as a Chief Executive of the State <sup>193</sup>

Legislative Assembly of AJK state comprise of 49 members. Among these members 41 seats are filled by directly elections and rest of 8 seats are filled indirectly which include 5 ladies seats, one seat each for Ulama and Mashaikh, Overseas Kashmiris and Technocrats. The State has separated independent Judicial System with its own Supreme Court and High Court. The Ministry of KANA now KA& GB Kashmir and Gilgit-Baltistan affairs works like a bridge between the Government of Pakistan and the Government of Azad Jammu and Kashmir.

The population of AJK is 2,973 according to 1998 census with almost 100% Muslim. AJK is divided in to three 3 divisions namely Muzaffarabad, Mirpur and Poonch and ten 10 districts and Muzaffarabad is the capital of the AJ&K State.

The people of Gilgit-Baltistan and Azad Jammu are like birds of same feather but not fly together. This region is being treated differently from the AJ&K since beginning. The local people of G-B consider the cause of Kashmir is the main impediment in granting its population the constitutional citizenship of Pakistan.

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<sup>193</sup> Official site of AJK government, <[www.ajk.gov.pk](http://www.ajk.gov.pk)> accessed 30 August 2013

While in Gilgit-Baltistan the federal Government of Pakistan enjoys de-facto control and reserves many rights for instance, “the right to impose and collect taxes, the right to enforce law and order, the right to station the military in the territory, the right to make recruitment to the Armed Forces from the local people, the right to prescribe the school curriculum, the right to re-settle outsiders, including ex-servicemen etc ”

The people of Gilgit-Baltistan don't enjoy the rights of voting at national level and don't have any representation in the parliament furthermore, the right to prepare it own budget, the right to self-determination etc

The sense of disappointment is very much in cent percent Muslim majority areas of Gilgit-Baltistan because soon after the partition of sub-continent local princes had shown their willingness to accede which hadn't accepted<sup>194</sup> The relationship of federation with the Gilgit-Baltistan is uneven because they are neither member of the princely state nor member of British government and not even full citizen of Pakistan<sup>195</sup>

#### **4.8 CURRENT POLITICAL DIVISIONS OF THE FORMER PRINCELY STATE**

Currently the former Princely State of Jammu and Kashmir is divided in two three neighboring States, Pakistan holds Gilgit-Baltistan and Azad Kashmir while India holds Jammu and

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<sup>194</sup> Victoria Schofield, 'Pakistan's Northern Areas dilemma' *BBC News* (UK, 15 August 2001) <[http://news.bbc.co.uk/2/hi/south\\_asia/1491179.stm](http://news.bbc.co.uk/2/hi/south_asia/1491179.stm)> accessed 16 March, 2013

<sup>195</sup> Caylee Hang, *Liminality and Resistance in Gilgit-Baltistan* (Centre for International Sustainable Development Law, McGill University Canada, June 2012) 10

Kashmir with some parts of Ladakh and China controls Aksai Chen with Trans-Karakoram Tract<sup>196</sup>

After the Communist Revolution of 1949 in China its military forces entered in the north-east portion of Ladakh by the mid of 1950s<sup>197</sup> In 1962 China took full control of Aksai Chin which is a vast high altitude uninhabited desert (5000m) of salt Geographically it is a piece of the Tibetan Plateau also known as the Soda Plain with no permanent settlements

These fragmented parts of the former Princely State have many claimants and in reality the three states China, India and Pakistan has not accepted the accession or control of one another and it is a lingering dispute among them<sup>198</sup>

#### **4.9 GILGIT-BALTISTAN & COURTS**

##### **4.9.1 DILAWAR SHAH VS THE JUDICIAL COMMISSIONER**

*(Northern Areas Gilgit, Writ Petition No 5961 of 1978)*

It was decided on 16<sup>th</sup> May 1981 by the Lahore High Court that “the Northern Areas which are administered by the Federal Government are not part of any Province of Pakistan nor these areas were included in the tribal areas” thus a resident of Northern Areas cannot seek redress of his grievance by invoking the writ jurisdiction of Lahore High Court

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<sup>196</sup> *ibid*, 5

<sup>197</sup> *Encyclopedia Britannica online 'Kashmir' (2007)*

<<http://www.britannica.com/EBchecked/topic/312908/Kashmir>> accessed 27 March 2013

<sup>198</sup> European Parliament Committee on Foreign Affairs, *Report on Kashmir Present Situation and Future Prospect* (Nicholson report, A6-0158/20024, April 2007) 4 para 4



#### **4.9.2 HAJI BASHIR AHMED KHAN VS SECRETARY ESTABLISHMENT DIVISION (1983 PLC (C S) 333)**

It was observed that the administration of the Northern Areas was a peculiar entity. It was opined that though the territory was amenable to the authority and control of the President of Pakistan, yet it didn't function as a Government Department within the relevant provision of law and thus a civil servant aggrieved by an order of the President could not seek the redress of his grievance from the Federal Service Tribunal.<sup>199</sup>

#### **4.9.3 MALIK MISKEEN VS GOVERNMENT OF PAKISTAN CASE**

*(PLD 1993 HC AJ&K 1)*

In year 1993 the High Court of Azad Jammu tried to bring the Gilgit-Baltistan within the Jurisdiction of Azad Jammu and Kashmir. Under Section 44 of the Interim Constitution of AJ&K 1974 a writ petition was filed by few people from of Northern Areas in the AJ&K High Court.<sup>200</sup> Considering the petitioner as a subject of AJ&K their petition was accepted and then the High Court adjudicated that the Northern Areas are the part of Pakistan controlled Azad Jammu and Kashmir. Since Northern Areas are historically and legally remained as an entity of the State of Jammu and Kashmir and their future has be decide under the UN resolutions like other parts of the Kashmir dispute. The court ordered the government of AJ&K to take the administrative control of the areas of Gilgit-Baltistan to remove the resentments and the grievances of the local people.

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<sup>199</sup> Federation of Pakistan vs Malik Muhammad Miskeen, PLD [1995] SC (AJ&K) 1

<sup>200</sup> M.Amir Rana & Muftaba Rathore, *Northern Areas: Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Niganshat Publishers 2007) 7

#### 4.9.4 FEDERATION OF PAKISTAN VS MALIK MUHAMMAD MISKEEN

*(PLD 1995 SC AJ&K 1)*

On appeal from the judgment of the High Court of AJ&K dated March 8, 1993 the Supreme Court of AJ&K decided the matter of handing over the administrative control of GB to AJ&K Government saying that there is no doubt, that Northern Areas were historically and constitutionally part and parcel of the Jammu and Kashmir State but it is not a part of Azad Jammu and Kashmir. Furthermore, Northern Areas don't come under the definition of expression "*Azad Jammu and Kashmir*"<sup>201</sup> given in the Section 2 of the Azad Jammu and Kashmir Interim Constitution 1974. Therefore, the High Court of AJ&K has no jurisdiction to pass such order and the Government couldn't take administrative control of Northern Areas<sup>202</sup>

Moreover, Northern Areas are not a part of the Azad Jammu and Kashmir because neither during the period of the enforcement of the Azad Jammu and Kashmir Government Act, 1970 nor after the promulgation of the Interim Constitution Act 1974 any representation was given to the Northern Areas in the Azad Jammu and Kashmir Legislative Assembly or in Azad Jammu and Kashmir Council. No practical steps appear to have been taken by the Government of Pakistan or the Azad Jammu and Kashmir Legislative Assembly to give representation to the Northern Areas. Thus the demand of administrative control over the Northern Areas is out of the scope of Interim Constitution of AJ&K 1974<sup>203</sup>

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<sup>201</sup> The Azad Jammu and Kashmir Interim Constitution Act, 1974 (Law, Justice & Parliamentary Affairs Department Azad Government of the State of Jammu and Kashmir, Amended up to date May 1997)

<sup>202</sup> Federation of Pakistan vs Malik Muhammad Miskeen, PLD [1995] SC (AJ&K) 1

<sup>203</sup> Federation of Pakistan vs Malik Muhammad Miskeen, PLD [1995] SC (AJ&K) 1

#### 4.9.5 AL-JEHAD TRUST VS FEDERATION OF PAKISTAN CASE

*(1999 SCMR 1379)*

The long neglected GB issue came under the intervention of Pakistan Apex Court in 1999, when Supreme Court of Pakistan in its landmark case entitled Al-Jehad Trust vs Federation of Pakistan,<sup>34</sup> assess the constitutional status of the Northern Areas. Al-Jehad Trust case analyzed, described and clarified the former laws of governance prevailing in GB were the main source of constitutional liminality.<sup>35</sup>

Therefore, in this case following remedies were sought,

*“1 Enforcement of fundamental rights under the Constitution of Pakistan*

*2 Declaration of the Constitutional status of the people of Northern Areas*

*3 Declaration of citizenship of Pakistan of the people Northern Areas with full participation in the  
Federation of Pakistan*

*4 Right to appeal, review, revision before the Supreme Court of Pakistan by the people of Northern Areas*

*5 Granting Provincial Status to the Northern Areas*

*6 Any other efficacious remedies which the Honorable Court deem fit”<sup>36</sup>*

The Supreme Court decided that, “the people of Northern Areas (G-B) are citizen of Pakistan for all purpose and intents and like other citizens have the rights to invoke any of the

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<sup>34</sup> Al-Jehad Trust vs Federation of Pakistan, 1999 SCMR 1379

<sup>35</sup> Cavlee Hang, *Liminality and Resistance in Gilgit Baltistan* (Centre for International Sustainable Development Law, McGill University Canada, June 2012)

<sup>36</sup> Al-Jehad Trust vs Federation of Pakistan, 1999 SCMR 1379, 1385, Para 1

fundamental rights, and liable to pay taxes and other competently imposed levies ”<sup>207</sup> The Supreme Court observed the people should be given right to govern by their own chosen representative and should have an independent judicial system to enforce and ensure the fundamental rights of the people. The court directed the government to take immediate steps to ensure all of their rights within six months after the pronouncement of verdict (28 May 1999) <sup>208</sup>

The people of GB are fully entitled to all those fundamental rights guaranteed under the Constitution Part II, Chapter 1, by virtue of their being a person residing within the sovereignty of Pakistan include security, safety, education, property, safeguard to arrest and detention etc

The Apex Court decides that it can't direct or bound the government to grant representation to the people of Northern Areas in the Parliament to ensure the compliance of Constitutional guarantees hold by the people of Northern Areas as a citizen <sup>209</sup> The Supreme Court observed that the central government is under obligation to grant regional representation and access to the regional Chief Court (which is equated with a High Court in Pakistan) and no access to the Supreme Court of Pakistan <sup>210</sup>

The Court finds that, “It may be observed that since the geographical location of the Northern Areas is very sensitive because it is bordering India, China, Tibet and USSR and as the above areas in the past have also been treated differently, this Court cannot decide what type of

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<sup>207</sup> *ibid* 1393, Para 14

<sup>208</sup> *ibid* 1380

<sup>209</sup> *ibid* Para 26, 1401

<sup>210</sup> *ibid*, Para 27, 1401

Government should be provided to ensure the compliance with the above mandate of the Constitution”<sup>211</sup>

The Apex Court of Pakistan further characterized the issue of status of Northern Areas is of political nature and Pakistan Government could address it properly. As the Judgment finds, “Nor can we direct that the people of Northern Areas should be given representation in the Parliament as, at this stage, it may not be in the larger interest of the country because of the fact that a plebiscite under the auspices of the United Nations is to be held. The above questions are to be decided by the Parliament and the Executive”<sup>212</sup>

#### **4.9.6 ANALYSES OF AL-JEHAD TRUST CASE JUDGEMENT**

The Apex Court judgment is not loud and clear rather it is full of ambiguities. At one side it decides the people of Northern Areas as a citizen of Pakistan having all the fundamental rights guaranteed under the Pakistan’s Constitution. These fundamental rights from Article 9 to 28 of the Constitution of Islamic Republic of Pakistan 1973 include freedoms of movement, speech, association, assembly etc.

The Apex Court recognized the issue of status of Northern Areas as of political nature and further showed the apprehension of national interest doesn’t favour the integration of Northern Areas fully in the State of Pakistan. On the other hand it firmly ascertained that the people of NA are citizen of Pakistan for all intend and purposes with all fundamental rights assurance. The debate goes further that how much has been done with regard to availability

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<sup>211</sup> Al-Jehad Trust vs Federation of Pakistan, 1999 SCMR 1396, Para 26, 1401

<sup>212</sup> *ibid*

and assurance of fundamental rights to the people of NA in the light of Al-Jehad Trust case of 1999.

After analyzing the Al-Jehad case multi-faceted verdict which signifies that the people of NA are citizen of Pakistan with same and equal rights as all other citizens of Pakistan guaranteed by the constitution but can't participate in the main policy and lawmaking body<sup>213</sup>

The reasons on which the decision was made out is in itself ambiguous, the Apex court based its decision on the issue which are not very substantial in legal purview for instance the sensitivity of the region (which is itself debatable that how and in what sense the region is sensitive), its historical distinction from the rest of Pakistan, doctrinal issue (i.e. of separation of powers between the state organs, executive, judiciary and legislature) and UNSC resolutions<sup>214</sup>

While on the other hand in Al-Jehad Trust case the Supreme Court of Pakistan tried to grant remedies to the past wrongs and deprivation of fundamental rights to the residents of Gilgit-Baltistan. Unfortunately, decade and half year have been elapsed yet the verdict of the apex court of Pakistan is not executed in its true letter and spirit by the successive governments of Pakistan. The only hinder in the implementation of the judgment is lack of political will, which is somehow, due to non-realization of the enormity of the issue.

It is a fact that there are very few constitutional cases or legal debate on any national and international forum regarding the status of Gilgit-Baltistan rather it is usually put in a political

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<sup>213</sup> Cavlee Hang, *Liminality and Resistance in Gilgit-Baltistan* (Centre for International Sustainable Development Law, McGill University Canada, June 2012) 7

<sup>214</sup> *ibid* 8

arena instead of raising it at legal forums. In the decision of Al-Jehad Trust case it was held that for the fully enjoy all the fundamental rights people should have access to a free and independent judicial system for this purpose Northern Areas must have a Chief Court equal to a High Court with following criteria "it is manned by the persons of the status who are fit to be elevated as Judges to any High Court in Pakistan and with jurisdiction to assess constitutional petitions " <sup>215</sup>

#### **4.9.7 SUPREME APPELLATE COURT GILGIT-BALTISTAN**

*(2010 GBLR 160)*

The Supreme Appellate Court of Gilgit-Baltistan using its suo-moto power granted to it under Article 61 of "the Gilgit-Baltistan Empowerment and Self-Governance Order 2009" has tried to open a new venue of bridge the gap and constitutional limbo faced by the G-B. The Court referring to the Article 1 of the Constitution of Pakistan which deals with the territories of Pakistan, decided that the territory of Gilgit-Baltistan fell within the purview of Article 1(2) (d) of "the Constitution of Pakistan 1973" which says, The state of Pakistan shall comprise of "such states and territories as are or may be included in Pakistan, whether by accession or otherwise "

The Apex Court also declared that "the Gilgit-Baltistan (Empowerment and Self-Governance) Order 2009" had constitutional backing and status is same as was enacted in pursuance of Article 258 of the Constitution of Pakistan, which says,

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<sup>215</sup> Al-Jehad Trust vs Federation of Pakistan, 1999 SCMR 1396, Para 27, 1401

“subject to the Constitution, until the Parliament by law otherwise provides, the president may, by order, make provisions for peace and good government of any part of Pakistan not forming part of a province ”

The bottom-line point is that the Apex Court of G-B has tried to elevate the laws and position of the region through various constitutional provisions to the national level but still there is need of acceptance of this particular interpretation of constitutional provisions by the Government of Pakistan and the Supreme Court of Pakistan <sup>216</sup>

#### **4.10 GILGIT-BALTISTAN & CONSTITUTIONS**

##### **4.10.1 CONSTITUTION OF PAKISTAN**

The former Constitutions of Pakistan of 1956, 1962 as well as 1973, are silent about the Gilgit-Baltistan. The Constitutions of Pakistan doesn't recognize Gilgit-Baltistan as a constitutional territory of Pakistan, although it exercises effective sovereignty from 1947 and this region is termed as a territory “administered by Pakistan or Federally Administrated territory”<sup>217</sup>

Furthermore, this territory doesn't have its own constitution like the state of AJK. G-B is under the control of federal authority unlike FATA and PATA don't carry any autonomous or semi-autonomous state. The critical issue of constitutional disregard and political

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<sup>216</sup> Basil Nabi Malik, The case of Gilgit-Baltistan *International The News* (18 Mar 2011) <<http://www.thenews.com.pk/Todays-News-9-47570-The-case-of-Gilgit-BaltistanInternationaatan>> accessed 18 Feb 2013

<sup>217</sup> IUCN, Environmental Law in Pakistan: Governing Natural Resources and the Processes and Institutions that Affect Them: Northern Areas (Karachi, Pakistan: IUCN Pakistan, 2004) 17



deprivation of the Gilgit-Balistan is not taken seriously by any Government of Pakistan till this date <sup>218</sup>

Pakistan has effective control over the Gilgit-Balistan after the partition of Sub-Continent the region remained legally undefined in the Constitutions of Islamic republic of Pakistan and its people lack representation in the National Assembly of Pakistan <sup>219</sup> Under Article 1 and 246 of the Constitution of Pakistan 1973 territories of Gilgit-Balistan are not included and mentioned as a part of Pakistan <sup>220</sup>

The liberated territories of G-B and AJ&K though not expressly named in Article 1 of “the Constitution of Pakistan” which defines the country’s territories This region could be brought under the clause (d) of Article 1(2) of the Constitution of Pakistan Which states,

*“Such States and territories as are or may be included in Pakistan whether by accession or otherwise ”*

Pakistani Intelligentsia argues India has implicitly accepted the position that these regions are part of Pakistan through Cease-Fire Agreement 1949, the Tashkent Agreement 1966 and the Simla Agreement of 1972 <sup>221</sup>

The step taken by the Government of Pakistan in 2009 after introducing a package due to which G-B got the status of De-facto fifth province, this act of the Government comes under

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<sup>218</sup> Dr Tanq Hassan, ‘Regions with constitutional drawbacks’ *The News International* (Karachi, 24 March 2009)

<sup>219</sup> IUCN, *Environmental Law in Pakistan: Governing Natural Resources and the Processes and Institutions that Affect Them Northern Areas* (Karachi, Pakistan: IUCN Pakistan, 2004) 17

<sup>220</sup> *Federation of Pakistan vs Malik Muhammad Miskeen*, PLD [1995] SC (AJ&K) 1

<sup>221</sup> Justice (Retd) Syed Manzoor Hussain Gillani, *Proposed Constitutional Amendments in the Constitution of Islamic Republic of Pakistan 1973, for Empowerment of Azad Jammu & Kashmir and Gilgit-Balistan* (Discussion Paper, PILDAT, May 2011) 9

the Article 1 Clause 2(f) as a territory of Pakistan without the mandatory approval of Pakistani Parliament with two third majority

The Article 257 of the Constitution says,

“When the people of the State of Jammu and 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”<sup>222</sup>

Therefore it is assumed that the fate of Gilgit-Balistan (considered and recognized internationally as a part of Kashmir) shall be resolute according to the will of the people and further settled according to the Article 257

#### 4.10.2 CONSTITUTION OF INDIA

India has given a special position to the State of Jammu and Kashmir under Article 370 of the Indian Constitution 1950<sup>223</sup>. This Article was worked out in late 1947 it is for the better governance, to grant identity, sense of security about their future as well. The formulation of Article 370 was a temporary arrangement and according to Nehru it will erode by the time

The Constitutional history of India tells that the Article 370 was included by two persons Shaikh Abdullah and Nehru, later this provision became the biggest hurdle in the integration of Jammu and Kashmir with the Indian State. Secondly, the Government of Kashmir has been given power of veto and the Central Government cannot introduce any law freely and solely

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<sup>222</sup> The Constitution of the Islamic Republic of Pakistan,  
<<http://www.pakistan.org/pakistan/constitution/part1.html>> accessed 20 November 2013

<sup>223</sup> The Constitution of India <<http://india.gov.in/my-government/constitution-india>> accessed 17 November 2013

Even the Article 352 and 360 of declaring national and financial emergencies cannot be imposed in Kashmir. The Kashmiris have two Citizenships unlike rest of Indian as well as all the advantageous laws like Gift Tax, Wealth Tax, Urban Land Ceiling Act and intermarriage with other Indian national's do not work in J&K.

Furthermore, Under Article 356 the President of India can enforce his rule in any state of India but this cannot be imposed in J&K without consent of the State Governor who is appointed by the President and even the establishment of Army garrison for defence purpose could be declined.<sup>224</sup>

India has reserved some seats in its Parliament for the territories controlled by Pakistan i.e G-B and AJ&K also claim that these areas as a constitutional part of India.<sup>225</sup>

#### **4.10.3 CONSTITUTIONAL ORDERS OF THE PRESIDENT OF PAKISTAN**

The link of Gilgit-Baltistan with the Constitution of Pakistan is developed through the powers envisaged in the President of Pakistan by virtue of constitution to administer the region. All the reforms in the governance of G-B are brought via Presidential order after Federal Cabinet approval. Parliament doesn't involve in this process because this region is out of Pakistan's Parliament scope as it is not part of any province that's why it cannot be discussed there.

The Article 258 of the Constitution of Pakistan describes the power of the President as,

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<sup>224</sup> Major Gen Sheru Thaplival, 'Article 370: The untold story' (Indian Defence Review: Issue Vol 26 1 Jan-Mar 2011) <<http://www.indiandefencereview.com/news/article-370-the-untold-story/>> accessed 10 October, 2013

<sup>225</sup> HRCP report 2005, "A Strong Yearning for Autonomy" 35

*“Subject to the Constitution, until Parliament by law otherwise provides, the President may, by Order, make provisions for peace and good government of any part of Pakistan not forming part of a Province”<sup>226</sup>*

Gilgit-Baltistan has gone through twelve political and administrative experiments since 1948. The lawyers of Gilgit-Baltistan expressed their astonishment and ridiculed Pakistan's excuse that the UN resolutions on Kashmir were an impediment to Islamabad's giving all the rights to the people of Gilgit-Baltistan. The fact of the matter is that, there is no provision in the UN resolution which can stop Pakistan from giving the rights to the people of Gilgit-Baltistan. They said that India gave special constitutional status to the part of Kashmir under its control back in 1949 by inserting a special Article 370 in its constitution. The Kashmiris have representation in the parliament of India and also have their own legislative assembly.<sup>227</sup> They also referred to Azad Kashmir, the other party to the issue, who were given special status in 1974 with the establishment of the state with its own Constitution of 1974<sup>228</sup> having their own Prime Minister and President.

While the situation in G-B according to the report of Human Rights Commission of Pakistan, “one way or the other, all problems are linked to the issue of the uncertain constitutional status of the Northern Areas.”<sup>229</sup>

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<sup>226</sup> The Constitution of the Islamic Republic of Pakistan,  
<<http://www.pakistan.org/pakistan/constitution/part1.html>> accessed 20 November 2013

<sup>227</sup> Daily Newspaper K2, 2<sup>nd</sup> November, 2013

<sup>228</sup> The Azad Jammu and Kashmir Interim Constitution Act, 1974 (Law, Justice & Parliamentary Affairs Department Azad Government of the State of Jammu and Kashmir, Amended up to date May 1997)

<sup>229</sup> Human Rights Commission of Pakistan, Report 2005

## 4.11 THE PAKISTAN CITIZENSHIP ACT 1951

Pakistan Citizenship Act of 1951 (with amendments in 1952, 1972, 1973, 2000) is a principal document which governs the citizenship related matters of Pakistan. Pakistani citizenship rights are based on the principle of unconditional jus-soli (it means one who born in the territorial limits of Pakistan has the right to get its citizenship).

A provision under Section 14 B was inserted in the Act in 1973 which dealt with the Kashmiris. The section states that "A person who being a subject of the State of Jammu and Kashmir, has migrated to Pakistan with the intention of residing therein until such time as the relationship between Pakistan and the State is finally determined, shall, without prejudice to his status as such subject, be a citizen of Pakistan."<sup>241</sup>

### 4.11.1 CONTROVERSIES

Pakistan and India both considered the State of Jammu and Kashmir as disputed region and had many wars for the region. As far as citizenship is concerned, Pakistan law says a subject of the State of Jammu and Kashmir who, being under the protection of Pakistan passport, is resident in the United Kingdom or such other country as the Federal Government may, by notification in the official Gazette, specify in this behalf, shall, without prejudice to his rights and status as subject of that state, be deemed to be, and to have been, a citizen of Pakistan.<sup>241</sup>

On the other hand, Article 63(1)(f) of the Constitution of Pakistan which deals with the disqualifications for membership of Parliament of Pakistan says "being citizen of Pakistan by

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<sup>241</sup> The Pakistan Citizenship Act 1951

<sup>242</sup> [https://familysearch.org/learn/wiki/en/Pakistan\\_Naturalization\\_and\\_Citizenship](https://familysearch.org/learn/wiki/en/Pakistan_Naturalization_and_Citizenship), accessed 15 August 2014

virtue of section 14B of the Pakistan Citizenship Act, 1951, he is for the time being disqualified under any law in force in Azad Jammu and Kashmir from being elected as a member of the Legislative Assembly of Azad Jammu and Kashmir”<sup>232</sup>

#### **4.12 GILGIT-BALTISTAN EMPOWERMENT AND SELF-GOVERNANCE ORDER 2009**

The Gilgit-Baltistan Empowerment and Self-Governance Order 2009 is the recent legal framework which carries essential legislative, executive and judicial reforms to yield empowerment and self-governance to the residents of Gilgit-Baltistan<sup>233</sup> Prima facie the Order was introduced with the intention to extend fundamental rights to the inhabitants of G-B and empower the local Legislative Assembly framing a De-facto provincial setup without constitutional backing

The federal Cabinet passed “the Gilgit-Baltistan Empowerment and Self-Governance Order 2009” on 29<sup>th</sup> August 2009 which was later approved by the President of Pakistan. By virtue of this Order the people of Gilgit-Baltistan got Gilgit-Baltistan Legislative Assembly and Gilgit-Baltistan Council replacing the old Northern Areas Legislative Council

Historically, all the reforms which were introduced by time to time were to enhance the administrative capability of the area and to solve the problems of the local population. The federal government was intended to create an independent administrative unit without giving it a provincial status and stated this process in 1975. The purpose of the new package was to

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<sup>232</sup> The Constitution of Pakistan 1973 Article 63 (1) (f)

<sup>233</sup> Preamble of “Gilgit-Baltistan Empowerment and Self-Governance Order 2009” The Extra Ordinary Gazette of Pakistan Part-II (GoP Ministry of Kashmir Affairs and Northern Areas, <[http://www.gilgitbaltistan.gov.pk/images/stories\\_downloads/Governance-Order.pdf](http://www.gilgitbaltistan.gov.pk/images/stories_downloads/Governance-Order.pdf)> accessed 20 July 2013

implement new reforms in the region to increase the administrative capability of the federal government

This reform at first changed the name of the region from “Northern Areas” to “Gilgit-Baltistan” on the public demand and secondly this reform was framed for granting full internal autonomy to this region. The new bill substituted “the Northern Areas Legal Framework Order of 1994” and gave it the status of informal province. Under the order the Gilgit-Baltistan Assembly has been empowered to devise its own rules of legislation. A Chief Minister post was introduced in the order who has been given powers of a leader of the Legislative Assembly, Public Services Commission, Chief Election Commissioner and Auditor General. In addition post of a Governor was created to link and retain the federal government’s grip on the regional administration.

#### **4.12.1 GILGIT-BALTISTAN COUNCIL**

Gilgit-Baltistan Council constitutes of following dignitaries, “Prime Minister of Pakistan, Governor of G-B, Six members nominated by the Prime Minister of Pakistan from time to time from amongst Federal Ministers and members of the Parliament provided that the Federal Minister for Kashmir Affairs and Gilgit-Baltistan shall be an ex-officio member and Minister In charge of the Council”<sup>234</sup> The Council has also six members with the Chief

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<sup>234</sup> “Gilgit-Baltistan Empowerment and Self-Governance Order 2009”. The Extra Ordinary Gazette of Pakistan Part-II (GoP Ministry of Kashmir Affairs and Northern Areas, <<http://www.gilgitbaltistan.gov.pk/images/stories/downloads/Governance-Order.pdf>> accessed 20 July 2013

Minister of Gilgit-Baltistan which are chosen by the G-B Assembly by proportional representation system and through single transferable vote<sup>235</sup>

According to the 2009 Order the Prime Minister of Pakistan will Chair the Council while the Governor shall be the Vice-Chairman and the Minister of State for Kashmir Affairs and Gilgit-Baltistan (KA&GB) will be an ex-officio non-voting member<sup>236</sup> The powers and scope of the Council to legislate is within 55 areas stipulated in the third schedule of the 2009 Order and the President of Pakistan on advice of Prime Minister of Pakistan shall appoint the Governor of G-B

#### 4.12.2 GILGIT-BALTISTAN LEGISLATIVE ASSEMBLY

Under 2009 Order “the Legislative Assembly shall consist of thirty three members of whom

- (a) Twenty four members shall be elected directly on the basis of adult franchise
- (b) Six women members shall be elected on the pattern as in case of reserved seat in Pakistan One additional women seat (total 07) was created for newly created district of Hunza-Nagar
- (c) Three technocrats and professional members shall be elected on the pattern as in case of reserved seat in Pakistan

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<sup>235</sup> M.Amir Rana & Mujtaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Niganshat Publishers 2007) 79

<sup>236</sup> Justice (Retd.) Syed Manzoor Hussain Gillani, Proposed Constitutional Amendments in the Constitution of Islamic Republic of Pakistan 1973, for Empowerment of Azad Jammu & Kashmir and Gilgit-Baltistan (Discussion Paper, PILDAT, May 2011) 10



The Assembly will have its Chief Minister, Speaker and Deputy Speaker elected by the house  
The lower house will have 61 subjects for legislation given in the fourth schedule of the  
Presidential Order ”<sup>237</sup>

#### 4.12.3 ANALYSIS ON GILGIT-BALTISTAN 2009 ORDER

The self-governance and empowerment package has opened up a domestic box of suspicions  
about the government’s stand on Kashmir Under the new system, the NA has given a de-  
facto provincial setup instead of full constitutional province Therefore, the core demand of  
complete constitutional province of Pakistan and equal rights guaranteed under the  
Constitution is still lacking <sup>238</sup>

The Gilgit-Baltistan empowerment package though upgrades the previous status still exclude  
the public representatives of Gilgit-Baltistan from the Parliament as well as various other  
essential federal institutions like the Council of Common Interests (CCI), the National Hydro-  
Electric Board (NHEB), the Indus River System Authority (IRSA), the National Economic  
Council (NEC), the National Judicial Council (NJC) and the National Finance Commission  
(NFC) <sup>239</sup>

The 2009 order created a “Supreme Appellate Court” for Gilgit-Baltistan as the highest  
appellate forum to redress the grievances of local people It entertains the cases which are not

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<sup>237</sup> “Gilgit-Baltistan Empowerment and Self-Governance Order 2009”, The Extra Ordinary Gazette of  
Pakistan Part-II (GoP Ministry of Kashmir Affairs and Northern Areas,  
<<http://www.gilgitbalistan.gov.pk/images/stories/downloads/Governance-Order.pdf>> accessed 20 July  
2013

<sup>238</sup> Nirupama Subramanian, ‘Measures for Gilgit-Baltistan generate suspicion Islamabad *The Hindu* (1  
September 2009) <<http://www.thehindu.com/news/international/article12856.ece>> accessed 25 February 2013

<sup>239</sup> Justice (Retd) Syed Manzoor Hussain Gillani, Proposed Constitutional Amendments in the Constitution of  
Islamic Republic of Pakistan 1973, for Empowerment of Azad Jammu & Kashmir and Gilgit-Baltistan  
(Discussion Paper, PILDAT, May 2011) 9

appealable before the Supreme Court of Pakistan<sup>240</sup> This new creation has raised the ambiguity that the people of G-B being a citizen of Pakistan with equal rights couldn't invoke their fundamental rights at the Supreme Court of Pakistan The confusion further increased by declaring the region a province by the leaders of Pakistan without actually granting a constitutional setup of a province as enumerated in the Constitution of Pakistan It doesn't enjoy the same power as enjoyed by the other provinces with complete autonomy on various legislative subjects as it has been devolved to the rest of provinces As a matter of fact government of Pakistan has created an entirely different politico-legal entity that is extendedly under the hands of central government<sup>241</sup>

Though it is claimed that the 2009 order has empowered Local Legislative body and has given a chance to the people of G-B to self-rule but there are a lot of key subjects are out of GB Legislative Assembly purview and handover to the federally dominated Gilgit-Balistan Legislative Council<sup>242</sup>

Moreover, the 2009 Order has granted immense power to the Chairperson of the Council i.e Prime Minister of Pakistan like power to pardon, suspend or commute judgment any court, tribunal or any other authority Beside this the Chairman has power to proclaim Emergency<sup>243</sup> GBLA has power to elect a Chief Minister but there is no space given by the Order for the

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<sup>240</sup> Catelye Hang, *Liminality and Resistance in Gilgit-Balistan* (Centre for International Sustainable Development Law, McGill University Canada, June 2012) 9

<sup>241</sup> *ibid*

<sup>242</sup> M.Amir Rana & Mujtaba Rathore, *Northern Areas Crisis and Prospects* (Pakistan Institute for Peace Studies PIPS, Nigarishat Publishers 2007) 79

<sup>243</sup> "Gilgit-Balistan Empowerment and Self-Governance Order 2009", The Extra Ordinary Gazette of Pakistan Part-II (GoP Ministry of Kashmir Affairs and Northern Areas, <<http://www.gilgitbalistan.gov.pk/images/stories/downloads/Governance-Order.pdf>> accessed 20 July 2013, Section 34

seat of opposition leader which is indispensable for the smooth and good working of a real democracy

The order has granted council authority over tourism, planning for economic coordination, development of industries, forestry, minerals and mineral wealth, electricity and bulk water storage and duties which are highly productive and wealthy subjects. Even the fees, jurisdiction, power of all courts and offences against laws mentioned in a specified list is within the purview of the Council.

#### 4.13 OPINION OF KASHMIRI LEADERSHIP

Kashmiri politicians opposed “the Self Governance and Empowerment Order 2009” to Gilgit-Baltistan and in their opinion it is plan of Pakistan to integrate the disputed strategic Northern Areas into Pakistan. In their opinion this act will damage the cause of Kashmir independence as these regions are demarcated as a part of disputed Kashmir issue duly agreed by the both states in various UN resolutions<sup>244</sup>

In a conference at Islamabad arranged by Diaspora Kashmiri Lord Nazeer and attended by more than twenty leaders belonging to major political parties of AJ&K, where all of them showed their reservations pleading that the “reforms are equivalent to take out Gilgit Baltistan from Kashmir issue”

Amanullah Khan condemns this package saying, “It will harm the interests of Pakistan as well as Kashmiris. It looks like they are integrating these areas into Pakistan as done by India.”<sup>245</sup>

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<sup>244</sup> Zeeshan Haider, *Reuters Islamabad* (31 August 2009) <<http://www.reuters.com/article/2009/08/31/us-pakistan-kashmir-sb-idUSTRE57L2T120090831>> accessed 25 July, 2013

<sup>245</sup> *ibid*

Justice Mazoor Hussain Gilani (Rtd Justice of SC AJ&K) writes appointing a Governor and naming the Chief Executive of the area as Chief Minister like all other Provinces of Pakistan and India, is irritating the stakeholders. Both the regions being part of a liberated state, the system of their governance is required to be similar to avoid misperceptions, as perceptions are stronger than pretensions<sup>246</sup>

Sardar Attique Ahmed Khan, former Prime Minister of AJ&K showing his reservations regarding the 2009 Order said, "We support internal autonomy for these areas but such moves to unilaterally alter the status of these areas and gradually give them the status of a province are suspicious and unacceptable"<sup>247</sup>

Hassan Askan Rizvi, a political analyst said, "they have met the demands of people of the Northern Areas on a limited scale"

#### 4.14 OPINION OF NEWS AGENCIES AND OTHERS

About 2009 package opinions expressed by some news agencies were mixed with appreciation and reservations. The Dawn newspaper said that, "the decision struck a balance between meeting the aspirations of its people for political rights and maintaining the region's status as disputed territory."

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<sup>246</sup> Justice Syed Manzoor H Gilani, 'Gilgit-Baltistan and Azad Jammu and Kashmir Vis-a-vis UN Resolutions and India Pakistan Constitutions' *South Asian Pulse* (06 October 2009)

<[http://www.sapulse.com/new\\_comments.php?id=1397\\_0\\_1\\_0\\_C](http://www.sapulse.com/new_comments.php?id=1397_0_1_0_C)> accessed 18 September 2013

<sup>247</sup> Zeeshan Haider, *Islamabad Reuters* (31 August 2009) <<http://www.reuters.com/article/2009/08/31/us-pakistan-kashmir-sb-idUSTRE57U2TJ20090831>> accessed 25 July 2013

The Daily Time said that, “the people of Gilgit and Baltistan had been held hostage to the Kashmir dispute for long enough and should eventually be incorporated as a full province of Pakistan”<sup>248</sup>

The 2009 Order is a new kind of administrative setup having two folds governance system. There is a Senate like “GB Council” which shapes it as a separate State. On the other hand it has Governor and Chief Minister Offices which shape it as a Province. The head of the G-B Council (Senate like body) is Prime Minister of Pakistan and non-local representatives in the GB Council are in majority. This State-cum-Province structure is a unique experience in its form.

It is also presumed that the think-tanks and policy makers of Pakistan have tried to shape an equal provincial setup and structure that India has formed in Jammu and Kashmir. India had launched its protest against the enforcement of the Empowerment Package in Gilgit-Baltistan declaring it as an attempt to integrate this region with Pakistan and it seems that Pakistan has made the region its fifth province.

Parallel moves of integration in the shape of different reforms of disputed territory across the LOC are eventually settling the issue of Kashmir on its own by India and Pakistan. However, Pakistan has taken a cautious stance.<sup>249</sup>

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<sup>248</sup> *ibid*

<sup>249</sup> Mira MacDonald, *India and Pakistan, Looking beyond the rhetoric*, September 5, 2009, Reuters <<http://blogs.reuters.com/pakistan/2009/09/05/india-and-pakistan-looking-beyond-the-rhetoric/>> accessed 15 February 2013

The then Prime Minister of Pakistan Youfuf Raza Gilani once announced that, “Gilgit-Baltistan can’t be given constitutional status and representation in the parliament because of Pakistan’s commitment to UN resolutions ”

On the other hand it is realized that there is not any embargo on Pakistan to make any permanent constitutional arrangement or even a provisional arrangement for Gilgit-Baltistan. The restrictions or compulsion under UN resolutions are just lame excuses because there is nothing like that in those resolutions which hinders in granting rightful constitutional and fundamental rights to the people of Gilgit-Baltistan <sup>250</sup>

Once the former Minister Mr. Afzal Khan of Kashmir Affairs and Northern Areas Affairs (KANAA) said, “Azad Jammu and Kashmir through self-government made tremendous socio-economic progress, whereas the Northern Areas is still backward ”

#### **4.15 PROVINCIAL AUTONOMY & DEVOLUTION OF POWER**

Local representatives of Gilgit-Baltistan are continuously demanding full provincial status for GB time and again. Many resolutions have been passed by the GBLA (Gilgit-Baltistan Legislative Assembly) for the complete constitutional provincial status and full autonomy to this region. These resolutions reflect undoubtedly the popular will of the people of GB <sup>251</sup>

18<sup>th</sup> Amendment to the Constitution of Pakistan discarded the concurrent list and transferred several powers to the provinces which involve forestry and environmental protection subjects

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<sup>250</sup> M Ismail Khan, ‘Gilgit-Baltistan autonomy’ *Dawn Newspaper* (Karachi, 09 September 2009) <<http://www.dawn.com/news/843990/gilgit-baltistan-autonomy>> accessed 05 June 2013

<sup>251</sup> ‘GBLA approves resolution demanding provincial status for Gilgit-Baltistan’ *Pakistan Today Online* (13 September 2012) <<http://www.pakistantoday.com.pk/2012/09/13/national/gbla-approves-resolution-demanding-provincial-status-for-gilgit-baltistan/>> accessed 27 August 2013

etc.<sup>252</sup> In this debate of devolution of power after 18<sup>th</sup> Amendment in the Constitution of Pakistan, position of Gilgit-Baltistan is far behind because there are still many substantial subjects which are not in the scope of Gilgit-Baltistan Legislative Assembly (GBLA) and held by the Gilgit-Baltistan Council. Thus the regime of forestry and revenues which are collected in shape of duties and royalties on natural resources like oil, gas, water etc are granted to the one where the head of resources are located.<sup>253</sup> It is a questionable thing that how much the policy of federal government regarding the devolution of power to the provinces is implemented in Gilgit-Baltistan and how would the revenue sharing formula work in G-B.

#### 4.16 EFFECT OF LIMINALITY AND BEING IN-BETWEEN

Legal researchers observe how people excluded from the law, experience particular form of vulnerability. According to LEP Report, “law-induced exclusion and poverty go hand in hand, yet neither is inevitable.”<sup>254</sup>

There is doubt that people of GB are facing a specific kind of vulnerability due to liminal status of this region. Therefore, they may face a kind of legal segregation because hundred thousand people of G-B reside in the different cities of Pakistan. Identity crisis, insufficient security on behalf of law, ignorance of law for their own protection, lack of education and

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<sup>252</sup> Constitution (Eighteenth Amendment) Act, 2010 (26 November 2010) at Art 96 and Art 101(3) [18th Amendment], < <http://www.pakistan.org/pakistan/constitution/> > accessed 18 October 2013

<sup>253</sup> KP to Revisit Laws Related to Natural Resources *The Dawn* (Karachi, 28 July 2011) <<http://www.dawn.com/2011/07/28/kp-to-revisit-laws-related-to-natural-resources.html>> accessed 27 June 2013

<sup>254</sup> The Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone* (Report 2008) Volume I, 14

awareness to make their lives better are some of the difficulties. However, these experiences exacerbate by the exclusion of the specific region and its people<sup>255</sup>

Availability of rights and access to justice becomes severe in the places like Gilgit-Baltistan which are legally liminal and bearing in-between position. This liminality severely affects the residents of Gilgit-Baltistan in different ways. For instance, the ambiguity of the region creates hurdles for development and revenue sharing. The residents of Gilgit-Baltistan has negligible influence in the arena of Pakistan politics and military which is why they are ruled by the laws and policies not framed with their involvement<sup>256</sup>. The legal uncertainty and exclusion of the region becomes more prominent after the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> Amendments in the Constitution of Pakistan.

Though it is considered that this state of in-between is a temporary and transitional that will change with the resolution Kashmir conflict. Thus the regions suffer from the democratic deficiency and its ambiguous status prolong for unspecified period.

It is very obvious that communities see their legal exclusion and ignorance with the glasses prejudice of environmental and natural resources due to their great implications on culture, politics and economics<sup>257</sup>. Generally, the dispute over natural resources attracts injustices, inequalities and even violence sometime.

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<sup>255</sup> Ibid 13, 19

<sup>256</sup> Basit Nabi Malik, 'The case of Gilgit-Baltistan' *The News International* (Islamabad, 18 May 2011) <<http://www.thenews.com.pk/Todays-News-9-47570-The-case-of-Gilgit-Baltistan-Internationaaran>> accessed 18 Feb 2013.

<sup>257</sup> Caylee Hang, *Liminality and Resistance in Gilgit-Baltistan* (Centre for International Sustainable Development Law, McGill University, Canada, June 2012) 2.



The sense of deprivation is increasing day by day among the people in Gilgit-Baltistan as the status of this region is in limbo. The denial of constitutional recognition and protection has produced a sense of sourness, confusion and frustration and has given birth to new nationalist movements which may be tough challenges for Pakistan.

After Kargil war the government almost disowned the local people, their sacrifices and the martyred soldiers of Gilgit-Baltistan. This further aggravated the sense of deprivation of local people beside Pakistan's consistent refusal to integrate the region completely.<sup>258</sup>

It is an unfortunate thing that in spite of incredible natural resource potential this region is poor, remote, neglected and starved of funds. The region is shadowed with poverty beside magnificent hydel potential the central government don't took much interest in the development of this region and allocate a meager amount for its annual budget and development. Thus the local people see the mega projects like Diamir Bhasha Dam in the region with suspicion as they think this mega project will not help them. As hydel projects are very crucial for Pakistan's economy and development but when it comes to the question of royalty earned from these dams and due shares things go wrong way.<sup>259</sup>

#### 4.16.1 EUROPEAN PARLIAMENT REPORT 2007

In 2007 the European Parliament's Report on Kashmir, "Present Situation and Future Prospects" is said to be a critical paper for the state of Pakistan to create the Presidential 2009 Order. Baroness Nicholson of Winterbourne presented the report saying Pakistan fails to

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<sup>258</sup> Basit Nabi Malik, 'The case of Gilgit-Baltistan' *The News International* (Islamabad, 18 May 2011) <<http://www.thenews.com.pk/Todays-News-9-47570-The-case-of-Gilgit-BaltisInternationaatan>> accessed 18 Feb 2013.

<sup>259</sup> Navnita Chadha Behera, *Azad Kashmir and Northern Areas: The Forgotten Frontiers in Demystifying Kashmir* (Brooking Institute Press, December 2006) 191-192.

enforce democracy in Gilgit-Baltistan<sup>260</sup> The report says that, “the European Parliament is concerned that the Gilgit-Baltistan region enjoys no form of democratic representation whatsoever and that the people of Gilgit-Baltistan are under the direct rule of the military and enjoy no democracy.” The report suggested to the government of Pakistan “to hold elections for the first time in Gilgit-Baltistan”<sup>261</sup>

Nicholson observes the European Union and other International Organizations could be used effectively to promote and bring change in the political and legal arena of countries lacking democratic norms and values. Communities like Gilgit-Baltistan want to highlight their issues at every forum in order to get awareness and political strength. The people of Gilgit-Baltistan couldn't lobby effectively in Pakistan to redress their issues due to lack of awareness, existence of bleak democratic system and non-existence of any political institution in the history.

The observations of the International Crisis Group (ICG) and of Nicholson are clear. Noting that Pakistan has kept the constitutional status of Gilgit and Baltistan undetermined for almost six decades, the ICG report published on April 2 warns that “unless Pakistan takes steps to provide meaningful autonomy to the Federally Administered Northern Areas, extending civil and political rights to its people, grievance will mount.” It concludes that “Pakistan's legitimacy in the region is fast declining. So long as democracy eludes the country, political and durable peace in the Northern Areas will remain a distant dream.” Nicholson describes Gilgit and Baltistan as a constituent part of undivided Kashmir. She also expressed concern over the fact that the Gilgit-Baltistan has not any kind of democratic setup and representation.

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<sup>260</sup> European Parliament Committee on Foreign Affairs, *Report on Kashmir: Present Situation and Future Prospect* (Nicholson report, A6-0158/20024, April 2007) para 2, Note 3 at 38

<sup>261</sup> *ibid* at para 14, 15, 18

#### **4.16.2 INTEGRATION INTO THE FEDERATION**

From year 1972 to year 2009 various reform packages for Gilgit-Baltistan have been introduced by different political parties' government in the federation. Since 1972 the status of G-B is steadily upgraded to a separate administrative entity in a shape of province. All these reforms are out of the scope of United Nations Resolutions on Kashmir issue. The Gilgit-Baltistan is somehow granted a province like setup with a Chief Minister and a Governor but it is all extra constitutional arrangement. This unique federal administrative unit doesn't have any representation in the National Assembly nor in the Senate. Soon after the 2009 G-B Elections the Chief Minister was invited as an observer in the meetings of federal cabinet and all other national institutional meetings. Almost all the main stream political parties of Pakistan has involved and even included them in their core committees.

Still G-B lacks the it participation in the many other national forums like National Finance Commission (NFC) where all the Finance Ministers of provinces and Federal Finance sit and decide about distribution of financial resources among federating

#### **4.17 PUBLIC OPINION & DEMANDS**

It is persistent complaint of the people of Gilgit-Baltistan that their woes are scarcely heard at any national or international forum except some human rights organizations and native limited media forums. The issue of Gilgit-Baltistan is of political, constitutional, fundamental, civil and economic rights that have been denied to them even forgetting and ignoring the sacrifices, sense of attachment, sincerely and unparalleled loyalty to the State of Pakistan. The local people

of Gilgit-Baltistan are tirelessly struggling since their liberation for a permanent and complete integration with Pakistan<sup>262</sup>

Six decades have been passed still Gilgit-Baltistan is under constitutional limbo regardless of their unqualified accession primarily due to the long simmering Kashmir dispute<sup>263</sup> The people of this region is still ignored and deprived of their fundamental rights despite various efforts to integrate with Pakistan

The region of Gilgit-Baltistan shares a history of almost one hundred years with the former princely State of Jammu and Kashmir and even it was driven by occupation, coercion and exploitation Prior to 1840s different regions of Gilgit-Baltistan were independent states and they were annexed through occupation<sup>264</sup>

When partition plan was pronounced Dogra's were ruling in the state of Kashmir and Gilgit-Baltistan The people of Gilgit-Baltistan fought a war of independence to get rid of the Dogra and restored the region's independence and separate identity<sup>265</sup> After liberation from the Dogra oppression the people of Gilgit-Baltistan acceded unconditionally to the nascent Pakistani State Constitutional recognition was promised by the Pakistan, which remains a

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<sup>262</sup> Syed Ansar Hussain, 'Gilgit-Baltistan in limbo' *Dawn Newspaper* (08 January 2013)

<<http://www.dawn.com/news/777135/gilgit-baltistan-in-limbo>> accessed 20 August 2013

<sup>263</sup> Justice (Retd) Syed Manzoor Hussain Gillani, Proposed Constitutional Amendments in the Constitution of Islamic Republic of Pakistan 1973, for Empowerment of Azad Jammu & Kashmir and Gilgit-Baltistan (Discussion Paper, PILDAT, May 2011) 9

<sup>264</sup> Imtiaz Ali, 'Gilgit-Baltistan has a separate historical identity' *Pamir Times* (Online paper Gilgit, 01 February 2013) <<http://pamirtimes.net/2013/02/01/gilgit-baltistan-has-a-separate-historical-identity-imtiaz-ali/>> accessed 20 August 2013

<sup>265</sup> Syed Ansar Hussain, 'Gilgit-Baltistan in limbo' *Dawn Newspaper* (08 January 2013)

<<http://www.dawn.com/news/777135/gilgit-baltistan-in-limbo>> accessed 20 August 2013

pipe dream, since then onward the region is dealt as separate entity, governed by the state of Pakistan<sup>266</sup>

Analysts observed that G-B was once self-sufficient in their food and livelihood but nowadays it is completely dependent on the Karakoram Highway (KKH) for their basic needs and wants<sup>267</sup>

A politician and son of the former Maharaja of the State of J&K Dr Karan Singh once apologized publicly to the people of Gilgit-Baltistan on forcible occupation of the region by his ancestors. Furthermore, he advised the two States Pakistan and India to not consider this region as a part of Kashmir and that the reunification is not possible<sup>268</sup>

Pakistan to get the support of cent percent Muslim majority region of Gilgit-Baltistan in case of plebiscite under UN deliberately linked it with Kashmir dispute. As in case of plebiscite the Gilgit-Baltistan Muslim majority population could be used positively in swinging the results in favor of Pakistan<sup>269</sup>

Justice Manzoor Hussain Gilani once said the government of Pakistan rightly kept the area bracketed with the Jammu and Kashmir, although under the Indian Independence Act 1947,

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<sup>266</sup> Imtiaz Ali, 'Gilgit-Baltistan has a separate historical identity' *Pamir Times* (Online paper Gilgit, 01 February 2013) <<http://pamirtimes.net/2013/02/01/gilgit-baltistan-has-a-separate-historical-identity-imtiaz-ali/>> accessed 20 August 2013

<sup>267</sup> Sunder Mohan, 'Azad Jammu and Kashmir and Gilgit-Baltistan: A Tale of Economic Exploitation' (Jan - Mar 2010) Vol. 17, No 1 *Journal of Peace Studies* 31-34, 4

<sup>268</sup> Syed Ansar Hussain, 'Gilgit-Baltistan in limbo' *Dawn Newspaper* (08 January 2013) <<http://www.dawn.com/news/1135/gilgit-baltistan-in-limbo>> accessed 20 August 2013

<sup>269</sup> Basil Nabi Malik, 'The case of Gilgit-Baltistan' *The News International* (Islamabad, 18 May 2011) <<http://www.thenews.com.pk/Todays-News-9-47570-The-case-of-Gilgit-Baltistan-International>> accessed 18 Feb 2013

there was no impediment in making the area as a Province or a permanent part of federation of Pakistan like FATA.<sup>270</sup>

Both India and Pakistan given tremendous importance to Jammu and Kashmir, both claim full state which has been divided into many pieces years ago naturally. It is a fact of history that the people of Gilgit and Baltistan never remained sincere and felt much loyalty to the former Maharaja of the State of J&K rather they have list of complains and justifications that they have been held hostage to the Kashmir dispute.<sup>271</sup>

People of Gilgit and Baltistan want to integrate with Pakistan and overwhelmingly resist any attempt to merge it with the Kashmir. Their demand is to make it as separate province or a separate autonomous state like Azad Kashmir having its own government, parliament, Supreme Court and flag.<sup>272</sup>

Another pressing demand of local people is of opening the historical Skardu-Kargil, Chhorbat-Nubra roads for the better economic activity in the region and to resume the cultural and familial ties across the LOC.<sup>273</sup> Local residents are still denied the right to travel across the LOC to Ladakh and Kashmir. This situation affected the residents of Kargil, Nubra, Sham,

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<sup>270</sup> Justice Syed Manzoor H Gilani, 'Gilgit-Baltistan and Azad Jammu and Kashmir Vis-a-vis UN Resolutions and India Pakistan Constitutions' (Oct 06, 2009, South Asian Pulse)

< [http://www.saspulse.com/new\\_comments.php?id=1397\\_0\\_1\\_0\\_C](http://www.saspulse.com/new_comments.php?id=1397_0_1_0_C) > accessed 18 September, 2013

<sup>271</sup> Mira MacDonald, 'India and Pakistan, Looking beyond the rhetoric' *Reuters* (5 September 2009)

<<http://blogs.reuters.com/pakistan/2009/09/05/india-and-pakistan-looking-beyond-the-rhetoric/>> accessed 15 August 2013

<sup>272</sup> Zeeshan Haider, *Islamabad Reuters* (31 August 2009) <<http://www.reuters.com/article/2009/08/31/us-pakistan-kashmir-sb-idUSTRE57U2TJ20090831>> accessed 25 July 2013

<sup>273</sup> 'GBLA approves resolution demanding provincial status for Gilgit-Baltistan' *Pakistan Today* (Online 13 September 2012) <<http://www.pakistanoday.com.pk/2012/09/13/national/gbla-approves-resolution-demanding-provincial-status-for-gilgit-baltistan/>> accessed 27 August 2013

Dras, Gangche, Kharman, Gultari, Shungo-Shugar, Astore, Gurez, Saltoro and Chorbat Valleys<sup>274</sup>

#### 4.18 CONCLUSION

The issue of Kashmir was filed before the United Nations by the India soon after the local uprising supported by the tribal men. There are numerous UN Resolutions for the solution of the disputed territory from cease fire to withdrawal of forces and then to conduct a free and fair plebiscite in order to determine the will of the people of these areas. United Nations couldn't enforce its resolutions related to Kashmir dispute due to some legal impediments and other political and diplomatic reasons. The long pending issue of Kashmir is a big question mark on the performance of United Nations. There are many International Instruments signed by both India and Pakistan which guarantee the provisions of fundamental rights to every person such as civil, political, economic rights as well as right of self-determination but unfortunately the people of these disputed territories are lacking these rights. India and Pakistan both are legally bound to implement the provisions of UN Charter, UDHR, ICCPR and ICSECR especially in these long hanging unsettled disputed territories.

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<sup>274</sup> Peaceful settlement of Kashmir *The New Internationalist* (London Edition, Sunday, 3 April 2011)

## CHAPTER V

### CONCLUSION & RECOMMENDATIONS

#### 5.1 CONCLUSION

In order to bring Gilgit-Balistan under the Article 1 of the Constitution of Pakistan as a territory of Pakistan even on provisional basis until the final settlement Kashmir issue any arrangement can be made between the federation of Pakistan and the people of Gilgit-Balistan. There is a precedent for this provisional arrangement i.e. Pak-Sino Border agreement of year 1963 which is subject to renegotiation on the final settlement of Kashmir dispute. It is argued that when Pakistan can enter into an agreement with a third party regarding the disputed territory then more justifiably it can make some arrangement with its own people and let them participate in national law making body and other national institutions.

The Diamir District of Gilgit-Balistan is largely suffering from the construction of Diamir-Bhasha Dam almost 30 to 32 villages would be submerged with thousand kanals of agricultural land. Secondly, the Economic backbone and the most strategic 885km long Karakoram Highway (KKH) pass through G-B and it is the only road which links China with Pakistan constructed in 1978 without paying any royalty to the people of this region. The Diamir Bhasha Dam also submerged 125Km of KKH.

There are controversies upon the name, royalty and revenue sharing because the complete Dam lies in District Diamir yet it is name as Bhasha which is adjacent border region of KPK province. It is ironic that the river Indus starts from the Northern Areas and its royalty is being awarded to KPK instead of awarding it to Gilgit-Balistan similar attitude has been adopted in the project of Diamir-Bhasha Dam.



The constitutionally disadvantaged areas of Gilgit-Baltistan are rapidly changing and turning from a state of peace into chaos with persistent deteriorating law and order situation. There may be more than one way to come out of this endangering situation, especially in the case of a sovereign state power, there always remain various windows to handle and resolve any abnormal situation.

## 5.2 THE CASE OF ANDORRA

There is another possible solution to the Kashmir issue for India and Pakistan that is adoption of setup which is taken by the state of Andorra. Andorra is one of the smallest states in Europe having an area of 458 km<sup>2</sup> and population of 85,000 bordering with Spain and France. Andorra had a unique political setup for 715 years having co-principality, ruled by French and Spanish leaders. From 1607 onward the French head of the State and the Spanish bishop of Seud'Urgel, Spain ruled the state of Andorra.

In 1993 the system of government was transformed from feudal to parliamentary democracy by virtue of a constitution but the position of titular co-princes or heads of the state was retained. The two co-princes serve coequally with limited powers that veto of one doesn't affect government acts. Furthermore, the co-princes represent them in shape of delegate in Andorra. Therefore, there exist three layers of political setup, a council or commission comprises of co-princes, the General Council and the Executive Council. As co-princes of Andorra, the President of France and the Bishop of Urgell maintain supreme authority in approval of all international treaties with France and Spain, as well as all those that deal with

internal security, defense, Andorran territory, diplomatic representation, and judicial or penal cooperation<sup>275</sup>

Andorra has an electoral democracy with president as head of the government or executive. Being head of the government the president enjoys all executive powers. Legislative powers are vested in the government and parliament. Independent Judiciary check the executive and other institutions. The 1993 constitution remove the ambiguities in the separation of power among the branches of the state. People are free to form different political parties and participate in the democratic process independently. In 1993 with the promulgation of the constitution in Andorra it became member of United Nations. Tourism accounts for over 80% of Andorra's gross domestic product<sup>276</sup>

### 5.3 RECOMMENDATIONS

- 1 In Gilgit-Balistan democratic as well as military government brought many reforms in governance with the change of time. These reforms were brought in order to align the governance structure with the rising demands and needs of the people. It is need of the hour now to remove all ambiguities regarding the status of Gilgit-Balistan setting aside the bureaucratic setup, giving full autonomy, empower the local people by legislative powers and strengthen them so they may work for the welfare of the their own people.
- 2 The Supreme Court of Pakistan stopped Azad Jammu and Kashmir government in 1993 when it claimed jurisdiction over the Northern Areas of Pakistan and expressly

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<sup>275</sup> <http://www.eoearth.org/view/article/171643> accessed 10 March 2014

<sup>276</sup> Ibid

declared this region as a federal unit. Similar setup like AJK can be introduced in Gilgit-Baltistan with self-rule and autonomy in its affairs, having Prime Minister, President, Supreme Court and independent legislative assembly.

3. The federal government should respond sensibly to the real and rightful aspirations of the local people of G-B by guaranteeing full fledged constitutional rights with clear constitutional status. The central government should take steps for national integration of the people of Gilgit-Baltistan at every level and the people should be allowed to participate in all affairs of the state without any discrimination as it is the long waited wish of the people of G-B.
4. The federal government should make and announce Gilgit-Baltistan, the fifth province of Pakistan without any further delay and should address all the rightful claims and grant proportional share at federal and provincial level social, economic and political institutions.
5. In case of Gilgit-Baltistan Government's policy is to maintain its writ through force or strong federal control, which is wrong way of handling. The concern issues should be addressed through increased economic aid and developmental programs.
6. Time to time the local representatives of Gilgit-Baltistan has offered openly to the Federal Government of explore and utilize its natural resources for mutual benefit. Nature has blessed this region with exceptional potential in the energy production beside this it has potential in the areas of mineral, tourism, agriculture, livestock, forest, gemstones and small scale industries. The federal government should take immediate steps to maximum utilize its resources.
7. The security situation of GB depicts a gloomy picture, which is highly injurious for the local people with regard to their social life, business and development as well as for

federal The alleged sectarian violence drew out from the influence of outsiders which must be ceased and monitored keenly Those who are involved in such activities which disrupt the peace and order of the region must be brought to book

- 8 Local Government and all other stake holders in the region should take firm actions against any miscreant found in rising law and order situation in GB and put him to justice
- 9 Political and democratic parties should play active role in order to flourish peace and prosperity in the GB, otherwise the vacuum will be filled by religious zealots who would eventually lead the society towards sectarian hatred and violence
- 10 Gilgit-Balistan demands integration with Pakistan, for this purpose it requires reforms in the constitution, laws, politics, administration and economics as well as in society It is high time to fully recognize the fundamental rights and aspirations of the people of the region and fulfill it accordingly via permanent constitutional reforms considering democratic norms and values
- 11 Internal Autonomy is necessary to improve the economic and political backwardness of the region therefore, federation should increase the scope to internal autonomy of this region by allowing all the mainstream national parties to fully participate in the elections of G-B
- 12 The central government in collaboration with the G-B government can easily call international community and organizations e.g UN organizations, World Bank, the Asian Development Bank, the European Union and many other investors and humanitarian organizations to help in improving the standards of living of the people of this region

- 13 There is need to invest in the entire region to develop different potential sectors of revenue generation, for this purpose the federal government should increase the budget of this region considerably which is controlled by the federally dominated body i.e Gilgit-Baltistan Council (GBC)
- 14 The Government of Pakistan who is signatory of various International Human Rights Instruments and is under obligation of the Supreme Court judgment it should recognize and ensure all those rights without further delay
- 15 To address the present constitutional impasse in the G-B the federal should take the course which is suitable for granting complete autonomy and self-rule backed by the Constitution
- 16 The Government of Pakistan with the help of all stakeholders must accelerate the process of settling the issue of Kashmir as soon as possible because this long pending or lingering this issue will badly suffer all sectors of national life as well as it is a constant threat to the peace and regional stability
- 17 The economic and social organizations should be developed for the welfare of local people and borders policy should be soften in order to increase trade, tourism and commercial activities. It will also help the divided families across LOC to frequently visit their family and love ones
- 18 The Legislative Assembly of Gilgit-Baltistan should be given truly legislative mandate which could make policy and laws for the development of their region instead of performing a municipal body work of making developmental projects. For this purpose there is need of capacity building of GBLA members for effective legislation

- 19 The people of the Gilgit-Baltistan should increase their influence at national and international level by lobbying and raise their voices at every forum for their rightful claims and progress of the region
- 20 In future any reform or alternate arrangement regarding Gilgit-Baltistan should be made with consultation and taking into confidence the local people for long durable positive change and impact

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