

Essay

Supreme Court ruling on Gilgit Baltistan: A legacy of unfulfilled promises

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In January 2019, the Supreme Court (SC) of Pakistan, in a landmark judgment cleared the air on Pakistan's administrative relationship with Gilgit Baltistan (GB). The court, besides terming GB as part of the Kashmir 'dispute', also extended its writ to the region.¹ The controversial GB order, 2018, which was suspended by the GB Supreme Appellate Court, was also restored.

In brief, the SC judgment made two observations. Firstly, since GB is administered by Pakistan both de jure and de facto, Pakistan's control meant that Supreme Court's writ automatically applies to the region. Secondly, even though no constitutional changes could be initiated to incorporate GB into Pakistan as it formed part of the Kashmir 'dispute', fundamental rights still needed to be extended to the region. The court highlighted that any institutional mechanism to ensure greater rights to the people of GB should not violate the provisions of the UN resolutions on the Kashmir 'dispute'.

There were two key factors that shaped the court's verdict:

1. The Supreme Court's previous rulings on the region dating back to the Al-Jehad trust case in 1999 when it stated for the first time that GB was a 'disputed' territory.²
2. The controversy surrounding the promulgation of the Gilgit Baltistan Order, 2018 by Islamabad which abolished the GB Council and gave legislative monopoly to the Prime Minister.

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This article analyses the SC's judgment in light of GB's disputed status. Besides Pakistan's civilian and military establishments, even the judiciary's role has been accusatory of India rather than focusing on granting rights and representation to the people of GB. Contrary to the popular belief in the Pakistani media that the SC ruled in favour of GB, the article argues that even the SC's ruling has been complicit in perpetuating GB's political crisis.

Brief Background

After ceasefire between India and Pakistan in 1948, Azad Jammu and Kashmir, and Gilgit Baltistan came under Pakistan's control pending referendum in Jammu and Kashmir. The UN Security Council called on Pakistan to withdraw its forces from the occupied region, which was to be followed by a reduction of Indian troops from the Indian administered Jammu and Kashmir. These sequential steps would then prepare ground for a referendum which was to decide the fate of Jammu and Kashmir. Rather than abiding by the UN recommendations, Pakistan went on to strengthen its control on the territory. In April 1949, an agreement was signed between Mushtaq Gurmani (a federal minister without portfolio), Sardar Ibrahim (President of AJK) and Ghulam Abbas (President of Muslim Conference), wherein matters relating to defence, foreign policy, UNCIP negotiations and policymaking on Gilgit were handed over to Pakistan which controlled the region through Ministry of Kashmir Affairs (established in 1950). There was no representation from Gilgit Baltistan even as the policymaking on the region got handed over to Pakistan.³ The erstwhile British policy of appointing Political Agents was replaced by a Political Resident till 1962, after which the post of Resident (later known as Resident Commissioner) was created.⁴ The resident was assisted by two political (one each for Gilgit and Baltistan) and relocated from Islamabad to Gilgit.⁵ In 1970, the Gilgit and Baltistan agencies were merged into one unit and renamed as Northern Areas.

In context of power devolution and local representation, GB had been ruled by ad-hoc arrangements like the first electoral body of Northern Areas Advisory Council (1969), Northern Areas Council (1974), and the Legal Framework Order of 1994, which granted minimal legislative authority to the local representatives.⁶ It was only in 2009 that GB (Empowerment and Self Governance) Order established a legislative assembly headed by an elected Chief Minister, but it simultaneously created a GB Council based in Islamabad under the Prime Minister's chairmanship that exercised real decision making powers in the region. The order, a nominal

achievement over the previous arrangements left many things to be addressed and had been a source of local discontent in the region.

Parallely, the locals had taken recourse to the Supreme Court with the demand of being given full constitutional rights to GB and the region being treated on par with Pakistan's other provinces. A petition was filed in late 1990s to draw the Supreme Court's attention to the GB's political marginalization, wherein the court acknowledged GB's disputed status and called for granting constitutional rights to the people of the region.

While Supreme Court's tryst with the region's legality dates back to more than two decades, the immediate impetus for the recent judgment was the inception of the China Pakistan Economic Corridor (CPEC) in 2015 which strengthened the call for giving GB the status of Pakistan's fifth province. After New Delhi protested against the CPEC passing through Pakistan occupied Kashmir, the then PML-N led government formed a committee headed by the then National Security Advisor Sartaj Aziz in 2015 to look into GB's constitutional future.⁷ As Islamabad came to the realization that GB could not be incorporated into Pakistan given the region being part of the Kashmir 'dispute', the Sartaj Aziz committee report nevertheless agreed to grant greater rights to locals to address growing alienation.⁸

As a result, it was reported last February that Prime Minister Shahid Khaqan Abbasi had decided to abolish the Gilgit Baltistan Council, further stating that the Council's powers would be transferred to the legislative assembly.⁹ The news was received positively by the people of GB as the decision would have paved way for substantial possible devolution of powers. The Council's power to legislate on key subjects like forests, minerals and hydropower has long been a source of disquiet between the GB government and Islamabad.

Controversies surrounding GB order, 2018

Soon after, in May, the promulgation of the new GB order became a source of controversy after some of its provisions were found to be encroaching on the regional autonomy, especially at a time when the federal government had explicitly promised to transfer the Council's powers to the legislative assembly. The then PM Abbasi's decision to abolish the GB council had generated a strong hope among GB's masses soon turned into despair with the introduction of the new order. Compared to the 2009 Order, the 2018 order had certain regressive provisions as well as more tightened control by Islamabad. For instance, in the 2009 order a "citizen" was

defined as “a person who has a domicile of Gilgit-Baltistan”, but in 2018, this definition was changed to person “under the Pakistan citizenship Act (1951)”. This raised suspicions that the new provision could be used to legitimize the settlement of outsiders in the region, a long standing concerns of the locals to which Islamabad has never paid attention. Another new controversial addition was Article 5, which stated that “obedience to this order and law is the inviolable obligation of every citizen”, which clearly points towards the state’s efforts at instilling docility in GB’s populace.

The troublesome GB Council was abolished by the new order, but its powers were transferred to the Prime Minister, giving the PM nearly complete autonomy to legislate on the key subjects.¹⁰ Article 62 granted “Prime Minister the powers to adopt an amendment in the existing laws or any new law in force subject to the legislative competence”, and Article 65 empowered the Prime Minister to levy taxes. Federal bias was also seen in the criteria for selecting the chief judge of the GB Supreme Appellate Court, where in Article 75(2) stated that “retired judge of the Supreme Court of Pakistan” or a “retired Chief Justice of a High Court” were eligible for the position. To allay flaring up of controversy, misleading statements were made by the local politicians, wherein GB’s law minister wrongly stated that “all powers exercised by the four provincial assemblies under Schedule IV of the Constitution of Pakistan had been entrusted to the GB Assembly”.¹¹ Even the change in the definition of citizen was misinterpreted as bringing the people of GB on par with the Pakistani citizens. Other promises by Islamabad, like a separate civil service for GB and quota in the Central Superior Service have not been fulfilled as of now.

The purpose of outlining these provisions is to understand how SC’s role came into light and how it has fallen short of addressing the key concerns of the people of GB. Contrary to the perception that the SC’s ruling has stemmed from its concern for the GB’s residents, this article discusses how the ruling coming came from an altogether different impetus.

It all began with a sharp criticism from the existing GB Council members protesting against Islamabad’s abolition of the GB Council. One of the members of the GB Legislative Assembly, who simultaneously held the council membership filed a petition in the Supreme Appellate Court of GB citing that he “took the oath under Article 33 of the GB Empowerment and Self-Governance Order 2009 and was entitled to hold the office till 2020.”¹² According to the petitioner, “the new order should not [have been] be introduced till their tenure was completed”.¹³

As a result, a stay order had been issued by the appellate court against the abolition of the council on April 24 last year. Later in July 2018, the appellate court also suspended the new order stating that “despite stay order of the court, GB Order 2018 was introduced, which was violation of law.”¹⁴

SC Ruling: Strengthening the state’s writ

In response, the federal government moved to the Supreme Court against the appellate court’s verdict, and restored the order in August. Ironically, the SC Chief Justice Mian Saqib Nisar “remarked the order has been restored as people of GB should have the same rights as those in other parts of the country do.”¹⁵

Meanwhile, the Supreme Court examined the matter on a fast track basis. In December, it formed a committee headed by the Attorney General “to prepare a final draft of planned reforms for Gilgit-Baltistan”.¹⁶ The committee’s observations, along with those of the Sartaj Aziz committee became the basis of the Supreme Court’s latest ruling on 7th January.

The ruling was based on three questions, as enumerated ad verbatim in the ruling:¹⁷

1. Would granting Fundamental Rights within the constitutional scheme of Pakistan prejudice Pakistan’s cause for the resolution of the Kashmir ‘dispute’?
2. What rights can be granted to people of Gilgit Baltistan?
3. Is the appellate court a constitutional authority?

The judgment begins by quoting the works by Indian authors SP Agarwal and Aman Hingorani to substantiate Nehru’s commitment for a plebiscite in Jammu and Kashmir.¹⁸ Without discussing the preconditions for a plebiscite – that calls for Pakistani demilitarization of the occupied territory - the SC highlighted India’s inability to carry out plebiscite as the sole reason for denial of rights to the people of GB. Accepting Gilgit Baltistan as a ‘disputed’ territory, the court urged the government to ensure fundamental rights for the people of GB and setting up requisite institutional mechanisms to grant these rights, but without compromising GB’s position in the UN. In this way, the court also claimed to have saved Pakistan from complicating the position of GB in light of the UN resolutions.

A detailed reading of the ruling reveals that there is nothing new the present judgment. Rather, the court drew extensively from its previous ruling in the 1999 Al-Jehad trust case and reiterated the recommendations of the Sartaj Aziz Committee.

It recalled some of the committee’s recommendations like making GB a “provisional” province, and representation of GB in the national assembly as well as in all constitutional bodies, pending final settlement of the Kashmir ‘dispute’.¹⁹ Endorsing these recommendations, the court observed that “the [Sartaj Aziz] Committee itself was acutely aware of the sensitivities of the issue before it, and provided its recommendations only after considering their implications, if any, on the status of the Kashmir ‘dispute’.”²⁰

At the same time, the ruling was clearly intended to assert Pakistan’s control on Gilgit Baltistan. Despite declaring GB as a ‘disputed’ territory, the court nevertheless identified the people of GB as “citizens of Pakistan for all intents and purposes”. Even if the court evoked the Sartaj Aziz committee’s suggestions calling for granting greater rights, it still felt short of issuing a directive to the government to ensure fundamental rights to the people of GB. The nature of the ruling substantiates that the court’s intention was only to reinstate the GB order and a nominal assurance to people that they deserved speedy justice.

While Pakistan’s mainstream media has only highlighted the court’s suggestions to grant fundamental rights to locals and treat them on par with Pakistani citizens, it must be realized that the court even raised the same issue two decades ago. Besides the restoration of the GB Council, another change that did not receive much notice is the rise in number of Pakistani civil servants to be posted in the region. Compared to 2018 order, the quota of Pakistani civil servants to be posted in GB has been increased in top 5 pay scales listed in the order.

The tables below represent the percentage showing the share earmarked for All Pakistan Services officials out of total number of vacancies in Gilgit-Baltistan.^{22,23} (BS17-21 refers to pay scales of Under Secretary to Additional Secretary ranking officials).

GB Order, 2018

BS-17	BS-18	BS-19	BS-20	BS-21
18%	30%	40%	50%	60%

GB Order, 2018 (amended by Supreme Court)

BS-17	BS-18	BS-19	BS-20	BS-21
25%	40%	50%	60%	65%

This clearly shows that even the SC intends to intensify Pakistan's bureaucratic hold on GB.

The verdict was received with disappointment by the petitioner Dr. Ghulam Abbas, who has been raising the issue of GB's marginalization for almost three decades. Abbas was the moving force behind two petitions in SC in 1999 (Al Jihad Trust case) and 2011 (petition on legal reforms), which led to the recent verdict. Expressing dismay, he stated that the people of GB awaited Pakistan's response for the past 72 years and the judiciary too failed to deliver on their expectations.²⁴ On a positive note, the verdict came across as a reminder to those advocating GB to be incorporated into Pakistan that any such move would be impossible. Nevertheless, it still left no stone unturned in tightening Pakistan's control over the region. Abbas demanded that GB be at least given an administrative set up on the lines of Azad Jammu and Kashmir.

On one hand, the SC stated that the people of GB could be granted rights on par with Pakistani citizens but on the other hand, the GB administration is kept under tight grip of Islamabad. Furthermore, Dr Abbas highlighted that even the judges of GB's apex court were drawn from among the retired judges in Pakistan on a contractual basis.²⁵ He considered taking the case to the UN or International Court of Justice, citing that GB was part of an international 'dispute'.

In conclusion, all these moves only depict Pakistan's inability to grant rights to the people of GB. The judiciary's role only seems to be of a crisis-resolver when relations between GB and Islamabad have worsened. Further, the failure to deliver on these issues has time and again prompted Islamabad to blame India.

References:

1. Bhatti, Haseeb. 2018. "Top Court's Powers Extended To Gilgit-Baltistan, Rules Supreme Court". Dawn, , 2018.
2. Dawn. 2018. "Committee Set Up To Examine GB Reforms, SC Told", November 18, 2018.
3. Sahni, Sat Paul. 2009. "The Ceasefire Line And Line Of Control In Jammu And Kashmir: Evolution Of A Border". In *Himalayan Frontiers Of India: Historical, Geo-Political And Strategic Perspectives*, 1st ed., 73. Oxon: Routledge.
4. Mahapatra, Debidatta Aurobinda, and Seema Shekhawat. 2008. *Kashmir Across LOC*. New Delhi: Gyan Pub. House.
5. Ibid.

6. Ibid.
7. Mir, Shabbir. 2016. "Reforming Regions: G-B Closer Than Ever To Securing Constitutional Rights". The Express Tribune, 2016.
8. Supreme Court ruling on Gilgit Baltistan, January 7, 2019. http://www.supremecourt.gov.pk/web/user_files/File/Const.P._50_2018.pdf
9. Nagri, Jamil. 2018. "PM Decides To Abolish Gilgit-Baltistan Council". Dawn, , 2018.
10. Pamir Times (2018). Read the Government of Gilgit-Baltistan Order 2018 (Draft).
11. Nagri, J. (2018). New law promises more political, judicial powers to Gilgit-Baltistan. Dawn.
12. Nagri, Jamil. 2018. "Appellate Court Suspends GB Order 2018". Dawn, , 2018.
13. Daily Times. 2018. "SC Restores Gilgit-Baltistan Order 2018", , 2018.
14. Ibid
15. Ibid.
16. Pamir Times (2018). Read the Government of Gilgit-Baltistan Order 2018 (Draft).
17. Supreme Court ruling on Gilgit Baltistan, January 7, 2019.
18. Supreme Court ruling on Gilgit Baltistan, 10-11.
19. SC ruling, page 19.
20. Shigri, Afzal Ali. 2019. "GB: The Way Forward". Dawn, , 2019.
21. Supreme Court ruling on Gilgit Baltistan, January 7, 2019. http://www.supremecourt.gov.pk/web/user_files/File/Const.P._50_2018.pdf
22. GB order, 2018, page 61.
23. Supreme Court ruling on Gilgit Baltistan, 76.
24. GB (Gilgit-Baltistan) Isn't The Part Of Pakistan| Supreme Court's Clear Verdict | Dr. Abbas Petition. 2019. Video. https://www.youtube.com/watch?v=6ktgLBM_RtA&t=107s
25. Ibid.