

# MP-IDSA

## *Issue Brief*

# Dichotomies in Pakistan's Approach Towards Pakistan-occupied Kashmir

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## **S***ummary*

For decades, Islamabad has adopted a discriminatory and dichotomous approach towards the occupied territories of Jammu & Kashmir, or the Pakistan-occupied Kashmir (PoK). The so-called 'Azad' Jammu & Kashmir is neither Azad (independent) nor sovereign. It has been given a false accreditation of independence with a separate president and prime minister who merely function as agents of Islamabad. Similarly, Pakistan has denied Gilgit Baltistan of a definite political status given its disputed status. This issue brief analyses Islamabad's condescending approach towards PoK and its people and points to the failure of the international community at large to take into account this reality.

On May 4, the Indian Ministry of External Affairs (MEA) reacted sharply to the Pakistan Supreme Court ruling that permitted the government to hold elections in Gilgit Baltistan (GB) in September and install a caretaker set-up to oversee the process. The MEA spokesperson stated that the Government of Pakistan or its judiciary “has no locus standi on territories illegally and forcibly occupied by it”.<sup>1</sup>

The incumbent government in GB headed by Pakistan Muslim League-Nawaz (PML-N) completed its term on June 24 and now elections are to be held within 90 days, i.e., by September 24, 2020. As is the practice in Pakistan, the outgoing government is replaced with a neutral caretaker government to conduct the elections. However, the existing 2018 government order which lays down the administrative framework for GB does not have any such provision. The new Supreme Court order that directs the Imran Khan Government to legislate on GB is in the works. In such circumstances, the government approached the Supreme Court to allow it to amend the existing order to set up a caretaker government. Quite expectedly, the court allowed the government to amend the order.<sup>2</sup>

The way Pakistan's highest court has extended its writ to GB is quite controversial. It is a territory which Pakistan has forcibly occupied since 1947 and regards as disputed.<sup>3</sup> Pakistan has ruled over the terrain with an iron hand disregarding the aspirations of the people for a genuinely autonomous and representative administration. Interestingly, various unilateral orders that Islamabad has so far imposed on GB invariably included a clause acknowledging the disputed status of GB and a commitment to allow its people to decide their political fate as per the terms of resolution of the dispute in the future. The fact remains that since GB was part of the erstwhile princely state of Jammu and Kashmir (J&K), whose ruler had acceded to India in October 1947, the area is legally a part of India. The Pakistan Supreme Court has no jurisdiction, whatsoever, over this territory.

Even constitutionally, the authority of Pakistan's highest court is questionable since its jurisdiction is limited to the territories that are mentioned in Article 1 of the constitution of Pakistan. GB and the so-called 'Azad' J&K ('AJK'), are not mentioned in this article that defines the territorial boundary of Pakistan. However, in Article 257, there is a clause that makes a passing reference to Islamabad's ties with the Pakistan-occupied Kashmir (PoK). The article states: “When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with the wishes of the

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<sup>1</sup> **“India protests efforts to bring material change in Pakistan occupied territories and asks Pakistan to vacate them”**, Press Releases, *Ministry of External Affairs, Government of India*, May 04, 2020.

<sup>2</sup> Sohail Khan, **“Supreme Court allows govt to hold elections in Gilgit-Baltistan”**, *The News*, May 01, 2020.

<sup>3</sup> Mudabbir Ali, **“How Gilgit-Baltistan fits into the Kashmir dispute”**, *The Friday Times*, August 24, 2019.

people of that State.”<sup>4</sup> This article assumes that the entire erstwhile princely state will, by default, accede to it. Pakistan makes it mandatory for holders of all the public offices in GB and the so-called ‘AJK’ to sign a bond of allegiance stating that they would remain ‘loyal to the cause of’ Kashmir eventually joining Pakistan.<sup>5</sup> Submission of such allegiance is mandatory even to file nomination papers for largely farcical elections held in these areas from time to time. In this regard, Article 7(3) of the so-called ‘AJK’ Interim Constitution of 1974 (even after the latest revision in 2018) notes: “No person or political party in Azad Jammu and Kashmir shall be permitted to propagate against, or take part in activities prejudicial or detrimental to, [this] ideology”.<sup>6</sup>

It is apparent that Pakistan has adopted a dichotomous approach towards PoK. For example, the so-called ‘AJK’ is neither ‘Azad’ (independent) nor sovereign. It has been provided with a separate president and prime minister who function as agents of Islamabad. Similarly, Pakistan regards GB as a disputed territory and takes this as an excuse to deny the region a definite and respectable political status.<sup>7</sup> It has tightened its control over the area over the years and continues to manipulate it for its geopolitical needs. Besides, GB’s Kashmir link has been deliberately underplayed and every effort has been made to change its demography. Given Pakistan’s obsession with the Kashmir issue, one would have expected it to adopt a far more responsive approach towards PoK and its people. In contrast, however, it has dealt with the region with high-handedness denying the people their basic rights.

## Tales of Usurpation and Fallacies

The PoK, comprising the so-called ‘AJK’ and GB (referred to as the Northern Areas by the Pakistan Government till 2009), has been under Pakistan’s illegal occupation since 1947. It is well known that in the immediate aftermath of partition, Pakistan, unable to secure the Maharaja’s consent to accession and unsure of popular support in the Kashmir Valley, had engineered a tribal invasion, whereby it occupied ‘AJK’ and subsequently coerced GB to accede by use of force -- a machination in which Pakistan was aided by loyalists in the residual British Army. Soon the tribal *lashkars* (militias) backed by the Pakistan Army regulars headed for capital Srinagar but could only reach after the Maharaja had signed the instrument of accession to India. The Indian Army pushed the tribal *lashkars* out of the Kashmir Valley. Subsequently, the

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<sup>4</sup> See **Article 257: Provision Relating to the State of Jammu and Kashmir**, The Constitution of the Islamic Republic of Pakistan, Part XII: Miscellaneous, Chapter 4: General, *pakistani.org*.

<sup>5</sup> Ershad Mahmud, **“Status of AJK in Political Milieu”**, *Policy Perspectives*, 3 (2), July-December 2006, Retrieved from JSTOR on June 03, 2020, p. 119. Also quoted in **“Human Rights Violations in Azad Kashmir”**, *Human Rights Watch*, September 20, 2006.

<sup>6</sup> **“AJK Interim Constitution, 1974”**, *Law Department*, ‘AJ&K’, p. 14.

<sup>7</sup> **“Pakistan mulls elevating status of Gilgit-Baltistan on Chinese insistence”**, *Dawn*, January 07, 2016.

Indian Government took the matter to the United Nations (UN) to report Pakistan's aggression hoping for international intervention to clear the rest of the territory that the Pakistan Army had occupied illegally. However, the matter got caught up in the Cold War politics.

Later, Pakistan blatantly disregarded the UN directive to vacate the occupied territories of J&K as per the UN Security Council (UNSC) Resolution 47 of April 1948, which clearly stated that the "Government of Pakistan should undertake to use its best endeavours" in order "to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting, and to prevent any intrusion into the State of such elements and any furnishing of material aid to those fighting in the State."<sup>8</sup>

The PoK region has since received scant attention in the overall popular discourse on 'Kashmir' (which should ideally be about the J&K State), which to this day remains valley-centric. It is in view of its inconspicuous existence that people often refer to it as the 'other Kashmir' or 'forgotten Kashmir'.

A closer look at the history and politics of PoK, including both 'AJK' and GB, reveals how Pakistan has neglected these territories despite its obsession with 'Kashmir'. For a brief period (about one-and-a-half years) after 1947, Pakistan, as well as Pakistan-backed leadership of the 'AJK' Muslim Conference (AJKMC), regarded both Muzaffarabad region and GB as part of the J&K State. However, soon after the issue of Pakistani aggression was referred to the UN, the GB region was taken out as a separate unit and the rest of the occupied territories of the J&K State was called 'AJK'. This was perhaps done to keep GB out of the purview of negotiations with India. Even though its fate was directly linked to the Kashmir question, GB was not represented either in the negotiations between the Pakistan state and the leadership of AJKMC or in the signing of the infamous Karachi Agreement of April 1949, whereby the AJKMC surrendered its claim as well as the right of control over GB.<sup>9</sup> The GB region was later called Northern Areas, perhaps to disregard the historical and ethnic dimension of the territory and to accord it a geographical expression. It was ruled through a political agent appointed by the federal government.

It is apparent that both regions have been unlawfully subjugated and are no more than hapless adjuncts of the Pakistan state without any autonomy. Its people have suffered and their aspirations have been disregarded by the successive regimes in Pakistan despite their innate obsession with the Kashmir issue. The so-called 'AJK' was allowed some nominal representative government through an interim constitution that was framed by the Pakistani authorities in 1974, without any

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<sup>8</sup> **Resolution 47: The India-Pakistan Question**, April 21, 1948, *UN Security Council Resolutions*, p. 4.

<sup>9</sup> Syed-Ansar-Hussain, "**Gilgit-Baltistan in limbo**", *Dawn*, January 08, 2013.

participation of the 'AJK' leadership, while GB was governed directly from Islamabad in an unconstitutional manner. The people of GB were stateless for all practical purposes. In fact, people of both 'AJK' and GB do not have their representatives in the National Assembly of Pakistan. For decades, the people of GB remained disenfranchised and were allowed to vote only after 2009 when the Empowerment and Self Governance Order was hastily introduced by Islamabad to tide over simmering political unrest in the region. The order was dismissed by the local people at large and also the Human Rights Commission of Pakistan (HRCP) which called it a "mere eyewash."<sup>10</sup>

Unrelenting state high-handedness and protracted neglect have subdued popular political aspirations for long and has led to a strong undercurrent of disaffection in the PoK region. Repressed political sentiments find vent through demonstrations organised by emerging nationalist groups/parties in PoK from time to time. Despite being on Pakistan's tight leash, these groups have been challenging Pakistan's control over PoK, especially the GB region. While Pakistan champions the so-called human rights violation in the Kashmir Valley, it pays scant attention to the rights of the people in PoK which is effectively placed under the military 'jackboot'. Tactically, over the years, especially since the mid-1980s, Pakistan has settled the Sunni population in GB to undermine its Shia-majority population. The abolition of State Subject Rule from the region in 1974 (introduced by the Maharaja of Kashmir in January 1927 to disallow entry of outsiders into his Kingdom), enabled the Pakistan state agencies to engineer a major demographic change in the region. The memory of the Shia purge in GB during the 1980s still haunts the people of the region. Gross atrocities were committed under the watch of former military dictator Zia-ul-Haq who deputed Pervez Musharraf (who later became President), then heading the Special Services Group, to lead the massacre of Shias in the region.<sup>11</sup>

### Descent into a Terrorist Sanctuary

It is well-known that PoK has emerged as an epicentre of terrorism. Pakistan has been using the region as a launch pad to perpetrate cross-border terror attacks against India. The way terrorist groups have mushroomed in PoK all these years could not have been possible without Pakistan exercising tight control over the region. The people have been denied their rights to self-govern lest they oppose such machinations.

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<sup>10</sup> "Gilgit-Baltistan Elections 2009", Report of HRCP Observers Mission, *Human Rights Commission of Pakistan*, January 2010, p. 6.

<sup>11</sup> B. Raman, "**Biography of General Pervez Musharraf: His Past and Present**", *Angelfire*, July 01, 1999.

It is not mere coincidence that Masood Azhar, the founder of Jaish-e-Mohammed, took out a huge rally in Muzaffarabad (capital of the so-called 'AJK') immediately after India released him in a swap that took place after the hijacking of Indian Airlines IC814 in 1999. There were also reports about al Qaeda chief Osama Bin Laden taking refuge in Muzaffarabad soon after the 9/11 attacks as the American forces frantically searched for him. Similarly, the 26/11 investigations traced the movement of terrorists to Baitul-Mujahideen, the infamous terror camp run by Lashkar-e-Taiba (LeT) in Muzaffarabad.<sup>12</sup> Post-Uri attack, the surgical strikes launched by India in September 2016 brought to fore the names of other terrorist training camps operated by Pakistan across the Line of Control (LoC).<sup>13</sup> The Hizbul Mujahideen chief Syed Salahuddin has also led several anti-India rallies and demonstrations in PoK.

In Gilgit Baltistan, terrorist activities have witnessed a notable surge. The gruesome killing of foreign mountaineers in 2013 at the base camp near Nanga Parbat was one such incident that hinted at the widening web of militant groups in this region.<sup>14</sup>

### Political Deficit and Ambiguities

Pakistan's relationship with both parts of PoK is replete with inconsistencies and contradictions. Both entities now have interim structures of governance which help maintain a façade of representative governance, while the regimes, 'elected' by the people, remain puppets of Islamabad. Their only claim to power is loyalty to the Pakistan state rather than the interests of the people they represent. The so-called 'AJK' being given trappings of an independent country is perhaps Pakistan's biggest sham, amongst other things. It was ruled under a separate 'AJK' Interim Constitution Act of 1974 till June 2018, when another fraud was hoisted on the people (in the name of conferring more legislative and executive powers to the elected government in the region) through the 13<sup>th</sup> Amendment, which was passed in the 'AJK' legislature. The word 'Act' was omitted from the title of the interim constitution.<sup>15</sup> While much of the administrative structure remains the same, the balance of power has further tilted in favour of the federal government in Islamabad.

GB, on the other hand, does not even have a constitution of its own and is ruled under ad hoc ordinances/orders issued by Islamabad from time to time. The long-standing plea of a section of the population in GB to convert it into Pakistan's fifth province has gone unheeded. Popular hope around the Sartaj Aziz Committee, which was trying to address some of these issues, has diminished as its recommendations

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<sup>12</sup> For details, see Priyanka Singh, **"Militant Training Camps in Pakistan-Occupied Kashmir: An Existential Threat"**, *Strategic Analysis*, 33 (3), May-June 2009, pp. 334-335.

<sup>13</sup> Praveen Swami, **"Surgical strikes: Bodies taken away on trucks, loud explosions, eyewitnesses give graphic details"**, *The Indian Express*, October 07, 2016.

<sup>14</sup> **"Nanga Parbat attack: Taliban say new faction killed climbers"**, *BBC News*, June 24, 2013.

<sup>15</sup> **"Interim Constitution"**, *Law Department*, 'AJ&K', June 02, 2018.

continue to remain unimplemented.<sup>16</sup> Rather, Pakistan chose to introduce limited political reforms in 2018, which was more of an eyewash as it did not confer a provincial status on GB. In this regard, the HRCP in its *State of Human Rights 2019* notes: "Pakistan's objection to the abolition of special status for Indian-held Kashmir appears odd, because Pakistan itself has not granted special status to one of its components (GB)."<sup>17</sup>

Broadly, both regions are virtually ruled by Islamabad. The political party which rules Islamabad preposterously wins each time election is held in PoK. Until recently, the councils in both 'AJK' and GB were headed by the Prime Minister of Pakistan. Instead of empowering the local governments, the much-awaited reforms ended up further reducing the powers of the council and vesting more power in the Prime Minister of Pakistan.<sup>18</sup>

Over a period, Pakistan has created ambiguities about PoK as a deliberate policy so that facts could be conveniently misrepresented or left to interpretations. It is clear that Pakistan neither wants to completely absorb these territories into its political system nor reduce its tight control over their affairs. For all practical purposes, Islamabad's hold over the region is complete without any concern for the political rights of the people. By terming the region as disputed, Islamabad has recused itself of its responsibility to grant the people their basic human rights. The fact remains that it has not allowed a genuine democratic system of governance to emerge in the area, as it could interfere with its pursuit of absolute control over the occupied territories. It has tried to sell the idea to its people that granting either provincial status or complete autonomy would be prejudicial to their interests, given the non-resolution of the Kashmir issue, mainly because of India's inflexibility.

Over the years, the local resistance to the Pakistani control has taken shape in various ways. There is an ongoing tussle between various structures of governance - - for instance, between the judiciary of Pakistan and the separate judicial structures raised by Pakistan in parts of PoK. In 2010, a bench of the so-called 'AJK' Supreme Court resisted the authority of the Pakistan Supreme Court to appoint judges in the higher court of the region.<sup>19</sup> In 2012, a controversy erupted after a non-native was appointed as the Chief Justice of GB Supreme Court. Admitting a petition that challenged Pakistan's authority to make such appointments, Pakistan Supreme Court had even sought a reply from Islamabad on the matter.<sup>20</sup> There are also tensions between the GB Government and the GB Election Commission after the

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<sup>16</sup> **"Gilgit-Baltistan: Government of Pakistan Announces Plans to Declare the Occupied Region as its Fifth Province"**, *Unrepresented Nations and People's Organisation (UNPO)*, March 15, 2017.

<sup>17</sup> **"State of Human Rights in 2019"**, *Human Rights Commission of Pakistan*, 2020, p. 254.

<sup>18</sup> Jalaluddin Mughal, **"Who rules Azad Jammu and Kashmir?"**, *The Friday Times*, August 17, 2018.

<sup>19</sup> **"Pakistan occupied Kashmir: Changing the Discourse"**, *IDS Project Report*, May 2011, p. 16.

<sup>20</sup> **"SC directs govt, KANA to file replies"**, *The Nation*, February 23, 2012.

latter suspended its financial and administrative powers much before the expiry of its term on June 24.<sup>21</sup>

### Contempt despite Geopolitical Salience

Given Pakistan's high-profile strategic partnership with its all-weather friend China and the criticality of the GB area of PoK as the only land link between the two countries, the region is of immense strategic value to Pakistan. It was for geopolitical reasons that Pakistan had ceded the Trans-Karakoram Tract to China as part of an illegal territorial swap concluded under a provisional border agreement signed in March 1963. Given this and Pakistan's continuing obsession with Kashmir, PoK should ideally have been given a high priority. However, the dismal state of development and infrastructure in PoK, despite its natural wealth in terms of mineral and hydropower resources, only speaks of Pakistan's utter neglect of the region.

The power houses of the controversial Diamer Bhasha Dam (to be built on River Indus) in GB were deliberately moved to Khyber Pakhtunkhwa (KP) to deprive the region of its legitimate royalty. According to the constitution of Pakistan, royalty is awarded to the state where power is generated.<sup>22</sup> There is an ensuing battle between KP and GB over the sharing of royalty ever since. This assumes significance as the constitution of Pakistan does not apply to GB.

During the Kargil conflict, Pakistan had commissioned the Northern Light Infantry (NLI), manned mostly by the people from GB, but refused to take back the bodies of their deceased soldiers.<sup>23</sup> As part of a malicious design to deny its army's involvement, Pakistan disowned them stating they are freedom fighters from the disputed territory of Kashmir.<sup>24</sup>

### Peripheral to Pakistan's Kashmir Agenda

Noted scholar Christopher Snedden describes the so-called 'AJK' as the "rump" area devoid of attention.<sup>25</sup> It is an unfortunate reality that PoK never received the attention it deserved. As a result, it was never a part of the international discourse on Kashmir. A cursory look at the Kashmir Day (February 5 every year) speeches makes it apparent that Pakistan's politics and strategy are only focussed on J&K, which is an

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<sup>21</sup> Ghulam Abbas, "**Tug of war starts between GB govt and election commission**", *Pakistan Today*, May 21, 2020.

<sup>22</sup> See **Article 161(2)**, The Constitution of the Islamic Republic of Pakistan, Part VI: Finance, Property, Contracts and Suits, Chapter 1: Finance, *pakistani.org*.

<sup>23</sup> M. Ilyas Khan, "**Kargil: The forgotten victims of the world's highest war**", *BBC News*, July 26, 2019.

<sup>24</sup> Sandeep Unnithan, "**Letters from Kargil**", *India Today*, July 05, 2019.

<sup>25</sup> Christopher Snedden, *The Untold Story of the People of Azad Kashmir*, Hurst & Company, London, 2012, p. 146.



integral part of India. Pakistan's revisionist Kashmir strategy is solely directed towards attracting the international attention towards India's J&K and it ends there.

It is time that the people of PoK (both the so-called 'AJK' and GB) as well as the international community, long swayed by the Pakistani state propaganda, see through Pakistan's sinister strategy and take note of the sorry state of affairs in the Pakistan-occupied parts of J&K and Ladakh. Collectively, they need to bring to bear pressure on Pakistan to allow genuine autonomy and self-governance to the people in this hapless terrain, rather than wasting energy on sponsoring mindless terror and subversion in the Indian state of J&K, which only brings suffering and deprivation to the people of Kashmir.

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