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Background Paper

Pakistan-Azad Jammu & Kashmir Politico-Legal Conflict

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PILdAT
Pakistan Institute of
Legislative Development
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FOREWORD

The Background Paper on **Pakistan-Azad Jammu & Kashmir Politico-Legal Conflict** has been commissioned by PILDAT to assist and support an informed dialogue on the legal and political conflict between the State of Pakistan and AJ&K. This peer-reviewed paper is authored by Mr. Muhammad Feyyaz, who holds a Masters degree in War Studies from Quaid-e-Azam University, Islamabad and M.Phil. in Peace & Conflict Studies from the Faculty of Contemporary Studies, National Defence University, Islamabad.

The paper has been prepared as a background for a conflict resolution simulation exercise for Members of the Legislative Assembly of Azad Jammu & Kashmir.

Situated in upper reaches of Indian subcontinent and the Pakistani side of the Line of Control (LOC), Azad Jammu and Kashmir (AJ&K) is a unique politico-legal territorial entity of unresolved status which unlike IAK, has not been formally annexed by the state of Pakistan. The relationship between AJ&K and Pakistan is twofold: in 1947, the Federal Government of Pakistan struck a deal with Muzaffarabad, commonly known as the Karachi Agreement. Additionally, the AJ&K Constitution of 1974 gives Islamabad significant legal authority in the affairs of AJ&K but only through the Kashmir Council. The AJ&K Constitution also restricts the AJ&K Assembly and the Kashmir Council from making any laws regarding the following areas, which fall under the purview of the Federal Government of Pakistan. In March 1949, Pakistan created the Ministry of Kashmir Affairs and Northern Areas (MKANA now known as Kashmir Affairs and Gilgit-Baltistan), which has been liaising between the Azad Kashmir and Pakistan governments, although local Kashmir authorities have always been critical of its role. The paper is an analytical discourse which reviews the issue from multiple perspectives but as such is non-prescriptive in nature.

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Disclaimer

The views, opinions, findings and conclusions or recommendations expressed in this paper belong to the author and do not necessarily reflect the views of the British High Commission, Islamabad or PILDAT.

Islamabad
September 2011

PROFILE OF THE AUTHOR

Mr. Muhammad Feyyaz

Muhammad Feyyaz holds a Masters degree in War studies from Quaid-e-Azam University, Islamabad and M. Phil. in Peace & Conflict Studies from the Faculty of Contemporary Studies, National Defence University, Islamabad. He is a diploma holder in Conflict Management from the Modern Institute of Informatics and Management, Islamabad Pakistan and certificates in Conflict Management Course from the Pakistan Institute of Management, Lahore and Mozambique-Tanzania Foreign Relations Centre, Dar es Salaam, Tanzania. He is a professional peacekeeper, trainer in counter-terrorism skills and a writer with interest in peacekeeping, terrorism, societal radicalization, conflict studies and security issues.

Introduction

India and Pakistan have consistently subjected Kashmiri interests to their own national security agendas and silenced calls for greater autonomy.¹ Despite efforts to the contrary, neither India nor Pakistan has been able to impose its preferred solution on the long-standing Kashmir conflict, and both sides have gradually shown more flexibility in their traditional positions on Kashmir, without officially abandoning them.² While bilaterally, both the states seem to be engaged in exploring possibilities of lessening the historical gulf, internal structures characterized by conflicted relationship in both parts of Kashmir vis-à-vis centres have not seen compatible political developments. In India J&K (Jammu and Kashmir) officially has more autonomy than other states of the Indian Union, enshrined in its “special status” under Article 370 of the constitution.³ New Delhi has, however, eroded this autonomy by regularly interfering in Kashmiri politics – through coercion and rigged elections, by marginalizing independent-minded leaders and by sponsoring the pro-accession National Conference party. As a result, “confidence in public institutions has been completely eroded”⁴ in Indian Administered Kashmir (IAK).

Situated in upper reaches of Indian subcontinent and the Pakistani side of the Line of Control (LOC), Azad Jammu and Kashmir (AJ&K) is a unique politico-legal territorial entity of unresolved status which unlike IAK, has not been formally annexed by the state of Pakistan.

In essence it is a byproduct of the division of the Dogra

principality of Jammu and Kashmir that took place due to the Indian intervention in 1947–48 and a subsequent mass uprising.⁵

'Azad' preceding J&K as the name of recently won territory derived its inspiration from the political character of freedom movement launched by native Kashmiris for liberation of State of J&K. In practice however, the critics contend that ever since its emergence as an interim governance dispensation in October 1947, the territory is not azad or independent by any stretch of imagination. Human Rights Watch (and some other international NGOs) has described Azad Kashmir as anything but "Azad", which invited censure from the Pakistani government.⁶ Some go to the extent that a conflict over land between the people of Kashmir and the government of India will soon become a thing of the past. On the other hand, a water war between Kashmir and Pakistan is inevitable in the future.⁷ Among the prominent Kashmiris are voices that concede that maximum autonomy should be given to AJ&K but also assert that most of the problems are of administrative nature rather constitutional...the actual problem lies in the functions of AJ&K Council.⁸ Christopher Snedden, in an upcoming Book - The Untold Story of the People of Azad Kashmir, critically reexamines Azad Kashmir's internal politics by a survey of former administrative structures, economic and political systems, and subordinate relationship with Pakistan. He notes, contrary to expectations of the Azad Kashmiris' ruling entire J&K after reunification, Azad Kashmir effectively, if not legally, became a (dependent) part of Pakistan. Therefore, long disenchanted with Islamabad, some Azad Kashmiris now

1. Steps Towards Peace: Putting Kashmiris First, Crisis Group Asia Briefing N°106, 3 June 2010, p.1, <http://www.crisisgroup.org/~media/Files/asia/south-asia/kashmir/B106%20Steps%20Towards%20Peace%20-20Putting%20Kashmiris%20First.pdf>, accessed 24 Sep 2011.
2. P.R Chari and Hasan Askari Rizvi, “Making border irrelevant in Kashmir”, USIP, special report, September 2008, <http://www.usip.org/files/resources/sr210.pdf>, accessed 24 Sep 2011.
3. Article 370 of the constitution limits New Delhi's jurisdiction to matters related to defence, foreign affairs, communications and currency and requires Indian laws to be approved by the state's constituent assembly. Crisis Group Reports, Kashmir: The View From New Delhi, 4 December 2003; N°68, 4 December 2003; N°41, Kashmir: The View From Srinagar, 21 November 2002.
4. Jyoti Thottam, Why Kashmir is burning again, Time, 30 Aug 2010, pp.26-29.
5. Ershad Mahmud, Status of AJK in Political Milieu, Policy Perspectives, Vol 3, No.2, <http://www.ips.org.pk/education/1115-status-of-ajk-in-political-milieu.html>, accessed 26 Sep 2011.
6. For example read; ""Pakistan: Free Kashmir Far From Free, Human Rights Watch, September 21, 2006, <http://www.hrw.org/news/2006/09/20/pakistan-free-kashmir-far-free>; Ershad Mahmud, Azad Kashmir and self-governance, http://www.kashmiri.info/index2.php?option=com_content&do_pdf=1&id=1070 and Dr Shabir Choudhry, Azad Kashmir or Pakistani occupied Kashmir, September 25, 2011, <http://www.scoopnews.in/det.aspx?q=15941>, all accessed 24 Sep 2011.
7. The Final Settlement, Strategic Foresight Group of the International Center for Peace Initiatives in Mumbai, C:\Documents and Settings\NMC\Desktop\AJK1\sfgnews_101.htm, accessed 24 Sep 2011.
8. Remarks by Gen (Retd.) Muhammad Aziz Khan, Former Chairman Joint Chiefs Staff Committee (CJCSC); for details read, PILDAT proposes provincial status for AJK, G-B, May 19, 2011, Daily Times, http://www.dailytimes.com.pk/default.asp?page=2011%5C05%5C19%5Cstory_19-5-2011_pg11_7, accessed 24 Sep 2011.

favor independence for Jammu and Kashmir and hope to prosper without help from their neighbors, he concludes.⁹ A senior government functionary expressed before this Author that whatever internal autonomy was left, present political alignment at the centre and AJ&K has compromised it. Winning of the bye-election by Pakistan Muslim League (Nawaz) by a thumping majority in a keenly-contested electoral fight against heavy ruling coalition, is cited as a popular reaction to the increasing interference by the Central government. Consequently, the emerging perceptions if not bordering a crisis of mutual trust, are a quagmire of serious ramifications warranting an indepth appraisal and immediate redressal.

Structure and Context of the Paper

This background paper is an attempt to highlight some crucial characteristic of AJ&K-Pakistan relations with a view to identify critical fault lines produced by an array of factors for finding an enduring resolution of contentious issues. It has been developed as part of a series of conflict resolution workshops initiated by PILDAT which aim to sensitize elected legislators on important national and regional issues, and in the process build their conflict resolution capacity and allied skills. However, unlike conflict contexts that underpinned earlier workshops, the AJ&K perspective assumes an entirely different dimension due to its peculiar status as part of an 'unfinished agenda of partition' 1947 and being at the centre of competing interests by a complex of state and non-state regional and extra-regional players.

In its brief fold, the paper outlines politico-legal status of AJ&K followed by discourse on genesis of conflicted relationship and the contemporary issues. Discussion on juridical boundaries of AJ&K also trace its changing character vis-à-vis what is now called Gilgit-Baltistan region. The aim is to clarify the empirical framework for issue under review. It will be noted that in the title of this paper the notion of 'conflict' has been used with reference to structural relationship of Pakistan and AJ&K. This is an

academic innovation which has been employed to conceptualize the existing equation between Pakistan and AJ&K from the perspective of conflict literature. The expression 'conflict' embodies an array of meanings ranging from simple disagreements to violent clashes to major armed conflict or war. In present scenario it has been construed to imply 'a social situation in which a minimum of two actors (parties) strive to acquire at the same moment in time an available set of scarce resources.'¹⁰ The definition is self explanatory symbolizing Pakistan and AJ&K as the actors, autonomy as the resource and legal instruments by Pakistan as the actions or striving. Besides, in keeping with the sensitivity of the issue, care has been exercised to employ euphemism to tamp down political rhetoric. Finally, the paper is an analytical discourse which reviews the issue from multiple perspectives but as such is non-prescriptive in nature.

The Politico-Legal Status of AJ&K

Azad Jammu and Kashmir ('Free Kashmir') is the southernmost political entity within the Pakistani-administered part of the former princely state of Jammu and Kashmir (refer Map). According to Justice (Retd) Manzoor Gillani, the administration of AJ&K and Gilgit-Baltistan (GB)¹¹ was entrusted to Pakistan under UN Security Council resolutions. They have since been treated in many respects as administrative units of Pakistan and are subject to most of the liabilities and obligations of a Province under the Pakistan constitution. But they do not have any of the constitutional rights and powers enjoyed by the provinces.¹² He further notes that 'although the liberated territories of State [of Jammu and Kashmir] are not expressly named in Article 1 of the Constitution of Pakistan which defines the country's territories, they form part of Pakistan under clause (d) of Article 1(2) of the Constitution of Pakistan which states that Pakistan's territories include "such States and territories as are or may be included in Pakistan, whether by accession or otherwise". Both AJ&K and GB are territories "otherwise included" in Pakistan under UNCIP Resolutions. He asserts, this position was

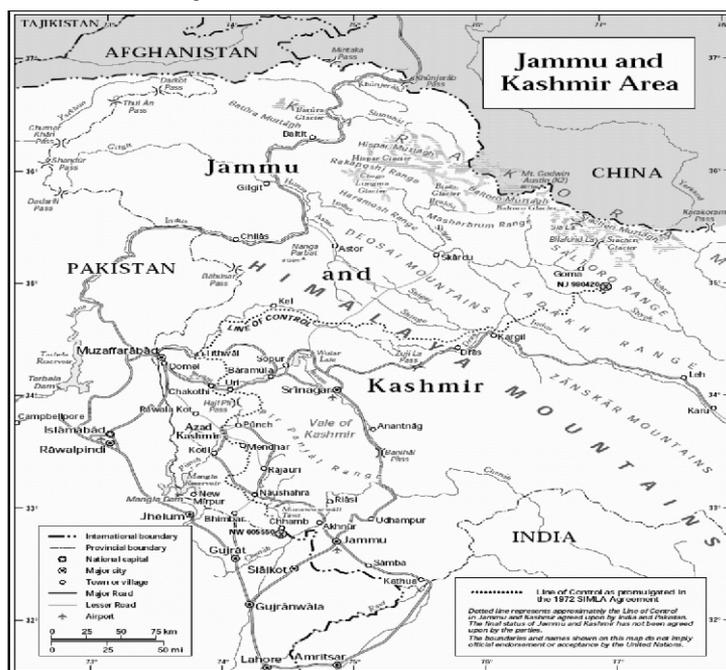
9. Christopher Snedden, *The Untold Story of the People of Azad Kashmir*, Columbia University Press (December 27, 2011), http://www.amazon.com/Untold-Story-People-Kashmir-Columbia/dp/0231702507/ref=sr_1_1?s=books&ie=UTF8&qid=1316942366&sr=1-1, accessed 24 Sep 2011.
10. Peter Wellensteen, *Understanding Conflict Resolution*, (London: Sage Publications, 2007) p.15.
11. At places Gilgit-Baltistan and Northern Areas have been used interchangeably.
12. Proposed Constitutional Amendments in The Constitution of Islamic Republic of Pakistan 1973, for Empowerment of Azad Jammu & Kashmir And Gilgit-Baltistan, Discussion Papers, May 2011. Publication Number 02-010, p.10, <http://www.pildat.org/Publications/publication/constitution/ProposedConstitutionalAmendments-AJK-GB-DiscussionPaperMay2011.pdf>, accessed 24 Sep 2011.

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implicitly accepted by India through the Cease-Fire Agreement of 1949, the Tashkent Agreement of 1966 and the Simla Agreement of 1972.¹³ Ershad Mahmud, a leading expert on Kashmir, contends that Azad Kashmir is neither a sovereign state nor a province of Pakistan but rather a 'local authority' with responsibility over the area assigned to it under the ceasefire agreement of July 1949.¹⁴ Yet another evidence that can be used to ascertain the status of AJ&K, albeit vaguely, is the Karachi Agreement April 1949 signed between Pakistan and Azad Kashmir Governments. The document details AJ&K as *AK territory* five times,¹⁵ reinforcing position taken by Ershad. On the other hand, Article 48 of the State Constitution of Indian-held Jammu and Kashmir mentions Azad Kashmir as an area under Pakistani control and reserves 25 assembly seats for the people of AJ&K and the Northern Areas (GB).¹⁶ Crisis Group observes that officially, Pakistan maintains that

Azad Jammu and Kashmir is not intrinsically part of its territory and that its constitutional status is provisional, dependent upon a final settlement of the territorial dispute with India. It further reports that indeed, with its own constitution and elected government, AJ&K has the trappings of a sovereign state, but it is only nominally independent. The territory has no international legal status, leaving Pakistan a free hand in controlling its foreign affairs.¹⁷ The argument finds resonance in observation by Shanna Surendra arguing 'although it is given a larger degree of self-government than the other portion of Pakistan-administered Kashmir [GB], it is not a sovereign territory, so diplomatic contact is made via its de facto ruler, the Pakistani government.'¹⁸ Prominent human rights activist and scholar I.A. Rehman posits that Azad Kashmir is not a province of Pakistan. Its status is apparently higher than that of the Federally Administered Tribal Areas

Map: State of Jammu and Kashmir



13. Proposed Constitutional Amendments in The Constitution of Islamic Republic of Pakistan 1973, for Empowerment of Azad Jammu & Kashmir And Gilgit-Baltistan, Discussion Papers, May 2011. Publication Number 02-010, p.10, <http://www.pildat.org/Publications/publication/constitution/ProposedConstitutionalAmendments-AJK-GB-DiscussionPaperMay2011.pdf>, accessed 24 Sep 2011.
14. Ershad Mahmud, Status of AJK in Political Milieu, op.cit.
15. Karachi Agreement between Government of Pakistan and Government of AJK in 1947, http://www.kashmiri.info/index.php?option=com_content&task=view&id=40, accessed 26 Sep 2011.
16. Ershad Mahmud, Status of AJK in Political Milieu, op.cit.
17. Steps Towards Peace: Putting Kashmiris First, p.7.
18. Shanna Dietz Surendra, Explaining Social Mobilization in Pakistan: A Comparative Case Study of Baluchistan and Azad Kashmir, http://muse.jhu.edu/journals/comparative_studies_of_south_asia_africa_and_the_middle_east/v029/29.2.surendra.html, accessed 26 Sep 2011.

(FATA).¹⁹ Given Pakistan's traditional centre heavy leanings vis-à-vis smaller provinces, this view warrants a revisit.

Evolved Territorial Configuration of AJ&K

Article 2 clause (1) of Azad Jammu and Kashmir Interim Constitution Act, 1974 presents a further insight into the issue but restricted to territorial boundaries stating that '**Azad Jammu and Kashmir**' means the territories of the State of Jammu and Kashmir which have been liberated by the people of that State and are for the time being under the administration of Government and such other territories as may hereafter come under its administration;²⁰ The definition is short on two counts; first, it does not clearly spell out the liberated territories which implicitly should also have included erstwhile Northern Areas and secondly, character of juridical status of AJ&K has been left unattended. The former is assumed to have been resolved by the Karachi Agreement which divided Pakistani-administered Kashmir into two distinct entities – Azad (Free) Kashmir and the Northern Areas.²¹ The Agreement encompassed threefold provision viz; A. Matters within the purview of the Government of Pakistan; B. Matters within the purview of the Azad Kashmir Government and C. Matters within the purview of Muslim Conference. It was under the matters within the scope of Government of Pakistan that all affairs of Gilgit - Ladakh were temporarily assigned under the administrative control of Pakistan (vide sub-clause 8 of section-A of the Agreement). This agreement further enhanced the legitimacy of controlling GB by Government of Pakistan through appointment of a Political Agent.²² However, the issue related to suzerainty and political profile of Northern Areas remained simmering until it found its near resolution in a series of judgments by apex courts in AJ&K and Pakistan.

On September 14, 1994, Azad Kashmir Supreme Court adjudicated against decision of High Court March 18, 1993 on this issue contending that “No doubt, that Northern Areas is part of the state of Jammu and Kashmir

– but not of Azad Kashmir. Therefore, the government needs not to take administrative control of these areas. On May 29 1999 Supreme Court of Pakistan gave its verdict with reference to AJ&K High Court Decision as follows:

... “that Northern Areas were constitutional part of the state of Jammu and Kashmir... that the people of the Northern Areas are citizens of Pakistan for all intent and purposes”. The government of Pakistan should ensure that basic human rights and other political and administrative institutions are provided in the areas within six months. However, the action should not adversely affect Pakistan's stand concerning the Kashmir dispute”.

The former Chief Justice of AJ&K High Court Majid Malik commented on the decision of the Supreme Court against his decision observing “Actually the Supreme Court had agreed with my decision but section 2 of the Interim Constitution of AJ&K 1974 confines the boundaries of AJ&K to its present limitation and the supreme Court considered that GB doesn't fall under the jurisdiction of the AJ&K High Court while my interpretation about the jurisdiction is that the area got free from Dogra Rule in 1947-48 including all parts of GB is under the jurisdiction of constitutional ambit of AJ&K”.²³

On August 28, 2009 the Government of Pakistan introduced Gilgit-Baltistan Empowerment and Self-Governance Order, 2009”. The reforms package was introduced through a presidential order which was approved by the Federal Cabinet and set forth for immediate implementation for instituting a status to Northern Areas similar like a province but not a province because of denied representation in the Parliament and the Senate of Pakistan. Through the reforms another setup was created similar like Azad Jammu and Kashmir, the GB Council headed by the Prime Minister of Pakistan.²⁴ With the introduction of this self governance package, a long demanded question of GB being part of AJ&K appears to

19. I.A Rehman, AJK fault lines, 30 June, 2011, Dawn.Com, <http://www.dawn.com/2011/06/30/ajk-fault-lines.html>, accessed 26 Sep 2011.

20. Khalil Ahmed Qureshi Secretary Law, Azad Jammu and Kashmir Interim Constitution Act, 1974 (ACT VIII OF 1974), http://www.ajkassembly.gov.pk/AJK_Interim_Constitution_Act_1974.pdf, accessed 25 Sep 2011.

21. Karachi Agreement, http://www.kashmiri.info/index2.php?option=com_content&do_pdf=1&id=4, accessed 24 Sep 2011.

22. Karachi Agreement between Government of Pakistan and Government of AJK in 1947, http://www.kashmiri.info/index.php?option=com_content&task=view&id=40, accessed 26 Sep 2011.

23. Altaf Hussain, The Gilgit-Baltistan Reforms 2009, December 2009, The Forum of Federations project in Pakistan, <http://www.forumfed.org/en/pubs/pakistan/Gilgit-Baltistan%20Reforms%20AHussain%20FinalDec09.doc>, accessed 24 Sep 2011.

24. Ibid.

have been settled. Another argument that may be employed in support of this assertion is the Sino-Pakistan Frontier Agreement of March 1963. Objectively viewed the agreement took place in a context of changing regional political dynamics, particularly, the India-China border dispute wherein Beijing-facing the combined effects of Muslim ethnic unrest in Xinjiang and exacerbated Soviet Interference –was keenly interested in such a settlement.²⁵ While it "placed China formally and firmly on record as maintaining that Kashmir did not, as yet, belong to India,²⁶ legal status of GB was muted as part of AJ&K. It is argued that while GB's empowerment symbolizes a facilitative policy injunction for those long denied their fundamental rights; legal status of AJ&K continues to be fluid and contentious.

Genesis of Conflicted Relationship

Historically Kashmir as a princely state has been centre of global intrigues since last two centuries. During imperial era, British and Czar Russia were the principal actors involved in manipulating geo-politics of the state. The struggle continued among the same protagonists upon emergence of USSR with USA joining the streak. After the partition of British sub-continent into India and Pakistan and rise of communist China, Kashmir became focus of political struggle between new dominions supported by their ideologues; Pakistan by USA and Great Britain and India by USSR and China.²⁷ When it was being discussed in the Security Council in 1948, the British representative, Mr Noel Baker, described it "as the greatest and gravest single issue in international affairs".²⁸ President Ayub Khan explained the matter, saying:"Kashmir is keeping the two countries apart and unless this is settled we shall remain apart. So long as we remain apart, the solution of other problems stands in danger of being nullified."²⁹

Popular revolt began against the repressive rules of Maharaja in Jammu, Poonch³⁰ and Rawalakot (Tehsil of Poonch) in September 1947 and an independent government was proclaimed in the liberated territories in October 1947 while the war continued until 31st December 1948. It is historically proven that it was 'not the Pashtun tribesmen invading from Pakistan, which is India's official narrative',³¹ who started the armed uprising but it was purely indigenous drawn by fighters comprising youth, volunteers, Muslim elements of Maharaja's army, ex-soldiers and leadership engendered by spontaneous popular revolt.³² Ceasefire Agreement of July 1949 between India and Pakistan ultimately divided the State of Jammu and Kashmir into two halves with 60 % territory remaining under Indian control and 40 % liberated by Kashmiris, tribesmen and Pakistan Army. Resultantly, the official name adopted by this Government was the "Azad Government of the State of Jammu and Kashmir". Thus the Azad Government is successor to the late Government of Jammu and Kashmir.³³

The tensions with the central government are not new to AJ&K. The Kashmiris have long demanded a restructured federal-territorial relationship like other smaller provinces of Pakistan especially Balochistan that would transfer powers from what is seen as an exploitative central government to the provinces, regions and territories. A brief factual narrative will be in order broadly encompassing discussion on systemic and geopolitical causations spawning sense of deprivation. During the period immediate following liberation war, AJ&K Government was working like a war council. In order to meet the popular demand for civil rights and a democratic set up, the AJ&K government revised its Rules of Business with the consent of the Ministry of Kashmir Affairs and Northern Areas (MKANA), thrice in a short span of eight

25. Yitzhak Shichor, "The Great Wall of Steel: Military and Strategy," In *Xinjiang: China's Muslim Borderland*, edited by S. Frederick Starr, (New York, NY: M.E. Sharpe, Inc., 2004), 143, http://books.google.com/books?id=GXj4a3gss8wC&pg=PA120&dq=isbn:0765613182&source=gbs_toc_r&cad=4#v=onepage&q&f=true, accessed 15 Aug 2011.
26. Syed Anwar Hussain, 'China & Pakistan: Diplomacy of an Entente Cordiale', (University of Massachusetts Press: 1974), p. 82.
27. This historical synthesis is formulated based on Josef Korbel's *Danger in Kashmir*, Princeton University Press: Princeton, NJ; 1966. pp. xvii+ 401.
28. K Sarwar Hussain, *Kashmir Question*, 1966. p.3
29. Sisir Gupta, *Kashmir: A Study in IndiaPakistan Relations* (Bombay: Asia Publishers, 1966), p. 439.
30. J&K had two provinces – Jammu and Kashmir. Poonch was a state within Kashmir province and Rawalakot was part of Poonch state.
31. Christopher Snedden, *The Untold Story of the People of Azad Kashmir*, op.cit.
32. For detailed account read *The Kashmir Saga* (second Edition) by Sardar M. Ibrahim Khan, the founder President of AJK, Verinag Publishers, 1990, Mirpur Azad Kashmir.
33. An Appraisal of Constitutional, Financial and Administrative Arrangements between the Governments of Pakistan and Azad Jammu and Kashmir, Centre for Peace, Development and Reforms Azad Jammu and Kashmir June 2011, <http://www.cpdr.org.pk/2011%20CPDR%20Kashmir%20Report.pdf>, accessed 26 Sep 2011.

years.³⁴ The frequent revisions of rules however reduced the status of AJ&K government to that of a municipality. The local political groups expressed their anger vociferously and organized several protests to demand democratic rule.³⁵ During this while, ethnicity and a sense of personal élan of Sardar Ibrahim, a Kashmiri and Chaudhary Ghulam Abbas, a migrant from Jammu, dominated power corridor of AJ&K Government. Muslim Conference being the spearhead of Liberation Movement headed by Ghulam Abbas (Head of All Jammu and Kashmir Muslim Conference) on this side of CFL (Cease Fire Line), therefore, championed the cause and had won favours with the Federal Government. Consequently, for some-times, in the earlier years, the office of Supreme Head also existed and he approved the Legislation for Azad Jammu and Kashmir but this office was abolished in 1952 and thereafter only the President was the Executive Head, who was assisted by some Ministers.³⁶ Both the leaders were instrumental in signing the Karachi Agreement specifically Ghulam Abbas. Besides ceding control of Northern Areas to Pakistan, the Agreement it (Muslim Conference) was persuaded to sign, seriously limited the role of Azad Kashmir Government in the Kashmiri freedom struggle. Therefore it is no surprise that respective governments of Azad Kashmir have very little or no interest in the freedom of the State of Jammu and Kashmir.³⁷ The agreement was thus viewed by many as losing autonomy right at the outset.

Concurrently, a fact generally ignored is the impact of dynamics of internal politics of Pakistan on AJ&K. In 1958, the shift from democracy to dictatorship in Pakistani politics heavily impacted AJ&K politics, slowing the democratization process further. The military-led establishment appointed and sacked AJ&K's rulers on the basis of personal likes and dislikes. The Ayub government, in particular, had little tolerance for political opponents. The people of AJ&K, who had earlier experienced the tyrannical rule of the Maharaja, were not prepared to accept another dictator. Their urge for representative government was unprecedented and enjoyed widespread support.³⁸ There

were two obvious consequences of political changes in Pakistan. First: in its actual political structure AJ&K demonstrated great instability. Presidents came and went with extra-ordinary rapidity, particularly in its early years, for reasons which were not always apparent to the outside world. Second: its formal constitution tended to reflect whatever regime was in force in Pakistan, be it Ayub Khan's Basic Democracy, Zulfikar Ali Bhutto's PPP, or varieties of martial law administrations. In both cases what was at work was a conflict between Pakistani interests in a wider context and the interests and attitudes of local Azad Kashmiri leaders, some of whom were prepared to consider solution to the Kashmir problem which did not of necessity coincide with that was in favour at the moment of Karachi, Rawalpindi or Islamabad.³⁹

In 1960, the Presidential Elections system through the votes of basic democrat, was introduced in Azad Jammu and Kashmir with another body known as Azad Jammu and Kashmir council which was also elected by the basic democrats.⁴⁰ A legislative assembly was set up in 1970, and the 1974 interim constitution established a parliamentary system headed by a president and a prime minister, fundamentally departing from presidential system.⁴¹ While in tone and tenor, the revised constitution resembled Constitution of Pakistan of 1973, it had articulated instruments that were meant to favourably condition local environment to the ideological nuances of state of Pakistan on the one hand, and to structurally steer the governance affairs of AJ&K to the tune of central government in power.⁴² Azad Jammu and Kashmir Council, a constitutional body was established under section 21 of the Interim Constitution Act, 1974 with clearly defined executive, legislative and judicial sphere enumerated in the third schedule of the Act. The Council was and is the highest linking forum between Pakistan and Azad Jammu and Kashmir and is the principal arm of Government of Pakistan chaired by chief executive of Pakistan to formalize policies and influence processes inside AJ&K. In sharp similarity with the formerly federal list in the Constitution of Pakistan, here it was integrated in the form of 52 subjects

34. Ershad Mahmud, Status of AJK in Political Milieu, op.cit.

35. Ibid.

36. Khalil Ahmed Qureshi Secretary Law, Azad Jammu and Kashmir Interim Constitution Act, 1974, op.cit.

37. Karachi agreement signed between Pakistan and Azad Kashmir Governments, op.cit.

38. Ershad Mahmud, Status of AJK in Political Milieu, op.cit.

39. Alastair Lamb, Kashmir: A Disputed Legacy (1846-1990), Oxford University Press, Karachi, 1992, pp-188-189.

40. Khalil Ahmed Qureshi Secretary Law, Azad Jammu and Kashmir Interim Constitution Act, 1974, op.cit.

41. Freedom House, Freedom in the World - Kashmir [Pakistan] (2007), 16 April 2007, available at: <http://www.unhcr.org/refworld/docid/473c560d1f.html>, accessed 24 September 2011.

42. Read articles 7, 31, 35, 56 and relevant subclauses of the Interim Constitution of AJ&K.

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under the executive control of Kashmir Council. The attempt manifested a scheme to centralize the AJ&K's political powers. While this may be true, it will be relevant to contextualize the mindset then prevailing in polity of Pakistan which vehemently challenged ethnic identity of any order. During 1974, memory of cessation of East Pakistan was fresh, armed forces were demoralized; POWs were still returning home from India; Baloch insurgency was peaking; Sindh was somewhat recovering from language riots of 1972 which had widened the differences between Sindhis and Urdu-speaking population, and despite a heavy mandate, PPP did not form provincial governments in Balochistan and NWFP (now Khyber Pakhtunkhwa). For the governments in Pakistan, thus the word nationality [e.g., Balochi, Sindhi, Kashmiri etc] remained anathema to national integration and evoked strong reactions.⁴³ The Bhutto government's case for banning the NAP (National Awami Party) in 1975 and trial of its leaders on the charge of sedition was based largely on a resolution passed by the central working of the [Pakistan Peoples] party stating that there were four nationalities in Pakistan. The government also passed a law in 1975 prescribing a seven-year imprisonment for individuals advocating the presence of more than one nationality in Pakistan. The State of Pakistan and the right-wing establishment traditionally equated the word nationality with secession and, hence considered it an anathema to Pakistan's integrity and survival as a state.⁴⁴ Using Islamic bond to justify suppressing the distinctive linguistic and cultural mores of Pakistan's regional peoples, especially during prolonged bouts of military dictatorship was perhaps employed justifiably, but it had politically divisive effects.⁴⁵ AJ&K was no exception, it is contended.

Bashir Asef, a Marxist, noted that prior to institution of

Kashmir Council politically the Ministry of Kashmir Affairs, was in full control of the political activity in Azad Kashmir. It ran the government, enacted laws, and removed and replaced the elected Presidents of the Azad Kashmir government. Consequently, some have termed AK as "another colony of Pakistan... [and saw solution] by revolutionary means, with the help, of course, of the Pakistani people who have to prepare themselves against the evils of their own existing social structure".⁴⁶ Pakistan itself has also been called a rentier security state whose action, it is alleged, is rarely guided by feelings of altruism for its people. Putative threats precede the priority of developing the country or dealing with conflict in society from the peoples' angle,⁴⁷ therefore no wonder because the military controls Kashmir policy, it shapes that policy in accordance with its institutional preferences and past experiences.⁴⁸ It is in this backdrop that losing the Pakistani part of Kashmir has been seen as undermining national security, as argued by General Jehangir Karamat. Nor could Pakistan afford to lose its control over the parts of Kashmir it administers directly, since its strategic road link to China, through the Karakoram highway to the Khunjerab pass, traverses those Northern Areas.⁴⁹ Critics of Pakistani political parties accuse them of cynically supporting the military's preferences and policies towards Kashmir because their own access to power depends on military goodwill. Political leaders and parties are indeed hesitant to earn the military's ire.⁵⁰ With Muzafarabad dependent on Islamabad's authorisation, political debate is sterile, and political parties largely sidestep questions of AJ&K's autonomy.⁵¹ The opportunists apart, many political leaders of Azad Kashmir, are strong critics of the powers enjoyed by the federal government through the council. They believe that good governance there would remain a pipedream unless the executive powers of the council are

43. Feroz Ahmed, Ethnicity, Class and State in Pakistan, Economic and Political Weekly Vol. 31, No. 47 (Nov. 23, 1996), pp. 3050-3053 <http://www.jstor.org/pss/4404794>, accessed 9 Sep 2011.
44. Tasadduq Hussain, Ethnicism in Sindh, Individual Research Paper, 85th National Management Course, Pakistan Administrative Staff College, Lahore.
45. Ayesha Jalal, The Past as Present in Pakistan Beyond the Crisis State, (ed) Maleeha Lodhi, Oxford University Press, Karachi, 2011, p.11.
46. M. Bashir asef, azad kashmir: a colony of the republic of Pakistan islamic, Publish in Pakistan Fourm 1971 .
47. Khalid Aziz, Causes of Rebellion in Waziristan, Regional Institute of Policy Research and Training, Peshawar, 22 Feb 2007. www.report.org.
48. Kashmir: The View From Islamabad ICG Asia Report N°68, 4 December 2003, p.11, http://www.crisisgroup.org/~media/Files/asia/south-asia/kashmir/068_kashmir_islamabad.pdf, accessed 24 Sep 2011.
49. Ibid.
50. Kashmir: The View From Islamabad ICG Asia Report N°68, 4 December 2003, p.16-17, http://www.crisisgroup.org/~media/Files/asia/south-asia/kashmir/068_kashmir_islamabad.pdf, accessed 24 Sep 2011.
51. Steps Towards Peace: Putting Kashmiris First, p.7,

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taken away and transferred to the government of Azad Kashmir,⁵² which is answerable to popular sentiments unlike Kashmir Council which is not. The nationalists believe that the stringent control of the Azad Kashmir Council over the last 37 years has resulted in the poor state of development in the territory. Operationally it did not let Azad Kashmir's governments formulate policies to undertake developmental initiatives in these critical sectors compared to the successive governments of Azad Kashmir who have performed better than the provinces of Pakistan in the subjects left with them, like health, education, electrification, local security, roads and communications, provision of clean drinking water, local government, rural development, and population welfare.⁵³

Even with respect to matters which fall within the responsibility of the Government of AJ&K, effective authority is exercised to a large extent by senior members of the civil service appointed directly by the Government of Pakistan such as Chief Secretary, Additional Chief Secretary, IG Police, Finance Secretary, Health Secretary, Auditor General and Accountant General.⁵⁴ This generates grievance among AJ&K services group who feel their powers having been curtailed in operation of even routine affairs. Known as "Lent Officers", and not being under the AJ&K Government's control in matters of discipline or posting, the posted officers are a strong check on the exercise of powers by the President and Cabinet of AJ&K. The system of "Lent Officers" is a permanent feature, and has never been changed. The Government of Pakistan, therefore, always retained an extremely strong influence in AJ&K's affairs.⁵⁵ With increased political awareness and social mobilization, the demands for autonomy have become more vocal after the 18th and 19th Amendments which have devolved more powers to the provinces and reduced the central government's role in provinces.⁵⁶ I.A. Rehman therefore concludes that the government of

Pakistan must learn to avoid giving the impression that the people of Azad Kashmir are subject to its diktat.⁵⁷

"Azad" Kashmir is categorised as an "autonomous" region. But critics claim titles such as Prime Minister and President for the region's elected political leadership are misleading, as candidates are required to sign an affidavit of allegiance to Kashmir's accession to Pakistan. Scholars claim that any legislation that is passed requires the approval of Islamabad, so even the most local matters are handled within the purview of the Pakistani state. Because Azad Kashmir is not an official Pakistani province, it has no jurisdictional rights even within the territory itself and does not enjoy the distribution of funds that should result from the federally imposed taxes.⁵⁸ Identically, the political process in Azad Kashmir has been suspended on several occasions by the military rulers of Pakistan. In 1977, General Zia ul-Haq dissolved the legislative assembly and banned all political activity for eight years, and in 1991, the prime minister of Azad Kashmir was dismissed, arrested, and imprisoned in Pakistan.⁵⁹ At this occasion Benazir Bhutto said: "Pakistan had arrested the prime minister of Azad Kashmir, rigged the state elections, and alienated the Kashmiris to such an extent that they want an independent Kashmir".⁶⁰ Chronic infighting among Azad Kashmir's various political factions has also allowed Islamabad to interfere with ease in the electoral process.⁶¹ An apt example is the reinstatement of deposed Supreme Court Chief Justice Riaz Akhtar Chaudhry by Azad Jammu and Kashmir President Raja Zulfikar Khan during 2010. Interestingly however, Pakistan Prime Minister Yousaf Raza Gilani refused to play a role or interfere in the matter.⁶² A similar example of non-interference can be found in political history of AJ&K when in 1971, the Assembly amended the Act (without having to seek prior permission of the Government of Pakistan) and gave fundamental rights to the people and writ jurisdiction to the High Court.

52. Ershad Mahmud, Empower Azad Kashmir, op.cit. <http://thenews.com.pk/TodaysPrintDetail.aspx?ID=61242&Cat=9>, accessed 26 Sep 2011.

53. Zulfiqar Abbasi, Why Azad Kashmir lags August 17, 2011, <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=63238&Cat=9&Result=0>, accessed 26 Sep 2011.

54. Ershad Mahmud, Status of AJK in Political Milieu, op.cit.

55. An Appraisal of Constitutional, Financial and Administrative Arrangements between the Governments of Pakistan and Azad Jammu and Kashmir, Centre for Peace, op.cit.

56. Ershad Mahmud, Empower Azad Kashmir, op.cit.

57. I.A Rehman, AJK fault lines, op.cit.

58. Shanna Dietz Surendra, Explaining Social Mobilization in Pakistan, op.cit.

59. Freedom House, Freedom in the World – Kashmir, op.cit.

60. Lal Khan, 'Kashmir's Ordeal', 19 July 2011, <http://www.marxist.com/kashmir-ordeal.htm>, accessed 26 Sep 2011.

61. Ibid.

62. AJK president 'restores' deposed chief justice, Daily Times, April 05, 2010, http://www.dailytimes.com.pk/default.asp?page=2010%5C04%5C05%5Cstory_5-4-2010_pg1_4

An Apex Court was also created, in which appeals could be filed against the High Court's judgments. The power to appoint judges to the superior courts lay with the President of AJ&K. Importantly, the subjects of foreign trade and foreign aid were included in the legislative and executive authority of the AJ&K Government which immensely raised internal autonomy to a new height.⁶³ Later however the paradigm was changed with the advent of Interim Constitution and formation of Kashmir Council. Alastair Lamb, a historian, provides an incisive rejoinder to the oft-perceived exclusionary nature of state of Pakistan vis-à-vis AJ&K. He rather asserts the equation in favour of inclusive relationship as evident from his observation.

While dependent upon Pakistan for its military and economic survival (not least because of its importance for the watering of the West Punjab by rivers which ran through it and by vast projects like Mangla which were over the years to come to be situated on its soil), it was not entirely a Pakistani puppet state. In some respects it was a kind of Kashmir government in exile. At the same time, it was inevitable that Pakistan would watch closely, and intervene actively in, its political processes; and without Pakistani assistance, economic, political and military, it could not hope to survive.⁶⁴

Contemporary Contentious Issues

In addition to lingering legality predicament, current estimates show that around 300,000 jobs are required to cater to the needs of promising but unemployed youth in the next five to seven years. In the present scenario, the state does not have the capacity to create even 3000 jobs as the private sector has not been allowed to develop and flourish in the state. It is generally held that the government's hands are tied under the constitutional arrangements between Azad Kashmir and Pakistan.⁶⁵ Likewise, Azad Jammu & Kashmir does not have any seats in the parliament of Pakistan or in the institutions established by the constitution for consultation and

coordination between the federation and its component units, such as the Council of Common Interests (CCI), the National Economic Council (NEC) and the National Finance Commission (NFC).⁶⁶ Similarly, Azad Jammu and Kashmir and Gilgit-Baltistan are also not represented on the Indus River System Authority (IRSA) and unlike the provinces, they get no share in the profits earned from the hydro-electric power stations located in their territory. This denial of rights has generated considerable resentment.⁶⁷ Recently a summary for allowing a 614 causes of water from Jhelum River for drinking and irrigation purposes into AJ&K was withdrawn in face of strong opposition from Sindh, in turn creating unrest and mistrust in Kashmiris.⁶⁸

Lal Khan claims that Islamic fundamentalism that surfaced in the 1990s has suffered a rapid decline. The issue of social liberation has come to the fore within the nationalist movement. The revolutionary currents developing amongst the youth through the Jammu Kashmir National Students Federation (JKNSF) in Azad Kashmir are worrying the rulers in Islamabad. He further states that the conditions of the social and physical infrastructure are terrible. Poverty, misery and deprivation are worsening. In a recent poll conducted on both sides of the Line of Control, 87 percent of participants considered poverty and unemployment as the main issues facing Kashmir.⁶⁹ This state of affair is borne out by hindered rescue and relief efforts in the aftermath of Earthquake 2005 due to the region's poor infrastructure. The devastation triggered by this natural disaster only amplified the grievances of Azad Kashmiris against their government. Though development of Azad Kashmir has received increased attention, many of the existing development plans are exploitative, such as the Mangla Dam and water reservoir.⁷⁰

Impact of 18th Constitutional Amendment has had profound bearing on financial health of AJ&K. Prior to devolution of MINFAL (Ministry of Food, Agriculture and Livestock) Government of Pakistan, there were five ongoing umbrella projects directly funded by GoP from

63. An Appraisal of Constitutional, Financial and Administrative Arrangements between the Governments of Pakistan and Azad Jammu and Kashmir, Centre for Peace, op.cit.

64. Alastair Lamb, *Kashmir: A Disputed Legacy (1846-1990)*, p.188, op.cit.

65. Zulfikar Abbasi, *Why Azad Kashmir lags*, op.cit.

66. PILDAT proposes provincial status for AJK, G-B, May 19, 2011, Daily Times, http://www.dailytimes.com.pk/default.asp?page=2011%5C05%5C19%5Cstory_19-5-2011_pg11_7, accessed 24 Sep 2011.

67. PILDAT proposes provincial status for AJK, G-B, op.cit.

68. Khaleeq Kiani, Summary for use of Jhelum water by AJK withdrawn, Daily Dawn, 4 July 2011.

69. COMMENT: Kashmir's ordeal —Lal Khan, June 26, 2011, Daily Times http://www.dailytimes.com.pk/default.asp?page=2011%5C06%5C26%5Cstory_26-6-2011_pg3_4, accessed 26 Sep 2011.

70. Shanna Dietz Surendra, *Explaining Social Mobilization in Pakistan*: op.cit.

MINFAL PSDP. Total cost of these projects was Rs.900.658 Million, out of which an amount of Rs.386.105 Million had been released and utilized by the department of Food, Agriculture, Livestock and Irrigation Government of AJ&K till end June 2011 (cut-off date for devolution of MINFAL to the provinces). Since AJ&K and Gilgit Baltistan are not part of the Federation of Pakistan under the Constitution, they do not get any share from NFC award. That is why the above mentioned projects have virtually come to a halt since 30th June, 2011. Same is the case for Health, Education, Communication & Works, Social Welfare, Forest, Wildlife, Fisheries and Energy departments. Although an amount of Rs.6258.813 Million has been provided (as block provision) to the Planning Commission of Pakistan for its allocation to the projects funded by devolved federal ministries, yet no allocation has so far been made to either of the special areas i.e. AJ&K, GB or FATA. The ground realities suggest Pakistan is fast losing traditional sympathetic constituencies owing to indifferent core-periphery attitude.

Conclusion

AJ&K is not unique in terms of such territories whose sovereignty is associated with the destiny of their possible mother states, in this case Pakistan. While the people are "by all means, obliged to and feel part of the larger community of [Pakistan] ... there appears a consensus that the relationship between Muzaffarabad and Islamabad certainly needs to be redefined without delay ... on the basis of mutual interests, dignity and honour."⁷¹ The structural violence and machinations endemic in real-politick notwithstanding, it will be a remiss not to take into account the unending sufferings of the people of Pakistan who have endured along with their Kashmiri brethren in supporting the Kashmir cause. Besides, those who oppose AJ&K entry into national institutions, apprehend such a move germinating negative consequences for Kashmir cause. What is ironical however is absence of structured institutions and a vibrant civil society in AJ&K which may have advanced its cause within Pakistani context through constitutional and peaceful means. While in the recent past dialogue on the issues under review has been pioneered by several quarters both by native Kashmiris and foreign think tanks, a particular feature of this initiative of PILDAT is not only to expose legislators to

substantive facets of the issue but more importantly help develop their argumentative and negotiations skills for conducting a meaningful and result oriented bargain under competitive environment. Fostering in them media handling techniques is an added feature of this undertaking.

71. Nirupama Subramanian, What the elections in PoK mean, Aug 15, 2006, The Hindu, <http://www.hindu.com/2006/08/15/stories/2006081503691000.htm>, accessed 24 Sep 2011.



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