

Protection of fundamental rights of peoples belonging to disputed/occupied territories not protected by a constitution (Gilgit-Baltistan): Approaches of developing democracies (India and Pakistan) to autonomy and self-determination

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Abstract: *Constitutions not only guarantee fundamental rights but also prevent arbitrary State restriction on these rights. The absence of constitutional protection raises significant political and legal challenges both to the fundamental rights as well as governance system, as seen in the case of Gilgit-Baltistan. Gilgit-Baltistan is a disputed/occupied territory under the de facto administration of Pakistan, which is located to the north of Pakistan, bordering China and India. Gilgit-Baltistan is a region/territory which is neither constitutionally integrated into the Federation of Pakistan, nor protected by the Constitution's fundamental rights provision. Due to this peculiar situation of constitutional limbo, Gilgit-Baltistan occupies a unique position in political and legal academic discourse. Unlike other cases of autonomy and self-determination such as Quebec, Catalonia, South Sudan, West Bengal, and Kashmir, Gilgit-Baltistan lacks constitutional recognition within any State vis a vis Pakistan. This research project will address the political, democratic, and legal implications of this unique status, proposing a novel approach to autonomy with due consideration to the existing principles of autonomy (such as self-determination through autonomy or independence by Dr. Markku Suksi), that elaborates unique autonomy arrangements in the case of New Caledonia, which can form a foundation for the case of Gilgit-Baltistan. In doing so, the project will contribute to the broader discourse on autonomy and self-determination for disputed/occupied territories which lie outside the formal constitutional frameworks of sovereign States.*

Keywords: *self-determination; autonomy; international law; Gilgit-Baltistan; India; Pakistan; democracy; human rights.*

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1. Introduction

In modern day political and legal systems, “fundamental rights are at the heart of a constitution, which not only determines relationship between individuals, groups and the state, but also the policy and decision-making of the state” (OHCHR 2018). A constitution is the fundamental document to guarantee, provide, and protect the fundamental rights of the people within a State. Not only does it guarantee the fundamental rights but also prevents arbitrary restrictions by the State on fundamental rights. But what if a territory or its people and their fundamental rights are not protected by a constitution? For instance, in the case of Gilgit-Baltistan, which is neither part of the territories forming the Federation of Pakistan, nor are the fundamental rights of its people protected in the Constitution of Pakistan. In the context of decolonisation and globalisation, the right to self-determination as enshrined in Article 1 of the United Nations (UN) Charter is, perhaps, the most significant principle of international law accepted by all free and civilised nations. The history of Gilgit-Baltistan is both intriguing and tragic at the same time. Intriguing because of the significance it enjoyed due to its marvellous historical, cultural, geostrategic, and geopolitical position as a group of small yet sovereign and self-sufficient princely States until 1947. Tragic because of the transition from an independent State to statelessness under occupation and subjugation of the State of Pakistan. The twentieth century is marked for the beginning of decolonisation for some nations and colonisation for the others. The struggle for the rights to self-determination, autonomy, and independence resulted in the culmination in the control of colonial powers over many nations in Africa, Europe, and Asia, while for others it has brought tremendous human suffering, systematic human rights violations, and subjugation. Gilgit-Baltistan is a classical yet ignored case of colonisation, decolonisation, and recolonisation. Understanding of the current governance and legal system is possible only with an in-depth analysis of the historical events prior to the division of the Indian subcontinent into the dominions of Pakistan and India to the present day.

It is equally imperative to explore, in the current global dynamics, the geo-strategic, geo-economic, and geo-political standing and importance of Gilgit-Baltistan for two important reasons. First, to truly appraise the urge among the peoples of Gilgit-Baltistan for greater autonomy, self-governance, and for self-determination – viable options, which in the light of international law, human right instruments, and constitutions requires a thorough inquiry. Second, to compensate for the lack of sufficient scholarships on the subject, which have long contributed to the confusion, i.e. the association of Gilgit-Baltistan with Jammu and Kashmir and essentially with the issue of Kashmir, and to understand the ways in which the fundamental rights of the people can be protected pending the final disposition of the matter. The issues of autonomy and self-determination in Gilgit-Baltistan is unique in the sense that unlike other cases of autonomy

and self-determination, i.e. Quebec, West Bengal, Kashmir, Catalonia, and South Sudan, it is neither a territorial part of any State, nor it is part of a constitution seeking autonomy. Therefore, the project will seek to answer the legal question of autonomy and self-determination and will contribute to the wider understanding of the question of autonomy and self-determination for the regions not forming part of any State and as such not protected under any constitution. The objective of this study will be to identify a mechanism through which the fundamental rights of the people of Gilgit-Baltistan can be protected pending the political, legal, and constitutional status through a referendum or a plebiscite. An effort will be made to critically analyse the current status, as it exists in Gilgit-Baltistan, and its failure to protect the fundamental rights of the people of Gilgit-Baltistan, as these fundamental rights are not guaranteed under the Constitution of Pakistan. Furthermore, attempts will be made to explore and understand autonomy or self-determination as a viable long-term solution for the issue of Gilgit-Baltistan, considering other successful or failed cases of autonomy and self-determination in other regions of the world. Finally, given the sensitivity of the region, i.e. the geostrategic position of Gilgit-Baltistan, an epicentre of three nuclear States (India, Pakistan, China), and the power shift in the Global South, the action and inaction by the UN in determining the political and legal status (autonomy and self-determination) of the region will be considered to understand what implications it has on the right of self-determination and human rights of the people of Gilgit-Baltistan.

2. Self-determination: Connotations and use

The concept of self-determination has always been an important topic of discussion and controversy in the global political landscape and international relations since the twentieth century, not as a pure legal context but in a political one (Dembinski 1969, 35), which later became a legal “grundnorm.” No specific definition of self-determination has been established since it has been used over the years in different political, legal, and human rights dynamics. Its use can be traced in economic, cultural, political, and legal connotation as used in international law and human rights instruments. In general terms, self-determination refers to “the right claimed by a ‘people’ to control their destiny” (Berman 1992, 389–90). It is this general proposition that establishes self-determination as a right to be claimed, which means the establishment of the right-holder “people.” A right, a choice, through which “people” can decide and control their political destiny, if the proposition is used in the political context. The political and legal connotation of the right to self-determination merited attention in international law by its inclusion within the UN system through the UN Charter. Of particular importance in this context are Articles 1 and 55 of the UN Charter, which although do not provide a meaning or definition of the self-determination yet they do provide the purpose and outcomes of the principle of self-determination. Article 1

of the UN Charter enlists the purposes of the establishment of the UN, which includes, among other fundamental principles and purpose, the principle of self-determination. Article 1(b) reinstates the commitment of creating peace and friendly relations among the States as described in the preceding article and presents the principle of self-determination to attain these results. In the language of this article, one of the purposes of the UN is “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.”

Though this provides a foundation and subsequent transition of the self-determination principle to a legal and human right, it does not in itself recognise self-determination as right but as a principle to achieve other outcomes, i.e. development of friendly relations and peace among the nations. A similar type of commitment and principle is laid down in Article 55 of the Charter, which states “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote....” Both Articles 1 and 55 of the UN Charter merely establishes the principle of self-determination for the purpose of achieving other objectives and ends rather than laying down the self-determination as a principle or right in itself. A mere embracing of a principle under the UN Charter without providing more details and context have resulted in much anticipated confusing and debate, hence, it requires more understanding and interpretation in other UN promulgated instruments. One of the most important developments in providing a clearer notion on the principle came with the adoption of the famous Declaration on the Granting of Independence to Colonial Peoples through UN General Assembly Resolution 1514 in 1960. It is important to note that the Declaration lays down self-determination as a right in relation both of the “peoples” and territories. Article 2 of the Declaration states “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” The Article reinstates three important principles regarding self-determination. First, by proclaiming self-determination not a mere principle but as a right of all peoples. Second, the political connotation of the right to self-determination, which guarantees the right to “all peoples” to determine and decide their own political status, governance system, and political destiny. Third, the expansion of the self-determination to the fields of economic, social, and cultural rights. Yet another important Article of the Declaration, which not only reiterates the notion of right to self-determination but provides further elaboration on what self-determination may entail is Article 4. According to Article 4 “All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their

national territory shall be respected.” By incorporating the notion of “complete independence,” the Declaration recognises the right of people not only of self-determination but also of the external aspect of the right to self-determination vis-à-vis complete independence and both internal and external sovereignty. Moreover, the right to self-determination has been accepted and incorporated into subsequent human rights instruments both in the context of civil and political rights as well as economic, social, and cultural rights. The International Covenant on Civil and Political Rights (ICCPR) lays down self-determination as a civil and political right whereas the International Covenant on Economic, Social and Cultural Rights (ICESCR) defines the economic, social, and cultural context of the right to self-determination. As a principle of international law, the right to self-determination has been accepted and acknowledged in different cases by the International Court of Justice (ICJ). In its Namibia opinion, the ICJ referred to the right of self-determination as “a principle in international law as enshrined in the Charter and its further development in the Declaration on Colonialism (1514(XV)), which refers to a right to self-determination” (Bucheit 1978, 9). Moreover, in the East Timor case (*Portugal v. Australia*), while adjudicating on the case the ICJ emphasised that the right to self-determination is “one of the essential principles of the contemporary international law” (Shaw 2003, 225). It is now consensus in the UN system that all peoples have the right to self-determination both internal and external. Further, it is acknowledged by a majority of the nations as a civil and political, and economic, social, and cultural right, the absence of which may endanger other human rights. However, the application and implementation of right to self-determination under human rights instruments and international law had so far been largely based on the different circumstances. For some “peoples” it had been made readily available and for others it has completely been denied. This unequitable approach of acknowledging and application had resulted in the distrust and criticism towards UN both by scholars and people. Additionally, the acknowledgement of the right to self-determination only after wars, conflicts, systemic and gross human rights violations, and destruction resulted in calls for a fresh approach of right to self-determination. Critics had long argued that the enforcement of right to self-determination only after conflicts and human suffering impedes the very purpose of the UN, which was established for promoting global peace, security, and human rights.

The UN Human Rights Committee, through its General Comments, Recommendations, and Reports has time and again reaffirmed the right to self-determination as a fundamental right as well as an important tool in the realisation of other human rights. In its General Comment 12 on the occasion of its twenty-first session, the Committee noted that “The right to self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of

those rights” (Human Rights Committee 1984, para. 1). In regard to the right of self-determination and its connection with the friendly relations between States, as enshrined in the UN Charter, the Committee opined that “respect for the right to self-determination of peoples contributes to the establishment of friendly relations and cooperation between states and to strengthening international peace and understanding” (Human Rights Committee 1994, para. 8). This not only emphasises the importance of securing, promoting, and guaranteeing the right to self-determination as a human right but also as a tool and an end in creating international peace and security.

3. Autonomy and self-governance

As opposed to the concept of self-determination, i.e. independence and sovereignty, autonomy refers to arrangements of power and responsibility sharing between two Governments or territories belonging to the same State – power sharing between a central Government and a subnational Government(s). Various reasons require delegation of greater governmental powers to the subnational or Governments of peripheries including the local Government’s ability to better understand the local needs/challenges hence being in a position to have a better response to such local needs and challenges. Other reasons may include the refusal or lack of acceptance by the local populace to accept the powers of the central Governments due to social, cultural, and political sensitivities. Disputed and occupied territories are mostly susceptible to central Governments, which they may not perceive as their representative. In some cases, the violations of human rights and oppressive measures by the national Governments may raise concerns among the local masses and hence create desire for effective autonomy and self-governance. This has resulted in different governance systems, power sharing, and self-governance methods across the globe with the above-mentioned challenges. Before we discuss autonomy as a viable option for the people of Gilgit-Baltistan in the view of ongoing oppressive measures and human rights violations, it is important to discuss some conceptual foundations of autonomy.

Autonomy in general terms can be understood as a political and legal concept as a middle way between complete independence/secession and complete dominance between a national Government and a Government of a certain territory. Autonomy refers to “the ability of a region or community to organise its affairs without interference from the central government” (Ghai and Woodman 2013, 5). Territorial autonomy according to the definition means decentralisation and devolution of more powers from the central Government to the territorial Government in question. Autonomy is an effective way of managing the governance concerning minorities, hence it is on occasions referred to as the “queen of minority protection instruments” (Brems 1997, 14). As a global political phenomenon for accommodating the demands of religious, cultural, and ethnic minorities

or otherwise of disputed and non-self-governing territories it has helped managed the tensions and challenges across the globe. Quebec in Canada is an effective example of successful self-governing and autonomous territory.

4. Self-determination: Comparative analysis of Quebec, Kurdistan, Catalonia, and Kashmir

The right of self-determination in international law, the UN Charter, and human rights instruments is an established right of the people (the colonised people) to freely determine their legal, political, social, and economic status. In particular, the ICCPR and ICESCR through their Article 1 recognises the right of self-determination to all peoples. Additionally, it recognises the principles of autonomy and to freely determine their political status and to use their economic, cultural, and natural resources for their development. The concept and principle of self-determination in international law and UN instruments is used in multiplicity of connotations. In its broader sense it is used both for internal self-determination (self-governance/ internal autonomy) and external self-determination, i.e. independence and sovereignty. The broader and liberal principle on the principle of self-determination was incorporated through UN Resolution 1514 (XV) in 1960, including the Declaration on the Granting of Independence to Colonial Countries and Peoples. An affirmation for the self-determination principle was included in section 2, which states “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” This concept of self-determination was further strengthened by its inclusion into the ICCPR and ICESCR in 1966, which recognises the right of self-determination, not only for the colonised people but to “all peoples.” The right of self-determination was further broadened by adoption of the Friendly Relations Declaration to “peoples under alien subjugation, domination and exploitation” (UNGA 1993). Thus the right of self-determination extends beyond the context of colonialism (UNSC 1986; UNGA 1987; UNGA 1974). Since the development and establishment of the right of self-determination, many cases of autonomy and self-determination have emerged across the world. Some settled through constitutional adjustments granting more autonomy, many through recognition of right to self-determination (by UN), and many through armed conflicts, leading to independence. As a principle of international law, the right to self-determination has been accepted and acknowledged in different cases by the ICJ. In its Namibia opinion, the ICJ referred to the right of self-determination as “a principle in international law as enshrined in the Charter and its further development in the Declaration on Colonialism (1514(XV)), which refers to a right to self-determination” (Buchheit 1978, 9). Moreover, in the East Timor case (*Portugal v. Australia*), while adjudicating on the case the ICJ emphasised that the right to self-determination is “one of the essential principles of the contemporary international law” (Malcolm 2003, 225).

The literature review consisting of the cases of autonomy and self-determination from various regions will examine these principles and their practical implementations and will provide a basis for exploring new approaches to autonomy and self-determination while answering the question of autonomy and self-determination in Gilgit-Baltistan. These cases include Quebec, West Bengal, South Sudan, Catalonia, Kurdistan, and Kashmir.

The struggle for autonomy and self-determination in the Kurdish regions in Turkey, Iraq, and Iran has a long history. Kurds under the domination of Turks and Arabs brought their claims of self-determination to Paris Peace Conference in 1919 for the first time (Chaliand 1993). The provisions for the establishment of an autonomous Kurdish State were provided in the Treaty of Sèvres (Treaty of Peace with Turkey 1920), which culminated in the Ottoman empire. However, the subsequent Treaty of Lausanne (1923), which superseded the previous treaty omitted the provisions for the establishment of an autonomous Kurdish State. Subsequently, the uprising of Kurds demanding autonomy and self-determination was forcibly quelled. The struggle for autonomy and self-determination/independence in both Iran and Iraq were oppressed by use of force, resulting in thousands of Kurds killed. In the early twentieth century, renewed efforts were made by the Kurdish people in Iran, Iraq, and Syria. However, with the support of Soviet Union, the Kurdistan Democratic Party was able to declare Kurdistan as Republic of Mahabad in 1946, which could survive for only 11 months and culminated with the execution of the President by the Shah of Iran (Arfa 2006, 95). The human rights abuses and prosecution of Kurds continued in Iraq and Turkey, and during the Anfal campaign under Saddam Hussain's era in Iraq almost 10,000 Kurds were killed including Halabja genocide in 1988 (HRW 1993). In Turkey, the Dersim and Zilan massacres of 1937 resulted in the death of around 13,000 Kurdish civilian (Jokuza 2012). The Kurdistan Regional Government (KRG) was subsequently formed as a result of 1992 elections, due to a political vacuum in the region in the aftermath of Gulf War of 1991. The appeals from the KRG for greater autonomy and independence have repeatedly been opposed by the Iraqi Central Government. In 2017, the KRG held a referendum on independence of the region, with 90% votes in the favour of the referendum, however, the outcome was not recognised by the Iraqi Government and the response of the international community has been discouraging. The unsuccessful plea of Kurdish self-determination represents the approach of authoritarian regimes towards international law and the right of self-determination. Also, it reflects the selective implementation of self-determination principles by the international community and UN. It is therefore imperative to revisit the legal approach to self-determination in third world countries and authoritarian regimes.

The Catalanian case of self-determination is a classical case in the context of liberal democracies in Europe. The case of Catalonia to self-

determination has historical, political, social, economic, and legal contexts and implications. During the twentieth century, politically, Catalonians were not given ample powers as they were striving for, and it was only in 1931 that the Spanish Parliament recognised limited autonomy “outside the cities with a common history, culture, and economy” within the Spanish State (Hannum 1993, 264). Due to widespread disagreements over the constitutional arrangements, a new Constitution was enacted and came into force in 1978 (Borgen 2010, 1018). The attempt to introduce this new Constitution was to ensure the State’s legitimacy over all citizens within the State and to encourage solidarity over calls for autonomy and self-determination.

During this period until 2010, the Catalanian political arena was dominated by autonomist pressing for the right of Catalanian self-determination, however, such efforts were countered by the Constitutional Court of Spain’s decision to promote territorial integrity (Lecours and Dupré 2018). In response, the Catalan Parliament decided to adopt a Declaration for Autonomy, which was declared repugnant to the Constitution by the authorities in Spain. The Catalan authorities made several deliberations with the Spanish Government in an attempt to secure a referendum for secession; however, such requests were frequently rejected. In such evolving circumstances, the Catalan authorities decided to consult the public and the rejection of such public opinion would lead the Catalan authorities to declare independence. An informal and non-binding referendum was conducted in 2014, with 80 percent of the participant voting in favour of the referendum of independence (BBC 2014). On 1 October 2017, the Catalan Government held a referendum to decide on the question of independence from Spain, which was obstructed by the Spanish Government with force resulting in injuries of around 800 people, however an overwhelming majority of 90% Catalan citizens vote in favour of the question (European Parliament 2017). However, the Spanish Government declared this referendum illegal and a crime against the Spanish State which resulted in the arrest of the Catalan leaders of the organisation (Montserrat Guibernau et al. 2014, 2). Due to the ban of such initiatives by the Spanish court, the Catalan Parliament decided to declare a symbolic independence in 2018 (Halisoglu 2020, 29).

The case of Quebec for autonomy and self-determination has its roots in linguistic, cultural, and political differences under a federal system with ethnic, linguistic, and cultural diversity. The self-determination in Quebec, which started in early 1960s as a “Quiet Revolution”, which resulted in two referendums in 1980 and 1995, still resonates in the Canadian legal and political debates. The first referendum for self-determination/independence in Quebec was held in 1980, which resulted in 40.4 percent (Bienvenu 1999, 3) in support of the independence proposal, while the second referendum which was held in 1995 was supported by 49.4 percent of Quebecers (Dunsmuir 2000). The question of secession of Quebec

was subsequently referred to the Canadian Supreme Court in 1996 for its opinion on the matter (Department of Justice Canada 1996). The Court disposed the question of Quebec's secession in 1998 and concluded as follows:

"The secession of Quebec from Canada cannot be accomplished by the National Assembly, the legislature or government of Quebec unilaterally, that is to say, without principled negotiations, and be considered a lawful act. Any attempt to affect the secession of a province from Canada must be undertaken pursuant to the Constitution of Canada, or else violate the Canadian legal order. However, the continued existence and operation of the Canadian constitutional order cannot remain unaffected by the unambiguous expression of a clear majority of Quebecers that they no longer wish to remain in Canada. The primary means by which that expression is given effect is the constitutional duty to negotiate in accordance with the constitutional principles that we have described herein. In the event secession negotiations are initiated, our Constitution, no less than our history, would call on the participants to work to reconcile the rights, obligations and legitimate aspirations of all Canadians within a framework that emphasizes constitutional responsibilities as much as it does constitutional rights". (Reference Re Secession of Quebec 1998, para. 273).

While recognising the right of self-determination for the province of Quebec, the Supreme Court had made the secession questions contingent upon the clear will of the majority through democratic and constitutional means. This reflects the openness and willingness of developed democracies and constitutions to negotiate and provide greater autonomy to the units of the federations. In contrast the authoritarian and third world democracies and constitutions tend to show rigidity to questions of autonomy and self-determination, as evident in the case of Pakistan and India while allowing more autonomy in Gilgit-Baltistan and Kashmir.

The Kashmir dispute represents a classic case of legal complexity in the context of colonisation of the Indian subcontinent by the British empire and its subsequent decolonisation plans. The origin of the dispute lay in the partition of Indian subcontinent into the dominions of Pakistan and India in 1947 by the British empire. Kashmir, a princely State, with a majority of Muslim population under the rule of a Hindu maharaja (King) was given the choice of acceding either to India or Pakistan (Teng et al. 2006), contingent on two preconditions, contiguity with either of the States, and aspirations of the people (Teng et al. 2006). In the face of Muslim uprising and revolt against the Maharaja, the Hindu Maharaja wished to align Kashmir with India, while the majority Muslim population wanted accession with Pakistan (Ankit 2010). This culminated with the Maharaja's accession of Kashmir to India through an Instrument of Accession on 27 October 1947. Autonomy was granted to Kashmir under

Articles 370 and 35A of the Constitution of India. This had later resulted in hostilities and three full-fledged wars between Pakistan and India in 1948, 1965, and 1971. Subsequently, the dispute was taken to the UN by India, which resulted in six UN Security Council (UNSC) Resolutions. These UNSC Resolutions accepting the right of self-determination for the people of Kashmir called for a “free and impartial plebiscite” (UNSC 1948). Additionally, the UN Commission for India and Pakistan was appointed to consult and mediate the dispute between Pakistan and India, and to study and recommend suitable conditions for administration of a referendum and plebiscite. Despite the calls for holding a referendum, the dispute remained unsolved until today, however, the UN has accepted the right of self-determination for the people of Kashmir, a legal right and foundation on the basis of which the people of Kashmir can determine their legal and political future, when conditions become suitable. The special status of Kashmir was revoked by the Government of India in 2019 by abolishing Articles 370 and 35A, which was legitimised by the Supreme Court of India in 2023 (INSC 2023). The right of self-determination for the people of Gilgit-Baltistan is distinct from that of the Kashmir issue because unlike the agreement between the Maharaja of Kashmir and the Indian Government, there had been no accession agreement between Gilgit-Baltistan and the Government of Pakistan. Hence, the question of self-determination in Gilgit-Baltistan requires a new approach and interpretation of the right of self-determination, which can contribute to a fresh understanding of the principle of self-determination applicable to the similar issue which may arise in the future.

6. The quest for autonomy and self-determination in Gilgit-Baltistan

Gilgit-Baltistan is sparsely populated, located among some of the world's highest and largest mountain ranges in the north of Pakistan (Gilgit-Baltistan Government 2025). As in the words of Dr. Martin Sokefeld, “the people of Gilgit-Baltistan are by no means a people without history” (1997). The struggle for constitutional rights, autonomy, and self-determination can be categorised into two parts. First, the political and legal situation before the partition of Indian subcontinent and second, from the independence. i.e. 1 November 1947, till present. Valuable pre-partition historical literature to an extent is available in forms of books, archives, and scholarship, such as the historical works of Edward Frederick Knight (1893), Colonel Algernon Durand (1899), Shah Rais Khan (1987), and Qudra Tullah Beg (1980). However, the huge amount of data preserved in British, Pakistani, and Indian archives still needs to be explored, especially those relevant to the events prior and immediately after the War of Independence in 1947. The region's constitutional dilemma took a major turn when it supposedly acceded to Pakistan in 1947–48, an action that was met with disapproval by Pakistan (Ali 2022). An attempt was made to legitimise this accession through the controversial Instrument of Karachi (Karachi Agreement 1949),

which the inhabitants of the region dispute as a one-sided agreement. The political, constitutional, and legal history and developments after the de facto administrative takeover of the region by the State of Pakistan requires a thorough examination and understanding. The current status of constitutional limbo and question of protection of fundamental rights originates from the takeover of the region by Pakistan. A limited literature exists regarding the legal developments since 1 November 1947 till the present time. A significant research scholarships gap exists regarding the political and constitutional developments in Gilgit-Baltistan and their implications on the right to self-determination for the people of Gilgit-Baltistan. This is partially due to the sensitivity of the subject and the region and partially due to censorship by the State. The question of autonomy and self-determination requires exhaustive research because Gilgit-Baltistan serves as the gateway and nerve of the China-Pakistan Economic Corridor (CPEC) (McCartney 2020), a major project under China's One Belt One Route Initiative (OBOR) (Du 2016). CPEC and the shift in the power dynamics in the Global South with China emerging as an economic power at the borders of Gilgit-Baltistan has amplified the international significance of Gilgit-Baltistan's constitutional status and protection of fundamental rights. However, Pakistan has been reluctant in making Gilgit-Baltistan part of its Constitution, hence, the constitutional status and consequently, the fundamental rights and territorial claims of the people of Gilgit-Baltistan which remain constantly at risk of exploitation by both Pakistan and China. It is therefore imperative to explore ways in which the fundamental rights of the people of Gilgit-Baltistan can be protected until their constitutional status or their right to self-determination is determined.

Due to the longstanding demands for fundamental and constitutional rights, in 1999, the Supreme Court of Pakistan delivered a significant judgment in the case of *Al Jihad Trust v. Government of Pakistan*, wherein it emphasised the extension of all constitutional and human rights to Gilgit Baltistan within a period of six months from the date of the judgment, which was 23 May 1999. The Court stated:

The two million people of Northern Areas are citizens of Pakistan with all intents and purposes and the fundamental rights as guaranteed in the constitution of Pakistan are very much available to the citizens of Northern Areas, now Gilgit Baltistan (GB), and these must be protected and enforced by making necessary amendments in the constitution of Pakistan and relevant laws and notifications as applicable (PLD 1999).

However, no steps have been taken by successive Governments to implement the Supreme Court's judgment, to the further suffering and agony of the 1.5 million people of Gilgit-Baltistan.

After 76 years of de facto control and reluctance of the State of Pakistan to provide fundamental and constitutional rights, in recent years, there has

been a rising desire among the general populace of Gilgit-Baltistan, resulting in an increased demand for a comprehensive political and constitutional framework, autonomy, and self-determination. However, due to the existing political vacuum created as a result of no representation of Gilgit-Baltistan in the Parliament of Pakistan and other constitutional institutions, the demands have neither materialised in any constitutional compromise nor in grant of autonomy. Such demands are further weakened by the persistence ignorance of the international community including the UN. However, keeping in view the change in power dynamics and increasing conflicts resulting territorial disputes or deprivation of fundamental rights, the constitutional status, autonomy, and self-determination needs immediate attention. It is therefore imperative to identify ways in which the fundamental rights can be protected and explore most feasible option of autonomy or self-determination in Gilgit-Baltistan, which will not only ensure the protection of fundamental rights but also prevent the region from a conflict and hotspot of war among nuclear States.

7. Why there is a desire for autonomy and self-determination in Gilgit-Baltistan

As a State narrative, the State of Pakistan had intentionally associated Gilgit-Baltistan with the Kashmir issue, however, the people of Gilgit-Baltistan had never been treated politically and legally like the people of Kashmir. On one hand Pakistan-occupied Kashmir (PoK) has been granted complete autonomy with an affective governance system and a Constitution which was adopted in 1974 (AJ&K Interim Constitution). The Constitution establishes a legislature with full powers to legislate on all matters related to PoK along with an independent judiciary and executive. The State is represented by the President of PoK and the Government by a Prime Minister who is elected by universal suffrage of the PoK citizens. Moreover, an independent judiciary is established to protect the human rights of the citizens of PoK, with a Supreme Court as the apex court. On the other hand, Gilgit-Baltistan has never been given autonomy neither through a legislature nor an independent judiciary. Gilgit-Baltistan has been governed through executive orders which are not acts of Parliament and their legal duration is limited to 120 days from its promulgation. Furthermore, the involvement of the Central Government in the appointment of judges compromises the independency of the judiciary. The differences of the legal and political treatment between Gilgit-Baltistan and Kashmir despite the frequent association of Gilgit-Baltistan with the Kashmir issue had caused resentment in the people of Gilgit-Baltistan, which resulted in frequent calls for autonomy and self-determination.

Furthermore, the sustained denial of legal and constitutional rights on the pretext of the linkage with the Kashmir issue had resulted in mistrust and suspicion among the people of Gilgit-Baltistan towards the Federal Government. Almost all major political and legal decisions

regarding the region are made by the Federal Government without taking the local narrative and opinion in the decision-making process and their implementation in the region without public involvement had caused a sufficient sense of deprivation among the people. This complete disregard of the local opinion in the political decision-making process is yet another reason for frequent calls for empowerment and self-governance. The representation of the people of Gilgit-Baltistan in the Parliament and other constitutional institutions of Pakistan had always remained a point of concern and sense of deprivation among the people. The lack of representation in both Houses of the Parliament (National Assembly and Senate) deprives the right of people of Gilgit-Baltistan to mainstream their issues and challenges. This is unlike Indian occupied Kashmir (IoK) to whom the Indian Government had given representation in both Houses of the Indian Parliament (Constitution of India 2024). The issues of the right to vote and political participation for the election of the Prime Minister and President elevates the sense of deprivation and raises concerns of a political nature, i.e. a Prime Minister and a President representing and making decisions regarding the people of Gilgit-Baltistan whom they did not elect. Furthermore, it is important to note that no person from Gilgit-Baltistan is eligible to be elected as the Prime Minister of Pakistan, which the people view as discrimination, violation of their rights, and their treatment as second-class citizens.

The rights of the people of Gilgit-Baltistan since their independence on 1 November 1947 from the Dogra's and the subsequent takeover by Pakistan had never been acknowledged in the first place, and when accepted they are not equally treated like other Pakistani citizens. The enforcement of the Frontier Crimes Regulation (FCR) by Pakistan soon after the takeover which continued until the mid-1970s is the first instance of systematic denial of human rights to the people who were left at the behest of a non-local political agent with all legislative, executive, and judicial powers (Holden 2019). The right to be represented by their chosen representatives was not recognised until the 1980s. The non-existence of a judicial system had entrenched human rights violations within the political system and perpetrators and oppressors had along avoided justice.

The indiscriminate use and extension of the Anti-Terrorism Act of 1997 to Gilgit-Baltistan has caused great concern among the members of civil society, political activists, and the people of Gilgit-Baltistan. According to the Human Rights Commission of Pakistan's (HRCP)¹ fact finding report on Gilgit-Baltistan in 2016, the HRCP's mission acknowledged the "rampant misuse of the Anti-Terrorism Act (ATA) by State institutions

3 The Human Rights Commission of Pakistan (HRCP), established in 1986 and registered in 1987, is the country's apex independent human rights body. A non-political, not-for-profit organisation, HRCP is committed to realising the entire ambit of human rights – civil, political, economic, social, and cultural – for all citizens and persons present in the country.

in Gilgit-Baltistan” (HRCP 2016). The law since its implementation has widely been used to suppress political activists, members of civil society, and members of Nationalist parties who call for greater autonomy and right to self-determination. In this context, the HRCP further reported that, “Hundreds of individuals continue to languish in the jails under ATA and the law has been used extensively to suppress any voices raised for the rights of the people of Gilgit-Baltistan” (HRCP 2016, 17). Many nationalist leaders and youths calling for the rights of the people of Gilgit-Baltistan are continuously booked under sedition and anti-terror charges. The courts under ATA are considered to be under the influence of the Pakistan military establishment of Pakistan, hence undermining their process of working, independence, and fairness of trials. Among several cases of misuse of ATA to suppress voices, the case against the leader of Awami National Party along with 11 others just for protesting for the rights of the victims of Attabad lake disaster tells the folklore of the State’s countless attempts to silence the voices of the nationalist narratives. Due to lack of access to information about the number of arrests and cases of anti-terrorism, it is not possible to know the exact number, however, in the year 2016 alone, 140 anti-terrorism related cases were reported (Mir 2025). It is worth mentioning that no inputs were taken from the Government of Gilgit-Baltistan in making or extending the law to the region. Furthermore, the Act was intended to be operational only within the territories of Pakistan, i.e. the territories mentioned in the Constitution of Pakistan, as the Act itself describes the limits of its application: “It extends to the whole of Pakistan” (Pakistan Anti-Terrorism Act 1997, art. 1(b)). Hence, its application in Gilgit-Baltistan has always been called in question as malicious and a repressive action by Pakistan. The behaviour and treatment of the State is such that, as per the HRCP’s report, “every time they protest or demand the rights of the people of Gilgit-Baltistan, they are declared enemies of the state, booked under the ATA, and arrested” (HRCP 2016). Not only are members of political and national parties booked and arrested under the ATA but also members of civil society are, if they in any way highlight or organise activities related to the human rights violations in Gilgit-Baltistan. Moreover, the ATA has been frequently used for acquisition of lands for the China Pakistan Economic Corridor (CPEC), a part of China’s flagship project and Belt and Route Initiative (BRI).² People who refuse to give their lands and homes or protest for forceful eviction from their homes or for payment of inadequate compensation are booked under the ATA. Among other provisions of the ATA, the most frequently applied Article to control the political activities of the nationalist political parties, members of the civil society, and youths is Article 11EE, which is commonly referred to as Schedule Four. Members of nationalist political parties and human rights

4 China’s Belt and Road Initiative (BRI) development strategy aims to build connectivity and co-operation across six main economic corridors encompassing China and: Mongolia and Russia; Eurasian countries; Central and West Asia; Pakistan; other countries of the Indian sub-continent; and Indochina.

activists are enlisted in the Schedule in the pretext of danger to peace and security. The movement and activities of the person enlisted under Schedule Four are continuously monitored. They are forced to report their movements to the Station House Officer (SHO) of the local police station. According to Article 11EE(c) a proscribed person is required; (i) that his movements to be restricted to any place or area specified in the order; (ii) him to report himself at such times and places and in such mode as may be specified in the order; (iii) him to comply with both the direction; and (iv) that he shall not reside within areas specified in the order. The law grants a wide range of powers to the police and other law enforcing agencies to restrict the movements of such individuals even at district levels. The failure to comply with the above section can result in the arbitrary arrest of the individuals. On most occasions, the charges against the person enlisted in the Schedule are not communicated.

Gilgit-Baltistan, due to its conspicuous geographic location, possesses a tremendous number of natural resources in the form of minerals, water resources, and tourism potential. One of the most important economic aspects of Gilgit-Baltistan is the linkage it provides between Pakistan and China, especially in the context of CPEC, i.e. the multi hundred-billion-dollar project between Pakistan and China. The land and natural resources of the people of Gilgit-Baltistan are exploited by the State institutions in the name of Khalsa Sarkar. Khalsa Sarkar are laws “by virtue of which the government could claim ownership of barren or uncultivated land, even if it was collectively owned by the community” (HRCP 2022). The illegal land grabbing by the State and State institutions dates back to the Pakistan takeover of the administrative control of the region. However, it was through the Northern Areas Nautore Rules 1978–80 (Bhatti and Ali 2016) imposed by the military dictator General Zia ul-Haq that attempts were made by the Federal Government to dispose the rights of the land without paying compensation to the people of Gilgit-Baltistan. These practices still exist and were incorporated in the Gilgit-Baltistan Empowerment and Self-Governance Order 2009. Such continuous and prolonged discriminatory and oppressive treatments by the State aggravated the demands for autonomy and self-governance among the people of the region. Furthermore, the natural resources of Gilgit-Baltistan had continuously been appropriated by State institutions, State-sponsored business in the wake of development projects, security installations, and projects of public interests, which had caused further resentment, mistrust, and suspicion towards the Federal Government and essentially towards the State of Pakistan. Gilgit-Baltistan serves as a gateway for CPEC, which is thus far one of the most important strategic and economic initiatives for both China and Pakistan. CPEC runs at least 300km through Gilgit-Baltistan from Xiangjiang province in China before culminating in the Khyber Pakhtunkhwa Province in Pakistan (Malik 2018). The project gives China easy access to the Indian Ocean by reducing the previous distance of 13,000km to only 2,500km (Alam et al. 2019). While entering

into the partnership with China, the people of Gilgit-Baltistan were not taken on board, while their lands have been utilised in the projects. Since then, a notion that “Pakistan wants only the ownerships of the lands of Gilgit-Baltistan and not of its people” had become common among the people of Gilgit-Baltistan. Furthermore, no due share for Gilgit-Baltistan had been given under the project, depriving the people from employment opportunities and economic benefits. All these factors together have increased the pre-existing urge for self-governance, autonomy, and self-determination in the region.

At the time of independence, the population of Gilgit-Baltistan was composed mostly of indigenous people. However, since 1947, Gilgit Baltistan has gone under significant demographic change. Up until 1974, the imposition of State Subject Rule had protected the demographic composition in Gilgit-Baltistan. With the abrogation of State Subject Rule in 1974, the demographic composition of Gilgit-Baltistan started changing significantly. This has mainly shifted the demography in the main cities in Gilgit-Baltistan, i.e. Gilgit and Skardu. This perhaps has been a deliberate and intentional move by the Government of Pakistan, either as a result of distrust for the local population in case of a plebiscite in Kashmir or to increase the number of votes in case of the referendum (Rasul 2004, 79). The Government had sponsored the settlement of the non-locals in the region, creating an imbalance in the local to non-local population, which resulted in rifts in the cultural and social fabric (Shah 2021). The indigenous communities had long resisted these sponsored settlements, however, the disagreements among the locals and non-local settlements on many occasions led to clashes. The State had frequently increased the deployment of armed forces and law enforcing agencies on the pretext of keeping security, law, and order. In fact, for the State of Pakistan, this had been an opportunity of divide and rule policy and to strengthen its grip of governance in Gilgit-Baltistan. In the view of the nationalist political party's (Balawaristan National Front) leader, “The Pakistani administration has been involved in efforts to alter the demographic profile of Pakistan-occupied Gilgit Baltistan, reducing the indigenous people to a minority. In the Gilgit and Skardu areas, large tracts of land have been allotted to non-locals. Other outsiders have purchased substantial stretches of land since they are economically better off than the locals. The rapid induction of Punjabi and Pashtun outsiders has created a sense of acute insecurity among the locals” (Khan 2002). Additionally, the whole region of Gilgit-Baltistan has been heavily militarised. The exact number of armed forces deployed in the region is unknown, given the secrecy and sensitivity of the region, however, according to the reports there is a huge presence of the Pakistan military in Gilgit-Baltistan (Asian Development Bank 2010). The army not only controls the law and order situation but also the communication system, is involved in construction enterprises, and tracks down nationalist voices. The whole telecommunication system was in the control of the military (Special Communication Organization – the

army wing controlling telecommunication in Gilgit-Baltistan) until 2020, and other operators were denied internet operations (Ali 2018). This was particularly designed to control freedom of expression and cases were filed against the youth and people raising their voices on social media and other platforms against human right violations in Gilgit-Baltistan. The hegemonic control of the whole region by the army and military intelligence can only make sense for brutally suppressing the voices asking for protection of human rights, autonomy, and self-determination. Such people are booked for sedition charges and in many cases forcefully disappeared. Keeping in mind these oppressive measures, Pakistan is doing in Gilgit-Baltistan exactly what India does in IoK.

8. Autonomy v. self-determination: A viable option for Gilgit-Baltistan

The Supreme Court of Pakistan's decision of 1999 is perhaps the most authoritative document in the context of Gilgit-Baltistan's political and legal status. Apart from directing the Federal Government to ensure the human rights of the people of Gilgit-Baltistan, the Supreme Court expressed its limitation on deciding the form of Government for Gilgit-Baltistan and expressed its opinion as:

It may be observed that since the geographical location of the Northern Areas is very sensitive because it is bordering India, China, Tibet and USSR, and as the above areas in the past have also been treated differently, this Court cannot decide what type of Government should be provided to ensure the compliance with the above mandate of the Constitution. Nor we can direct that the people of Northern Areas should be given representation in the Parliament as, at this stage, it may not be in the larger interest of the country because of the fact that a plebiscite under the auspices of the United Nations is to be held" (*Al-Jehad Trust v. Federation of Pakistan* 1999).

As a consequence of prolonged constitutional limbo and identity crisis, Gilgit-Baltistan has been searching for a viable option for protecting the rights of the people. Arguably two alternative options can be explored from within the UN system and the UN Charter. The option of right to self-determination is enshrined in Article 1(2) of the UN Charter, which guarantees it to all peoples "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." For all intents and purposes of this Article, the people of Gilgit-Baltistan constitute "peoples" to which the article refers for self-determination. As such, legally speaking the people of Gilgit-Baltistan can invoke the right to self-determination under this article of the UN Charter. Moreover, the right to self-determination guaranteed under Declaration on the Granting of Independence to Colonial Peoples can be made the

basis for demanding self-determination for the people of Gilgit-Baltistan. However, how practicable this option is, given the political and ground realities, can be arguable. It seems unlikely given the position and actions of the consecutive Pakistani Governments since 1947 that Pakistan is ready to give any concession to the people of Gilgit-Baltistan to invoke the right to self-determination. However, it legally remains an option if Gilgit-Baltistan is able to galvanise international support for its cause in the light of the human right violations which had continuously taken place for 76 years.

As an alternate and feasible option in the current political situation, autonomy and self-governance under the UN Charter can be invoked by the people of Gilgit-Baltistan. Article 73 and 76 of the UN Charter respectively guarantees autonomy and self-governance in respect of non-self-governing and trust territories. Article 73 of the UN Charter emphasises that Member States “develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement.” Since Gilgit Baltistan is a non-self-governing territory and no representation has been given in the Parliament of Pakistan, it has the right to demand self-government on the basis of the above article. Furthermore, with regard to trust territories the UN Charter obliges Member States “to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence” (art, 76(b)). Pakistan is a Member State of the UN, it could be convinced with the involvement of the international community or regional countries such as China to extend autonomy and self-governance in Gilgit-Baltistan. The right to autonomy and self-governance has already been partially accepted by Pakistan in the form of the Supreme Court’s judgment of 1999 and subsequently to a lesser extent by the promulgation of the Gilgit-Baltistan Empowerment and Self-Governance Order 2009. Hence, the granting of effective autonomy to the people of Gilgit-Baltistan seems to be an available option until the region is successful in convincing the UN Member States to support its claim to the right to self-determination.

9. Conclusion

Gilgit-Baltistan is a complex case of identity crisis, marginalisation, human rights violations, and constitutional limbo. The history both pre-partition and post-partition is full of ambiguities and subjugation. One of the biggest mistakes made by local historians is their inability to reduce their history into writing. As the colonials always do, they create rifts and ambiguities in the history, they divide and rule. Such an attempt is the Treaty of Amritsar between the British rulers in India and Sikh rulers in Jammu, making parts of present-day Gilgit-Baltistan part of the State of Jammu and Kashmir. Due

to its important geo-political and geo-strategic location, Gilgit-Baltistan remained under British rule until 1947. Many scholars argue that Gilgit-Baltistan was the centre stage of the "Great Game" in the nineteenth century and the first half of the twentieth century. However, when the British rulers decided to leave the Indian subcontinent, they decided to hand over parts of Gilgit-Baltistan to the Kashmiri rulers. The indigenous people of Gilgit-Baltistan revolted against this decision and liberated the parts of Gilgit-Baltistan and declared independence on 1 November 1947. However, it is rightly argued by Sokefeld (1997) that the independence won from the Dogra's was subsequently lost to Pakistan. After the war between Pakistan and India on Kashmir issue, a UN-led commission was formed to formally end the war. In anticipation of the negotiation and in view of the UN Resolution regarding the peaceful settlement of Kashmir issue, Pakistan signed the infamous Karachi Agreement with the Government of PoK. Though without any authority, the PoK Government transferred the administrative powers to govern Gilgit-Baltistan to the Government of Pakistan. This decision on the part of Pakistan makes sense in the view of scoring the majority of the votes in case of a plebiscite in Kashmir, as guaranteed under the UN Resolution of 1948. The approaches to self-determination and autonomy as a comparative analysis between developed democracies and third world nations are full of differences, both legally and politically. For instance, the Canadian Federation to a large extent have provided autonomy for Quebec along with the acceptance of self-determination for the people of Quebec, while third world nations are reluctant either to accept such rights or to implement them, such as in the cases of Kurdistan, Kashmir, and Gilgit-Baltistan. It is important to note that the UN Resolution regarding Kashmir makes no mention and reference to Gilgit-Baltistan. Since the beginning of Pakistani rule in Gilgit-Baltistan, the people of the region had been dealt with as second-class citizens without any politico-legal system and suffering oppression and systematic human right violations. The region was run under FCR, a draconian law for deterring and oppressing the masses. The first so called reforms were introduced in 1974 with the abolishment of the FCR and establishment of a council. Devoid of any actual political power, the reforms were meant to ease the growing demands of self-governance and self-determination in the region. In an acknowledgement of the grievances regarding the systematic human rights violations and deprivation, the Supreme Court of Pakistan in 1999 ordered the Federal Government to treat the people of Gilgit-Baltistan as equals to the other citizens of Pakistan. The Court emphasised reforming the political system to give more autonomy and self-governance to Gilgit-Baltistan within six months of the judgment, however, the orders were disregarded. The first reforms in the form of an executive order, the validity of which remains arguably in question, were introduced in 2009 through the Gilgit-Baltistan Empowerment and Self-Governance Order 2009. The opinion regarding the political status of Gilgit-Baltistan is contested and differs among the political leaders, the nationalist parties, and the people of Gilgit-Baltistan, perhaps influenced by a prolonged State propaganda, and probably this explains Pakistan's

successful oppression of the demands for autonomy and self-determination. The most recent reforms package was introduced in 2018, which was challenged in the Supreme Appellate Court of Gilgit-Baltistan (Nagri 2018), which declared the order illegal. However, in an astonishing move, the Supreme Court of Pakistan (EFSAS 2019) for the first time self-extended its jurisdiction to Gilgit-Baltistan and quashed the decision of the Gilgit-Baltistan Supreme Appellate Court. Subsequently, the order was enforced in the region and the current political and legal system is based on this order. Under the UN-based system, two alternatives for political identity and status exist in the UN Charter, i.e. self-governance and self-determination. The struggle of the 1.5 million people of Gilgit-Baltistan for autonomy and self-determination continues in the face of State oppression and fundamental human rights violations. In the changing global political dynamics and shift of the power to the global south, perhaps, the attention of the international community may provide solace for the political aspirations of the people and protection of their human rights.

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