

# Challenges to Constitutional Identity of Gilgit-Baltistan

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## Abstract

*Humans as social beings tend to form and identify as groups on ethnic, geographic, religious, ideological, linguistic basis, etc. Once such a group identity is formed, those who identify also demand recognition, sometimes for the purpose of prestige and other times for the sake of political representation. Identity in the modern world, premised on the principles of democracy and freedom, is considered a basic human right. Pakistan is also one such state that recognizes people's right to association. However, in Pakistan, Gilgit-Baltistan probably is the only tract of land in comity of nations that, unlike secessionist movements across the globe, has continued to struggle for complete integration with the state of Pakistan. Yet the denial of political identity continues even after more than 70 years. This study will undertake a chronological examination of major events and reasons that led to political identity crisis of GB. Federalism as a conflict resolution theory will be, thus, utilized in this study to make a case for G-B's valid concerns. Henceforth, the political conundrum of Gilgit-Baltistan should reach clarity as further lingering of the conflict will exacerbate into intractable conflict the overall situation.*

**Keywords:** Identity Crisis; Conflict Resolution; Federalism; Intractable Conflicts; Strategic Privilege.

## 1. Introduction

Language The core argument of this study is to unearth the political conflict that exists in Gilgit-Baltistan and utilize Federalism as Conflict Resolution Theory. The conflict in G-B is becoming intractable as people of the region are suffering from political identity crisis and also lack of representation in national legislature. G-B needs to be accommodated in the governance structure of Pakistan at federal level through the prism of federalism. State's inaction in this regard has already added up issues of sectarian violence, mismanagement of resources, low quality education, foreign influence and absence of governance for the region. In addition to this, the geo-strategic significance of Gilgit-Baltistan has been reinforced and supplemented by geo-economic importance with the launching of CPEC. The region which is also the gateway to CPEC, holds crucial diplomatic and strategic importance in maintaining sound relations between Pakistan and China.

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However, if not addressed, the situation in G-B may exacerbate and create challenges for Pakistan. The questions that arise are ‘what is the nature of conflict in GB and what does the conflict resolution theory of federalism offer as a remedy for the political crisis in the region?’ Moreover, the nature of our research is descriptive and answers questions regarding the solution to the constitutional limbo of G-B via conflict resolution theory of Federalism.

## **2. The History of Gilgit-Baltistan**

Historically Gilgit-Baltistan has been ruled through princely states and some parts of GB remained under the administration of Maharaja of Jammu & Kashmir while a few other areas remained tribal from the beginning (Ahmad, 2020). Before the partition of the sub-continent, GB remained independent of external aggressions and major influences until the area was brought under the Dogra Dynasty in 1846, who made Gilgit a part of Kashmir. In 1947, Gilgit scouts put a successful rebellion against Ghansara Singh of GB, declared it an independent Islamic Republic of Gilgit-Baltistan and later, unconditionally joined Pakistan. Until 1970s, Pakistan remained in confusion about the status of GB. Later, Zulfikar Ali Bhutto took some steps to introduce various reforms such as the abrogation of Frontier Crime Regulation, annulment of the status of princely states, etc. Since then, various economic, political and administrative development packages have been introduced.

## **3. Contemporary Situation and Developments in GB**

Gilgit-Baltistan has seen significant socio-economic development and the development indicators are getting better but feelings of political alienation and identity crisis are burgeoning and, thus, warrant attention. Pakistan, while unlocking GB from its physical isolation and ushering in economic opportunities, has also increased Gilgit-Baltistan’s vulnerability to new threats. The influx of illegal weapons, drugs and sectarianism have all effected the peace of Gilgit-Baltistan. In the recent past, attacks from terrorist organizations in Afghanistan have also been launched against Shia Community in GB and the social, political, and economic cohesion of the region is at stake due to these irritants.

### ***3.1 Recent Developments***

Pakistan’s former Prime Minister Imran Khan announced ‘provisional provincial status’ for Gilgit-Baltistan in 2019. The decision seemed to address political and constitutional demand of People of the region and to secure the geopolitical and geo-economic interests of Pakistan. However, it may also have created hindrance by making Pakistan’s stance on plebiscite in Kashmir weak. Thus, the People of Pakistan administered Kashmir and their assembly also rejected the proposal claiming GB as an integral part of AJK. Moreover, China has repeatedly requested Pakistan to give legal status to GB, so that her investment in the region get legalized. It is upto Pakistan to calculate the advantages of making peace through federalism by giving GB a provincial

status. So far, different governments in Pakistan have taken steps to promote tourism in the region for revenue generation and to increase economic activity. The improved tourism related infrastructure has started in economic activities but the development as a whole has to be built on sustainable foundations for which role of local communities is primary.

#### **4. Theorizing the Conflict**

The theoretical framework of conflict resolution is used to analyze the political conflict that exists in Gilgit-Baltistan and 'Human Needs Theory' is applied for refusal to honor non-material basic needs. The theory suggests that Human beings constitute society and human have needs, values and interests. Humans interact with each other to compete and sometimes cooperate, hence conflicts emerge. A social conflict arises when two or more persons or groups have incompatible objectives (Kriesberg, 2014). In most cases, the adversaries ensue conflict for relative gains, but the actual outcomes do not commensurate with expected outcomes therefore empathy is important for conflict resolution. The understanding of the conflict requires understanding of the core contention, adversary's characteristics, context, means of conflicting, faith in resolving the conflict and anticipation of the outcomes. Similarly, without addressing the underlying causes of the conflict, the conflict cannot be resolved and in most of the cases such conflicts exacerbate (Mitchell, 2014).

Conflicts may also emerge after a party senses deprivation. Political deprivation is one common type in which the deprived usually resort to social movements/violence to snatch their rights (Longley, 2020). Another cause of conflict is when people are denied their physiological, psychological and self-actualization needs. The Theory of Human Motivation by A.H. Maslow spells out that the most important needs are the 'basic needs', which encompass food, water, warmth, rest. The satisfaction of basic needs will lead to 'the safety needs' followed by 'the love needs'. With satisfaction of love needs, the humans want for 'esteem needs' which necessitate the need of recognition, respect, esteem and fame. Once humans are satisfied with esteem needs, the Need for Self-Actualization will develop unless the individual is doing what he is fitted for, self-fulfillment (Winston, 2016). According to John Burton, "Dispute is a short-term disagreement that can result in the disputants reaching some sort of resolution through negotiations. Conflict in contrast to dispute is deeply rooted issues that are seen as non-negotiable" (Burton, 1990).

John Burton is of the view that conflicts are intractable, which means they are chronic, long lasting, recurring, and have negative impact on physical and psychological aspects of human lives (Sekkat, 2020). He continues that adversarial relations do transform, but this transformation does not necessarily mean that the conflicts would not repeat. Burton argues that there may be strategies which help in deescalating or managing conflicts, but this does not address the core issues, therefore they are ineffective and temporary. Human beings are composite of three core elements: needs, values and interests. Most conflicts arise when these three are not satisfied and in such scenarios humans

resort to extra-legal norms, for gratification, which may involve also violence (Burton, 1990).

The premise of his structure of conflict resolution is that there is scarcity of resources. To come out from the abyss intractable conflicts, Burton argues that the adversaries should always look for negotiable difference, which is a compromised position to avoid conflict and violence. He states that there are always instances of hope in crises, as the adversaries look for shared goals and common grounds (Burton, 1969). Communication is also the pivot towards conflict resolution and should not be biased, the parties should listen to each other and understand concerns. John Burton encourages controlled communication as it helps make the environment congenial and facilitates the adversaries in making choices, thus positively transforming the relationship. This paper confines discussions to non-material basic human needs and suggest that the issue of political identity in the State-GB relations needs to be addressed.

#### **4.1 The “Human Need Theory” and the Case of Gilgit-Baltistan**

The theory highlights the importance of digging out causes of conflict to identify drivers of conflict and position of adversaries. Political conflict in GB has some major root causes; constitutional and political identity dilemma, deteriorating economy of Pakistan, lacking consensus amongst locals, value based sectarian violence, poor management of resources and non-material need of political desalination with Pakistan despite several requests by GB locals and representatives. These are the factors that pile up to give the people of GB a sense of deprivation from constitutional rights and political affiliation, thus, infuriating extremism and multiple fears such as the threat of militancy from Afghanistan, India and psychological fear of China.

#### **4.2 Lederach Theory**

The theory focuses on stages of conflict transformation as it considers conflict transformation more important than conflict resolution (Keil & Anderson, 2018). Conflict transformation is a stage which attempts to change the orientation of any conflict by sorting out avenues for competing parties to recalibrate their positions. It provides stakeholders with opportunity to exercise pragmatism to settle conflict constructively. In our case study, conflict transformation phase appears when the federation accommodates the people of GB with various advanced inclusive reforms.

The conflict in GB transformed after the region’s stance revised from always standing with Azad Jammu and Kashmir to the desire for a separate identity. The transformation in GB’s position has made Pakistan change its stance internationally. It was a continuation of the same process that, in 2018, the then Prime Minister of Pakistan Imran Khan announced to give GB a provincial status. Political conflict has transformed with strong realization of federalism as conflict resolution tactic.

### **4.3 Federalism as Conflict Resolution Theory**

Federalism as said by Tadena Tamuno is “a form of government where the component units of a political organization participate in power sharing and function in a cooperative manner through the combined forces of ethnic pluralism and cultural diversity” (Fayomi et al., 2015). Federalism is supported by ‘political idealism’ which leads to cooperation and integration of all federating units. There are two basic modes of federalism: dual federalism and cooperative federalism. Dual federalism is a mode in which constitution is designed in such a way that it creates two independent tiers of government. Areas of responsibilities are clearly marked and two governments mediate the relationship. While Cooperative Federalism is one in which different parts of government are considered as part of single government. There exist an atmosphere of shared functions and cooperation prevails rather than of conflict. Pakistan government system is cooperative federalism.

### **5. The evolution of Political Crisis in GB and the case for Federalism**

Political conflict of GB can be addressed through cooperative federalism as conflict resolution theory as by making GB the federating unit of Pakistan, local grievances can be addressed. Also, Chinese concerns about security of their investment, militancy, extremism, sectarian violence can be controlled and public administration can be better trained and made efficient. The approach is more ‘inner politic’ oriented as based on political idealism.

Under this prism, several political developments were consolidated to address administrative and political grievances of people of GB. Federalism can offer GB international recognition, a sense of safety and sense of affiliation with a sovereign land. People can directly vote for Government of Pakistan and seek any amendment related to their well-being through constitution of Pakistan. Inclusivity creates harmony among members of society which is helpful in reduction of sectarian violence. Moreover, various chains of Public-Private partnership, MNCs and NGOs can boost educational quality, school enrollment and tourism sector. CPEC in this regard may prove fate changing for the region making it hub of trade, development, and tourism once it gets integrated into government of Pakistan as a separate federating unit. Federalism is applied in this political conflict because there is a demand of majority for political and constitutional affiliation with Pakistan.

Soon after Gilgit-Baltistan’s accession to Pakistan, the area was placed under the administration of a political agent who was exercising administrative, judicial and political powers (Hamid et al., 2016). Frontier Crimes Regulation (FCR) a special and draconian law was imposed (Ahmed Khan, 2018). The FCR traces its origins in the Murderous Outrages Regulation (FOR) which was promulgated by Britishers to condemn crimes and it was specially tailored suppress the anti-state element in 1877. The FCR was enacted in Indian Sub-continent in 1901. The provisions of FCR directly negate the constitution of Pakistan and Universal Declaration of Human Rights but for the administrative convenience the political rights of the people

were slaughtered (Khan, 2016). The non-material needs of identity and belongingness to a nation are still curbed and the situation can lead to induce further friction between the State of Pakistan and G-B.

UN Resolution rules that the question of the accession of Jammu and Kashmir to India and Pakistan should be decided “through the democratic method of a free and impartial plebiscite” under the aegis of UN (UNDLS, 2020). GB was dragged and made part of the disputed territory despite the fact the People of Gilgit-Baltistan had voluntarily ceded to Pakistan. A reward was expected for unconditional accession to Pakistan, but it ended up in making GB a political orphan. Under lens of Federalism, Pakistan first needs to support the status of an autonomous unit of GB at International level by rejecting India’s claim of GB as part of Jammu and Kashmir. Secondly, Locals of GB and Kashmir need consensus on peacefully settling issue of Gilgit-Baltistan per hopes of the people. Thirdly, recognition of status of GB as autonomous unit, Pakistan can convince international community to hold plebiscite in Gilgit Baltistan per democratic norms which would also make Pakistan’s pledge strong. Such steps usually demand time but are extremely important for peace.

The Government of Pakistan and the then Government of AJK signed an agreement in Karachi on 28th April 1948, wherein, broader framework was chalked out for division of powers between the two governments and the administration of Gilgit-Baltistan was given to Pakistan (Shah, 2009). The ‘Karachi Agreement’ frustrated the basic needs and it led to massive protests in Karachi and erstwhile Northern Areas. This time conflict escalated horizontally and vertically by involving educated youth. The Government curbed on protests but failed to understand the underlying cause of frustration which could have been settled through self-rule and self- autonomy. Karachi Agreement was a dictatorial arrangement designed to determine the fate of individuals who were not part of the decision making.

The first major political empowerment in terms of governance and political representation came in 1970 wherein Advisory Council for Northern Areas was constituted with 21 members (“Brief History - Gilgit-Baltistan Assembly,” 2020). A ray of hope emanated among the people for resolution of their political and development issues. It was a significant reformative package to politically solicit the voices of GB. For the first time, the government realized and succumbed to the political aspirations of the people, deeming it necessary to address their concerns (Ahmad, 2020). Also, the draconian FCR was abolished in 1972 and administrative, judicial and political reforms were announced, Fiefdoms were abolished. Moreover, as per the reform agenda the princely states of Hunza, Nagar and small other administrative entities were abolished on 25th September 1974.

Although the small princely states were abolished but the political identity was continuously denied. This frustrated the people and voices rallied around the demand for complete integration with Pakistan. No formal engagement was made with the people and no communication was made. The

state remains contended in introducing governance related reforms without addressing the core issue. Political conflict continued with more intensity and resentment increased as the basic need of political identity was left unaddressed. Later, in 1975, the Legal Framework Order was introduced on 3rd July 1975 that too brought in some administrative and judicial reforms. These were indicative steps towards Federalism, small inclusive reforms were need of the hour, but again it did not go down well with the people who desired political recognition (“Brief History - Gilgit-Baltistan Assembly,” 2020).

In 1982, three seats with observer’s status were given to the representatives of GB by General Zia-ul-Haq in his Majlis-e-Shura that sought to tackle the western democracy (Shah, 2009). However, Majlis-e-Shura was sham democracy as it was without elections therefore presence with observer status was not substitution to the political aspirations of the people. The political conflict for denial of political identity remained unchanged. On 5th July 1977, it was also extended to today’s Gilgit-Baltistan and was made Zone-E and few months before General Zia expressed his views that Northern Areas is not a part of the state of Jammu and Kashmir (Dubey, 2009). He said Gilgit, Hunza, and Skardu of the Northern Areas were not a part of the disputed area but little effort was made to integrate the Northern Areas into Pakistan.

Following her father’s footsteps Prime Minister Benazir Bhutto also introduced LFO in 1994 under which Northern Areas Council was converted into Northern Areas Legislative Council with 26 members. The post of Chief Executive, Deputy Chief Executive and posts of six advisers were created and party-based elections were introduced. The Northern Areas Chief Court was established, and the office of Chief Secretary and Secretaries were introduced in the bureaucratic system. Later on May 28, 1999, the Supreme Court of Pakistan gave a milestone judgment in Al-Jehad trust case declaring “the people of Northern Areas citizens of Pakistan invoking constitutionally guaranteed fundamental rights” (Mir, 2013). Supreme Court also directed the federal government to introduce administrative and judicial reforms particularly the right to be governed by the elected representatives. In compliance with the court orders, the federal government planned some major reforms but were not introduce as the Government of Nawaz Sharif was ousted in a military coup. However, some amendments in LFO 1994 reforms were introduced to NALC with increased number of subjects i.e., 49 for legislation purpose but that was insignificant in comparisons to the directions given by the supreme court of Pakistan. The Gilgit-Baltistan (Empowerment and Self Governance) Order introduced in 2009 was the first major reform package introduced in 2009.

The purpose of this order was to empower the local people. It was a package that introduced a governance arrangement that was prototype of administrative arrangements in other provinces of Pakistan (“Governance Order 2009 - Gilgit-Baltistan Assembly,” 2009). The GB (E&SG) Order also

renamed Northern Areas as Gilgit-Baltistan and the Northern Areas Legislative Assembly (NALA) was replaced with Gilgit-Baltistan Legislative Assembly (GBLA) with 33 members, the post of Governor, Chief Minister, Ministers, Advisers, Parliamentary Secretaries were created. The upper house comprising 15 members was also established with significant and more powers than GBLA. The GB Chief Court, Supreme Appellate Court, Services Tribunal and special courts and institutions were also established. The order was a quantum leap towards realizing the political ambitions and hopes of the local people who welcomed the package. This was the first instance when the control of local representations was given to the natives to pragmatically find out solutions to administrative shortcomings.

At present GB is governed under GB Order, 2018 which has given more administrative, financial and judicial powers to the region than the 2009 ordinance (Nagri, 2018). The legislative powers of GBLA now eclipse the legislative powers of GB council which was earlier more powerful. Although this Order of 2018 has given more powers than Order of 2009, but it does not go down well with the people. A committee was established by the Federal Government to review the current constitutional and administrative status of GB that recommended “provisionally the special status of a province, pending final settlement of the Jammu & Kashmir dispute”, however, to the dismay of the people another order was promulgated.

The political conflict, “denial of political identity” remained subsided and even exacerbated owing to issuance of yet another order without constitutionally making GB part of Pakistan even after the recommendation of government committee. The order did not allow locals to have control over their resources which aggravated sentiments of locals. The GB reform order of 2018 provided the Prime Minister of Pakistan veto over any decision and reaffirmed Pakistan’s control over the region. Although, the recent two developments were steps towards inclusion of GB but were far from actual demand of people. The actual demand of the people of Gilgit-Baltistan which is based on political inclusion within the federal structure, remains.

## **6. Policy Recommendations: Solution and implications**

Multi-dimensional nature of the problem of Gilgit-Baltistan converge on one point, i.e. Political identity crisis of Gilgit- Baltistan. Federalism is the only tool which accommodates diversity, gives representation, right of self- rule and sense of affiliation to a political recognized entity as per immaterial needs of human needs theory. To draw people of GB out of political limbo, awarding provincial status and accommodation in NFC award is the only solution. However, federalism has, both, positive and negative implications which need to be taken into account.

Positive implications of this resolution include free mobility of people, trade routes development, political and social cohesion all of which are required for putting sectarianism, economic exploitation, poor management and political grievances of people to end. Federalism in G-B is also going to

impact the geo-economic, geostrategic and geopolitical position of Pakistan with CPEC also in picture. Under federalism, Gilgit-Baltistan administrative service can be made efficient, responsible and public-serving in true sense. National integrity and harmony will guarantee political stability to the region and economic prosperity to Pakistan.

Negative Implications include the possibility of India creating huge regional and international hurdles for Pakistan since giving G-B provincial status would make it easier for China to investment in a stable environment. India may also legalize its illegal occupation of Jammu and Kashmir which would hurt Muslims sentiments across the world. Also, Pro-India countries can raise objection on Pakistan by citing unilateral violation of UNSC Resolution 47. At the national level, South Punjab can strengthen its demand of constituting as a separate federating unit of Pakistan. Henceforth, Federalism has the potential to stir up numerous challenges for the state.

## **7. Conclusion**

Numerous issues that Gilgit-Baltistan is facing include sectarian conflicts, economic exploitation, demographic challenges, accessibility issues and concerns of the people for not being rewarded enough under the China Pakistan Economic Corridor. However, the foremost concern that dominates all conflicts is the political conflict that involves the denial of political identity. Identity is a basic non-material need of the people that has been refused for more than seventy years even though the people have already expressed their right of self-determination by ceding Gilgit-Baltistan with Pakistan. Yet, they have been rewarded by being declared as a disputed territory, G-B was completely linked with the Kashmir Issue which indirectly meant that until the Kashmir dispute is resolved, the constitutional status of Gilgit-Baltistan will remain in limbo and hence the question of political identity will remain unaddressed. This is, sadly, a violation of the basic needs and fundamental rights guaranteed by the constitution of Pakistan and International conventions to which Pakistan is a signatory.

The situation is also in congruence with what John Burton in his human needs theory encapsulates while suggesting that when the basic non-material needs such as belongingness and association with a country of choice is denied, conflict is bound to arise. With the exception of GB Order 2009 and Gilgit-Baltistan Order 2018, the locals have never been consider a party for any reform agenda nor there have been any serious engagement, dialogue, or any sort of communication to mitigate or address their concerns so that the conflict maybe transformed by engaging all the stakeholders. The delay and lethargy of the Federal Government of Pakistan has aggravated the situation and a conflict of intractable nature is permeating.

It is of vital interest for Pakistan to seriously address the core issue by completely integrating GB with Pakistan under formal constitutional arrangements. This would, in turn, ensure and reinforce the geo-strategic, geo-economic and geo-political significance of Pakistan in the region given that

GB is situated at the crossroads of East, South and Central Asia. The disputed status of GB is undermining this strategic privilege of Pakistan (Aziz, 2020). Former Prime Minister Imran Khan announced to make GB a provisional province of Pakistan. For the resolution of the intractable identity issue, it would have been a landmark breakthrough for the addressal of the political conflict.

The status quo at federal level has changed with Pakistan Democratic Movement now in government but the question of providing provincial status to G-B must not be ignored. The federation must not turn a blind eye towards the addressing genuine concerns of people living in the region and any status less than that of a provisional province will not gratify the basic non-material needs of the people. Also, anything short of it also has the tendency to aggravate the conflict which may potentially escalate vertically. The status of provisional province will be a quantum leap forward in resolution of the intractable conflict. The unnecessary linking of granting provisional status or complete status of a province to GB with broader Kashmir Issues has to be addressed on merit by considering distinct demographic parameters, administrative realities, socio-cultural identities and historical traditions.

Conclusively, John Burton's explanation of immaterial need for freedom of choice and affiliation for people of Gilgit Baltistan can be effectively addressed by Federalism as it would give them constitutional rights. Pakistan must decide whether it is ready to federalize Gilgit-Baltistan or will it wait for another decade to make situation in the region more complex.

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