

**India, Pakistan And The Kashmirs**

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**SAARC Initiative**

The 12th SAARC Summit held in Pakistan, which according to media would be remembered as path breaking, concluded on a very positive note. The Summit drew up a road map for peace, cooperation and development among the member countries of the region in future. The main highlights of the Summit were: (a) signing of the South Asian Free Trade agreement establishing a free trade zone in South Asia by the year 2006 and moving towards an economic union, (b) signing of the additional protocol on terrorism and (c) resumption of Indo-Pak composite dialogue by the next month i.e.; February, 2004.

The Pakistan President, General Pervez Musharraf declared that “History has been made. It is a victory for the people of South Asia, for the people of India and Pakistan, for those who want peace and an end to tension and hostility.” The significance of the SAARC Summit, in the context of Indo-Pak bilateral relations, lies in drawing up a new framework, in which the concerns and issues impacting both the countries, have been addressed and accommodated. It is significant that Pakistan has acknowledged that her future would remain secure within South Asia and instead of envisioning an artificial bond of affinity with some other regions in Asia, she should extend support and strengthen the South Asian cooperation. In a changing global economic scenario, in which different regions of the world, transcending racial, religious and ethnic divisions, are forging close cooperation, the establishing a free trade zone would go a long way in giving boost to the economy and industry of the region. In the long run it would enhance the sagging morale of Pakistan economy itself.

It needs to be acknowledged that Pakistan leadership has at long last mustered the courage to awake to the changing global realities and subscribed significantly in creating an atmosphere which would strengthen peace and goodwill in the region. However, the redrawing a framework of Indo-Pakistan dialogue invited varied responses from political and religious groups within Pakistan. It appears that the joint statement has upset the apple cart of religious fundamentalists and their extremist entrepreneurs who have been trading in conflicts and mayhem for more than a decade now in the South Asian region. Thus, the joint statement of the Summit was rejected by *Jihadi* groups in Pakistan and Pakistan Occupied Kashmir. However, the overwhelming majority of people in Pakistan have welcomed the new initiative of dialogue and peace.

It is ironical that mainland political parties in Pakistan are trying to settle the political score with their establishment on Kashmir by projecting that Pakistan, for whom Kashmir is the core issue on the basis of latter's religious identity, has been included within the framework of a wider composite dialogue rather than a separate and distinct issue. It may be mentioned here that India has committed itself to a composite dialogue where all issues including Kashmir would be addressed leading to a peaceful settlement to the satisfaction of both the sides.

### **The Creative Framework:**

The new ground broken by Indian and Pakistan leadership during the SAARC Summit may be viewed in the background of outlines drawn by the Indian Prime Minister, Mr. Atal Behari Vajpayee over the years. In his musings, a few years ago, Mr. Vajpayee underlined the need to come out with "creative solutions" to the long standing problems and contentious issues in South Asia. During the SAARAC Summit, he drew attention to the historical, social, political and cultural unity of South Asia during the period of its colonisation. In this vein, he proposed that India, Pakistan and Bangladesh should jointly celebrate the 150th anniversary of First Indian War of Independence of 1857 against British colonial rule. He said that "it reminds us that many of us have a shared history, which pre-dates our more recent divisions." The quest for creative solutions in the backdrop of historical unity of the sub-continent to the contentious issues besetting India-Pakistan relations for the last more than five decades would emerge with the recognition of changing global, political and strategic scenario. In this scenario pragmatism should be the key element in addressing the contentious issues. The ideologies and the rigid positions which divide territories and peoples leading to unending conflicts and bloodshed need to be outrightly rejected. In this behalf there appears to be, as reflected in the national media, a perceptible change in the public mood in Pakistan.

### **The Three Kashmirs**

In the backdrop of refreshing atmosphere generated by the SAARC Summit, it is expected that among other issues, Kashmir would be the subject of the intense dialogue between the two neighbouring countries.

It needs to be recognized that the developments which followed the partition of the sub-continent created immense complications relating to state of J&K. The tribal attack sponsored and organized by Pakistan (September-October, 1947) resulted in the creation of three Kashmirs. In the first instance, Pakistan appropriated one part of J&K comprising Gilgit and Baltistan in the Northern areas of the state. These areas which were given the nomenclature of "Northern Areas" were fully integrated by Pakistan within its territory. Ironically, the political and constitutional status of these areas remains undefined even today. A part of this territory was later provided to China for building Korakoram Highway. The ceasefire of 1949 between combating forces of India and Pakistan further divided the remaining area creating two

Kashmir. It may be mentioned that Pakistan had launched a full scale war to annex Kashmir after Indian army had repulsed the tribal attack on Kashmir. Thus the cease fire resulted in the division of Kashmir. One, Indian state of Jammu & Kashmir and the other described in India as Pakistan Occupied Kashmir (PoK) and in Pakistan as *Azad* (Free) Kashmir. All the three Kashmiris have been part of the two countries and hence have not remained immune to constitutional, political and social developments of the respective countries for the last more than 55 years. They acquired distinct legal, constitutional and political personalities.

### **The J&K State**

The J&K state acceded to the Indian Union in September 1947. The Indian Constitution accorded a 'Special Status' to the state which was articulated in Article 370 of the Constitution. The leadership of the state held elections in J&K state in 1951 and convened a Constituent Assembly to make provisions for the preservation of its special cultural identity and devising mechanisms to define and maintain state-Centre constitutional and political relations. The J&K state was the only state in the Indian Union to enjoy the privilege of convening a separate Constituent Assembly.

The sphere of state-Centre relations has remained a perennial subject of debate and controversy between the state and the Union leading to unpleasant and acrimonious situations. However, the periodic elections in J&K state since 1951 throwing up new dispensations have been a permanent feature of electoral and democratic politics in the state. Be that as it may, the Constitution of India along with the Constitution of Jammu & Kashmir provides a frame work for smooth constitutional and political relations between the state and the Union of India. Again, the state of J&K has a distinction of having a constitution of its own unlike other states of India. The cumulative outcome of the Constitutional provisions is that the J&K state is a *de jure* and *de facto* part of the Indian Union. The leadership of J&K represented the state in the Constituent Assembly of India and they were present when provisions relating to J&K were being discussed in the Constituent Assembly. It is relevant to note that Dr. B. R. Ambedkar, Chairman of the drafting Committee of the Indian Constitution asserted that the units could voluntarily join the Union of India, and once they had joined the Union, they had no right to secede. The member of UN Commission on India and Pakistan, Josef Korbel, in his book on *Danger in Kashmir* has raised this very issue. He maintains that in case Pakistan perceived that the accession of J&K was legally flawed, then she would have taken up the issue with International Court of Justice which it did not do. The implications are that Pakistan acknowledged the legal validity of Kashmir's accession to India. The Article 1 of the Constitution of India defines the territorial limits of India including J&K state. This article forms the basic structure of the Indian Constitution and remains beyond the pale of amendment unless the entire Union is dissolved.

## **The Internal Dynamics:**

In retrospect, the J&K state Constituent assembly adopted some measures of far reaching consequences and the policy of providing *land to the tiller* was one such bloodless revolutionary step. In the entire South Asia, J&K was the only state which expropriated the land from the land lords and distributed it to tillers. The J&K Big Landed Estates Abolition Act, 1951 expropriated 10,000 absentee land lords in respect of land measuring 1.82 lac hectares which was given to the cultivating tillers with ownership rights. The process of transfer of ownership of land continued and remaining tillers were further empowered through another J&K Agrarian Reforms Act, 1976 which passed on 0.3 lac hectares of land in ownership to 1.48 lac cultivating tillers. It may be mentioned that 80% of the population in the state lived on agriculture and land to tiller was a big economic and social boost to the vast majority of the population. However, as the years rolled by, the scope of the prosperity brought about by the distribution of land started shrinking. The fragmentation of holdings, the commercial use of the agricultural land and fast growing process of urbanization resulted in a situation in which the food production was insufficient to meet even domestic requirements. Thus, between the years 1985-99 there was decrease of area under commercial crops in some areas as follows:

District Srinagar: 23.10%

District Jammu : 20.57%

District Rajouri: 17.23%

District Poonch: 33.45%

District Leh (Ladakh): 39.35%

District Kargil (Ladakh): 23.08%

In the face of growing population and rising numbers of educated unemployed due to the state policy of free education from primary up to the university level the reliance was laid heavily on the recruitment in government jobs. The complete reliance on government for the jobs created a situation in which the government has to meet a huge wage bill now. The reliance on government jobs equally opened the vast avenues of corruption and nepotism. Ironically, the entire state planning process was bureaucratized by the bureaucracy in the state. However, state made impressive strides in education, health, social welfare, handicrafts and horticulture. The State Development Report, Jammu and Kashmir, brought out by Planning Commission, Government of India in September 2003 has documented these achievements in detail. It may be mentioned that J&K state enjoyed 8th rank in the All India economic development index in 1989 which slid to 23rd position in 1996 due to the ongoing militancy and turmoil in the state.

The J&K state has to face new problems which are not unique to it. The processes of modernization, urbanization, shifting of occupational patterns, emergence of competing social classes and ultimately a new social change in the state threw up new challenges. In a scenario of shrinking space for agricultural production and scarcity of government jobs, an alternative in the

form of industrialization remained the best option to meet the growing economic needs and meeting the aspirations of the people in the state.

The new approach of industrialization in the state cannot take off in absence of availability of electric power. The J&K state abounds in water resources and it has the capacity not only to generate enough hydro-electric power to meet its requirements but also to export it to the other states and generate enough income for the state exchequer. According to the recently published Panning Commission report, the state has a capacity to generate 20,000 Megawatts of Hydro electric power of which less than 10% has been exploited so far.<sup>1</sup> Thus, hydro-electric power generation can itself become the main industry in the state and open the avenues of setting up the other new industries. This dream, however, cannot be realized in presence of *Indus Waters Treaty* which gives the control of three main large rivers of Chinab, Jehlum and Indus which flow through the state to Pakistan. The three northern states of India, Punjab, Haryana and Rajasthan fully enjoy and reap the benefits of Satluj, Biyas and Ravi rivers, whereas the J&K state is suffering due to industrial stagnation. The state is believed to owe to the Union government about twenty hundred thousand rupees as a debt which was obtained to buy the electric power to meet the requirements within the state. Ironically, there is still shortage of electricity and people in Kashmir suffer when temperature touches below zero degree celsius in winter and rises to 45 degrees in Jammu during summer.

Pakistan has been sternly on guard that flow of the waters allotted to her under *Indus Waters Treaty* reaches its territory uninterruptedly. In this regard, Pakistan's recent complaint that Baglihar Power Project in J&K was being built in violation of the Treaty provides an illustration to the point. The Baglihar Power Project is being built on the off-shore water resource but Pakistan has raised many objections to the project. Recently, a team from Pakistan was allowed by the Indian government to conduct the inspection of the project. Pakistan has now threatened with a third party intervention in case the Project was not shelved. That even an off-shore water resource cannot be used due to the objections from Pakistan to alleviate the difficulties of people speaks volumes about the woes of Kashmir.

In fact, Pakistan has been perennially raising objections to the projects relating to the power development in J&K state since 1962 when the *Indus Waters Treaty* was concluded between the two countries to the peril of economic interests of the people of the state. In the immediate aftermath of this Treaty, the construction work on Salal Hydroelectric Project was stopped for seven long years because Pakistan had serious objections about the design and size of the Project. Ultimately, the Indian government was forced to incorporate the changes and the design of the Project was changed to a major extent. In 1982, the Wullar Barrage Project was started to deal with the power crisis created by the low water level in river Jhelum during winter which reduces the power generating capacity of lower Jhelum Power project from 105 MWs to mere 35 MWs. The construction of the Wullar Barrage would provide required flow of water to lower Jhelum and ensure the maintaining of the power generating capacity during winter. The Project would also provide an alternative route of communication for commercial purposes between

Barahmulla and Anantnag districts in Kashmir valley. However, Pakistan has serious objections to the Project. In the initial phase of militancy in 1990 in Kashmir, the Project was periodically targeted by the militants. In 1991, the Project figured in the Secretary level talks between India and Pakistan without any conclusion.

### **The Other Kashmir**

The constitutional, political and economic developments in PoK or *Azad Kashmir* are curious. Pakistan, after occupying the parts of Jammu & Kashmir in 1947-48 was guided by two considerations in its policy towards the occupied areas. Firstly, to re-adjust the occupied territorial boundaries to suit its geo-strategic interests. Secondly, to assimilate the occupied areas within its territory. Thirdly, to mislead the World opinion that Pakistan was eager to implement the UN Resolutions on Kashmir, and hence keen to resolve Kashmir dispute. According to A.G. Noorani, the noted Constitutional expert and keen observer of Jammu and Kashmir affairs: “What emerges clearly from these very documents is Pakistan’s annexation of the territory of Kashmir it had come to occupy in 1947-48; its dismemberment of that territory to suit its strategic interests; its Islamization Programme there, and its rejection of plebiscite in the part of Kashmir it has grabbed. This does not deter it from demanding plebiscite in the part it failed to grab in the two wars (*later another war in 1971 and yet another conflict in Kargil in 1999*) it launched in 1947 and 1965.”<sup>2</sup>

Pakistan assumed the administrative control of annexed territories on the basis of an agreement, known as ‘Karachi Agreement’ of April 28, 1949. The Agreement is reported to have been signed by Mr. M.A. Gurmani, Minister without Portfolio, Government of Pakistan, Sardar Mohammad Ibrahim Khan, President, *Azad Kashmir* Government and Choudhary Ghulam Abbas, President, All Jammu and Kashmir Muslim Conference.

According to the proclamations and assertions of Pakistan, *Azad Kashmir* was supposed to be a sovereign State. However, in terms of Karachi Agreement, “All matters pertaining to the following subjects in *Azad Kashmir* shall be within the purview of the Government of Pakistan: Defence (complete control over Azad Kashmir Forces), negotiations with the UN Commission, Foreign Policy, Publicity in Pakistan and Foreign Countries, Coordination of Publicity and all arrangements in connection with plebiscite, all activities within Pakistan itself with regard to Kashmir such as procurement of food, civil supplies, transport, running of refugee camps, medical arrangements etc. All affairs of Gilgit and Ladakh areas under the control of the political Agent of Gilgit.”

The lone survivor, among the signatories to Karachi Agreement, Sardar Mohammad Ibrahim Khan, repeatedly, publically as well as in writing, denied his signature on the Agreement. He died recently in August, 2003.

There is another important dimension to the Karachi Agreement. The Agreement was signed by Mr. Mushtaq Ahmad Gurmani, Minister without Portfolio, Government of Pakistan on April 28, 1949. However, on May 3, 1949, Mr. Gurmani sent a status paper alongwith the letter signed by him to the United Nations Commission for India and Pakistan (UNCIP) on Northern Areas mentioning in Chapter 10, Conclusion (b) that “the territory has been firmly under Azad (independent) Control.”<sup>3</sup> The status paper alongwith the letter is contained in the Third Interim Report of the UNCIP, Annexure 24, dated December 9, 1949. It is amazing that a senior government functionary of Government of Pakistan should mislead international Organization like UNCIP on the facts.

In absence of any Constitution or policy framework *Azad Kashmir*, as its name suggests, should have functioned as a free State; however, the administration of *Azad Kashmir* was run according to the Rules of Business promulgated by the Government of Pakistan from time to time. The first Rules of Business were promulgated in 1948 and supplemented in 1950. In 1960, limited franchise was introduced through Azad Jammu and Kashmir Basic Democracies Act, 1960. The Act, providing a limited franchise for the first time to the people of *Azad Kashmir* since its occupation in 1947-48, provided for an indirectly elected President and a 12 Member Council whose Members were to be elected by an electoral college comprising ‘basic democrats’ in *Azad Kashmir* and Kashmiri refugees in Pakistan.

The Presidential election under this system were held in October, 1961. The elections were held indirectly by an electoral college of 1,200 elected members of basic democrats in *Azad Kashmir*, and another 1,200 elected Kashmiri representatives of refugees living in Pakistan. Mr. K. H. Khurshid of Liberation League, (a former personal assistant to Quaide Azam Mohammad Ali Jinnah) won by defeating Sardar Abdul Qayoom Khan of Muslim Conference.

However, the tension started building up soon between Mr. Khurshid and the Pakistan authorities. Mr. Khurshid was opposed to *Indus Waters Treaty* between India and Pakistan. And pursuing the ideological line of Jammu and Kashmir Liberation League, Mr. Khurshid repeatedly asserted that *Azad Kashmir* was a separate and an independent entity. He even went to the extent in asserting that *Azad Kashmir* was free to obtain financial and military assistance from any quarter. This independent initiative brought him at loggerheads with the then military President of Pakistan, General Mohammad Ayub Khan, and he was forced to resign in August, 1964.

Mr. Khurshid’s removal brought forth the issue of mysterious relationship between *Azad Kashmir* and Government of Pakistan. The reputed Weekly from Karachi, *Outlook*, commenting on the removal of Mr. Khurshid wrote that: “The relationship between *Azad Kashmir* and Pakistan Governments had long been ambiguous and subject to a pull in opposite directions. The contradiction has now been augmented.”<sup>4</sup> The Weekly further wrote:

“The uncomfortable truth is that the Ministry of Kashmir Affairs has acquired a vested interest of its own. It treats *Azad Kashmir* territory and Gilgit-Baltistan Areas as its own domain which

a Joint Secretary controls as Chief Advisor. His overlordship runs supreme and without such checks and balances as are applicable to other areas of Pakistan. The possibility of friction between the *Azad Kashmir* Government and the Ministry of Kashmir Affairs has always been there. The Ministry likes to deal with puppets, not with the Presidents who take their position too literally.”<sup>5</sup>

According to the Weekly, two key officers, the Secretary General and Inspector General of Police are sent by Pakistan Government and so are many more Officers “loaned” by Pakistan which results in the “duality of Control”, and this duality extended “even to food supplies and sanction of development schemes.”<sup>6</sup>

In 1964, with the resignation of Mr. K. H. Khurshid, the Basic Democracies Act, 1960 was amended which reduced the number of Council members to eight. One of these members was to be nominated by the Chief Advisor to be the Chairman of the Council. However, this amendment caused a widespread resentment, particularly among Kashmiri refugees in *Azad Kashmir*. The Muslim Conference launched a campaign against this amendment.

The appointment of Chief Advisor of *Azad Kashmir* was made directly by Government of Pakistan. It had become a subject of great controversy and invited a great deal of criticism as well as ridicule. In 1968, an amendment was made to the 1960 Act. The amendment authorized the *Azad Kashmir* Government to appoint a Chief Advisor, however, the appointment had to be approved by Government of Pakistan. In other words, the Government of Pakistan retained its authority to appoint the Chief Advisor, although through the back door.

In 1970, during the regime of General Yahya Khan, Azad Jammu and Kashmir Act, 1970, was promulgated, which for the first time, recognized the principle of ‘Adult Franchise’ for the people of *Azad Kashmir*. This Constitution provided for a President and a 25 Member Assembly to be elected by adult franchise, a three Member Cabinet and a Plebiscite Advisor.

In October 1970, elections under this Constitution were held, which returned Sardar Abdul Qayoom Khan and his party Muslim Conference to power in *Azad Kashmir*.

### **Uniform Political System:**

In 1974, a new Interim Constitution was promulgated in *Azad Kashmir* with the objective to provide for a uniform political system between *Azad Kashmir* and Pakistan. The Azad Jammu and Kashmir Interim Constitution Act, 1974, provides for a Parliamentary System, a President and a thirteen Member Azad Jammu and Kashmir Council. The Act also provides for a 42 Member Assembly. It may be pointed out that this development took place in the background of Simla Agreement of 1972 between India and Pakistan. In 1971, the east Pakistan had broken away from Pakistan to emerge as an independent and sovereign Bangladesh.

The 1974 Constitution has two special features. One ‘Azad Jammu and Kashmir Council’, which in the words of former Prime Minister, Mr. Zulfikar Ali Bhutto, had the “purpose of bringing the people of *Azad Kashmir* and Pakistan closer.” The Council, which enjoys the executive powers has thirteen members, out of which five are nominated by the Prime Minister of Pakistan from the Federal Parliament and six are elected from the *Azad Kashmir* Assembly. The Council is headed by the Prime Minister of Pakistan and President of *Azad Kashmir* is the Vice Chairman of the Council. The Prime Minister of *Azad Kashmir* is also a Member of the Council. It is interesting to note that under this scheme, six Members to the Council are non-Kashmiris.

Second, the Section 7, Clause 2 of the Act, which corresponds to the Section 5, Sub-section 2, Clause 7 of Ordinance 1970, of the Azad Jammu and Kashmir Legislative Assembly, provides that:

“A person shall be disqualified for being elected or chosen and for being a Member if he is propagating any opinion or acting in any manner prejudicial to the ideology of Pakistan and the *ideology of the state’s accession to Pakistan*”. (emphasis added).

In their oath of Office, the President, the Prime Minister, the Ministers, The Members of Legislative Assembly and other official bodies have to swear that they will “remain loyal to the Country and to the cause of accession of the State of Jammu and Kashmir to Pakistan.”

The other Kashmir (PoK) remained without a constitutional set-up for twenty six years. The Ministry of Kashmir Affairs, Government of Pakistan has been, and even continues, to rule and administer the *Azad Kashmir*. Any initiative to treat *Azad Kashmir* as a separate entity is ruthlessly curbed by the Governments in Pakistan. The removal of Mr. K. H. Khurshid in 1964 is an illustration to the point.

According to 1974 Constitution, the President of *Azad Kashmir* is empowered to appoint a plebiscite advisor to advise the government on matters relating to the holding of a plebiscite in the state of Jammu and Kashmir in terms of the resolutions of UNCIP. However, the same very Constitution debars a person from carrying on any political activity which is prejudicial or detrimental to the ideology of Pakistan or is against the state’s accession to Pakistan. In this background any reference to plebiscite becomes a farce. This farce might be utilized by political parties in Pakistan for their domestic purposes; but it misleads the people in both the Kashmirs, and International opinion as well.

The assimilation of *Azad Kashmir* in Pakistan is an integral part of the domestic policy of Pakistan. However, there is a strong opinion in *Azad Kashmir* favouring a de-facto and de-jure independent Kashmir. These differing perceptions result in employing coercive methods on the part of Government of Pakistan against the people of *Azad Kashmir*.

The situation was summed up by Claire Galez, an European Human Rights activist, in these words:

“While interviewing common men in *Azad Kashmir* the overwhelming impression is that the people of Kashmir are not particularly in favour of the accession of Kashmir to Pakistan, on the contrary, they are proud of being Kashmiris and caress the idea of an Independent State.

“I also came across testimonies of people who had been fired from the jobs, students who could not pursue their studies, families who were casually deprived of water supply, because they either adopted the ideology of a political party opposed to the principle of Kashmir’s accession to Pakistan or they would not sign the obligatory affidavit stating one’s agreement with this ideology.”<sup>7</sup>

To sum up, the Constitutional provision of 1974 Constitution, debarring any political activity in *Azad Kashmir* against the State’s accession to Pakistan, and the practical implementation of the provision, completes the process of *Azad Kashmir’s* incorporation in Pakistan; the UNCIP Resolutions on Kashmir notwithstanding.

*Azad Kashmir* has had its own share of brutal repressions from successive governments in Pakistan from time to time. Many an European scholar who have been watching the developments in *Azad Kashmir* since 1950 have attributed the disenchantment and alienation of people in *Azad Kashmir* with Pakistan mainly to the environmental and societal consequences of the construction of Mangala Dam in Mirpur. There is no doubt that Mangala Dam played havoc with the areas in Mirpur and displaced the inhabitants of the area in a big way. Moreover, the benefits of Mangla Dam did not reach the local people, rather the benefits of electricity generated from the Dam went to Punjab. However, there were other political and social factors also responsible for this disenchantment; the principle factor being the perception that Pakistan was treating *Azad Kashmir* as its colony.

The first confrontation took place when Sardar Ibrahim Khan broke away from All Jammu and Kashmir Muslim Conference and formed his own Kashmir Muslim Conference in 1950, and started a civil disobedience movement. The movement, which had Mirpuris in the forefront was ruthlessly crushed by the Baluch Regiment of Pakistan Army. This led to the alienation of Sudhans (a local tribe) of *Azad Kashmir* from Pakistan. Subsequently, Pakistan made all out efforts to manipulate them back and made peace with them. However, the relationship remains feeble.

In 1955, another uprising of ex-servicemen in Poonch, who were demanding a hike in their pension, invited a violent reaction from the Government of Pakistan. The Punjab Armed Constabulary and the Pakistan Army are reported to have committed unabashed atrocities on the ex-servicemen and their families. Even civilian population was not spared. Hundreds of persons were jailed, dozens and scores of dwelling houses were razed to ground, people were tortured;

and even women were not spared. The weapons, which according to these ex-servicemen had been captured by them from their fellow soldiers of Maharaja's Armed Forces against whom they had risen in revolt in 1947 were snatched away by the Pakistan Army. Instead of effecting a hike in their pensions, the pensions were suspended and were restored only after twenty five years. The people from Pullandahri and Rawlakot in PoK had to bear the major brunt of this repression.

The Mangla Dam swallowed the most fertile agricultural land. The large areas of two commercial towns, Mirpur and Chaomukh were submerged in the water, and the geography of Dadial town was changed. And yet the benefits of the Dam were extended to the areas outside, Mirpur, beyond *Azad Kashmir*. Prof. Rodger Ballard of Manchester University who has extensively worked on Mirpur, writes that:

“So, for example, many Mirpuris were deeply resentful that despite their considerable contribution to Pakistan's economy through their foreign exchange remittances, no serious effort had been made to stimulate economic and infrastructural development, either in Dadial Tehsil, Mirpur District or indeed in *Azad Kashmir* as a whole. And although large sums had indeed been spent on the Mangla project, its beneficiaries were most definitely not Mirpuris. As my informants never failed to emphasize, the benefits of Mangla's electricity were felt in Lahore, and even in Karachi, long before powerlines began to be installed in rural Mirpur.”<sup>8</sup>

The Mangla Dam project continues to be the subject of great concern and controversy. Lately, the proposal of the extension in the dam evoked a large scale public resentment which was reflected in huge public demonstrations organized by 12 opposition parties in PoK in August, 2003. “The PoK Prime Minister, Sardar Sikandar Hayat Khan rubbed salt to the wounds of the PoK (people) by announcing that the royalty received from the extended Mangla dam would be utilized for the welfare of the people. He is not saying that fresh power generated from the extended dam would be utilized for the industrialization of PoK.”<sup>9</sup> The political parties in PoK aver that the extension of Mangla dam might help the federal government in meeting the demands of the provinces outside but it had nothing to do with the interests of the people in PoK. “An agitated PoK Prime Minister, Sikander Hayat told the press reporters that the extended Mangla dam agreement was not between the two countries. To this, the opposition parties enquired that what was then the status of *Azad (free) Kashmir*? According to opposition parties PoK was referred as a ‘base camp for liberation of Kashmir’, but in fact it was a beopar (business) camp. In this business camp, every service was available for a remuneration and every thing had a price tag including occupying a chair in the dinner hosted by General Musharraf.”<sup>10</sup>

The turmoil within PoK is simmering. The absence of a defined Constitutional status, restricted democratic rights and civil liberties and economic deprivations have contributed to the discontent and tension. The extension of Mangla dam has provided a rallying issue to the aggrieved PoK people. In the background of a social system divided on Kinship (*biradari*) and tribal affiliations, Pakistan has manipulated the *Sudhans* through Sardar Abdul Qayoom Khan,

on the tenuous link of political power. However, the Mirpuris, in the words of Prof. Rodger Ballard “regularly assert that they are Kashmiris, and by that token not Pakistani. They are enthusiastic supporters of a Kashmiri entity which would be entirely independent of both, India and Pakistan. Their slogan is ‘Kashmir azad banega’ (Kashmir will be independent)”.<sup>11</sup>

### **Gilgit-Baltistan**

The third Kashmir, comprising Gilgit-Baltistan, which Pakistan has clustered together as Northern Areas includes five districts of Gilgit, Skardu, Diamir, Ghizer and Ghanche covering an area of 72,495 Square Kilometres.

The areas of Gilgit and Baltistan forming the upper North areas of Jammu and Kashmir State, was leased by Maharaja Hari Singh the last autocratic ruler of J&K, to the British Government in 1935. Under the ‘lease of Gilgit,’ the civil and military administration of the areas was transferred to the Viceroy and Governor General of India.

The British Government, whose main concern was to watch Russian designs, because Northern Areas provided a direct access to Afghanistan and Central Asian States, had left the local Chieftains- *Mirs* and *Rajas*, free to rule their fiefdoms according to their own whims. On the eve of transfer of power in August 1947, Gilgit and Baltistan were transferred back to Maharaja Hari Singh.

However, Gilgit Scouts force of Maharaja revolted against the Maharaja’s rule, and formed a provisional Independent government of the “People’s Republic of Gilgit and Baltistan,” which lasted for seventeen days. Then the administrative control of the areas was taken over by Pakistan Government. And according to Abdul Hamid Khan, a human rights activist from these areas and Vice Chairman, Balawaristan National Front, “a Naib Tehsildar (Deputy Collector), from North Western Frontier Province, Mr. Sardar Alam Khan, was appointed the first political agent and administrative control of the areas was handed over to him.”<sup>12</sup>

In April, 1949 as a consequence of Karachi Agreement which has been discussed in the foregoing paras of this study, Pakistan Government assumed the direct and full control of Gilgit and Baltistan, detaching these areas from *Azad Kashmir* and renaming these as ‘Northern Areas’.

Gilgit Baltistan has remained behind the iron curtain for the last more than fifty five years. The first authentic information about the development in Gilgit-Baltistan was provided in the decision of ‘Azad Jammu and Kashmir’ High Court in the case of *Malik Muhammad Miskeen and others versus Government of Pakistan, through Secretary, Kashmir Affairs and Northern Affairs Division, Islamabad and others* in 1993.

The writ was filed before the Azad J&K (PoK) High Court that Gilgit-Baltistan was an integral part of Jammu and Kashmir and their detachment from *Azad Kashmir* had resulted in depriving the people of these areas from their basic human, fundamental and political rights.

The Court held that: “Detachment of Northern Areas from the rest of Azad Jammu and Kashmir tantamount to violation of the resolution of the Security Council of March 30, 1951 and January 24, 1957”.<sup>13</sup> The Court observed that “for no reason has been given for the failure to provide Fundamental Rights and representation to these people for the last 45 years.”<sup>14</sup>

The Court directed the ‘Azad’ government “to take the administrative control of the northern areas and annex it with the administration of Azad Jammu and Kashmir.”<sup>15</sup>

It was expected that the judgment would provide the people of Gilgit-Baltistan the basic human rights, including the right of representation in assemblies and other representative bodies and in the administration. However, the judgment was subsequently quashed by the Supreme Court on the ground that AJK High Court had no jurisdiction over the matter.

The Gilgit Scouts who rose in rebellion against Maharaja Hari Singh in October 1947 had dreamt of greater self rule for the people of Gilgit-Baltistan. The people in the areas, as subjects of Maharaja of Jammu and Kashmir could send their representatives to the assembly, and they could approach the Jammu and Kashmir High Court for adjudication of their disputes, their customs were well recognized by the feudal ruler; and more important was the strict enforcement of state subject laws, barring the outsiders to settle down in these areas during the autocratic-feudal rule pre 1947. This law is strictly applicable in Indian state of J&K.

Since Pakistan took over the control of the areas, the people were deprived of all these rights which they enjoyed under the rule of Maharaja. The areas were put under the Frontier Crimes Regulations (FCR), which gave all the administrative and judicial powers to the agent appointed by the Pakistan government.

In order to change the demographic profile of the areas, Pakistan allowed the outsiders, mostly from Punjab, to settle down in the areas. This has resulted in a sectarian divide and intermittent Shia-Sunni bloody clashes in Gilgit-Baltistan.

In 1971, when the people of the areas started a movement in Gilgit for their basic human and democratic rights, government responded to the movement quite violently and jailed a large number of activists. This led to an uprising and the people broke open the gates of the jail and freed the activists. It was during this uprising that Gilgit Scouts refused to lathicharge the agitating people of the areas. Later on, the government of Pakistan disbanded the Gilgit Scouts, Karakoram Scouts and Northern Scouts and merged them into one force under the control of Pakistan army. This was to pre-empt any further armed uprising in the areas.

Claire Galez, the European Human Rights activist, comments:

“While interviewing a cross section of people in Gilgit, I realized that all key posts of the administration, including in the army and police, were held by Pakistani nationals. Indigenous people do not have access to the posts of responsibility. The Northern Areas do not have their own administrative set up, they are not an integral part of Pakistan, neither are they administered by the government of *Azad Kashmir*. The essential question remains then: whose citizens are the 1.5 million people of Northern Areas.”<sup>16</sup>

Mr. Abdul Hamid Khan, narrates an interesting anecdote:

“When for the first time a delegation from the UNO visited Gilgit, Sardar Alam (political Agent, appointed by Government of Pakistan) disguised himself as a local head of government, thus misguiding the delegates. The UNO and the international community were assured by the Government of Pakistan that local rule existed in Balawaristan (Gilgit and Baltistan).”<sup>17</sup>

### **The Flash Point:**

Gilgit-Baltistan has reached a flash point. The Islamic solidarity, which is cited as one of the reasons of 1947 revolt, is fractured by intense sectarian divide. The absence of democratic and political institutions to allow the participation of the people in their affairs, the economic deprivation, the plunder of the natural resources, and repressive methods used to silence any voice of protest are all adding to the anger and frustration of the people. This surging anger is seeking its avenues of expression. Claire Galez, sums up the situation in these words:

“I visited the Northern Areas in February 1994, and met with the Bar Association. The lawyers who accepted to talk to me expressed their deep concern and growing anger since the situation seemed to be frozen and there was no response to their claim for 47 years. They felt the local population was kept aside in all circumstances and is totally alienated from the administrative, political and financial management of the area.”<sup>18</sup>

Gilgit Baltistan does not have a precise status. In 1950, the control of these areas was handed over to the Ministry of Kashmir Affairs, which was later re-named as ‘Ministry of Kashmir and Northern Areas Division’. This division is headed by a Joint Secretary in the Ministry of Kashmir Affairs as Resident of these areas. The Kashmir and Northern Areas Division exercises the administrative and all other control from its headquarter in Islamabad over these areas.

An advisory body, Northern Areas Council, with eighteen members from Gilgit-Baltistan and headed by the Minister, Kashmir and Northern Areas Division, enjoys no powers.

In 1994, Benazir Bhutto government announced some changes which she described as reforms in the constitution of Northern Areas Council. However, except for the change in the name, from 'Resident' to 'Chief Executive' and increase in the number of members from eighteen to twenty four, the legislative, administrative and financial powers remain with the federal Kashmir and Northern Areas Division.

Gilgit-Baltistan is, in a great ferment. The different political groupings have been formed, and a new trend of human rights activism has been set with the youth at the forefront. In a statement, a leader of a political party said that the people of Northern Areas want their rights, and if denied they would look elsewhere for them.<sup>19</sup>

### **Look Inward:**

In view of the foregoing appraisal, it may be concluded that the three Kashmirs have different sets of problems and concerns. In the new era of a global village, there is little scope for redrawing the boundaries in blood and territorial annexations. The two countries, India and Pakistan should look inwardly and address the grievances and concerns of the people living in their respective parts of territory.

In Indian State of J&K, there is a crisis of social change and problems of lop-sided development. The intensive and careful planning processes alongwith a fresh paradigm of industrialization would go a long way in meeting the growing aspirations of the people. In addressing the issue of industrialization in J&K state, Pakistan needs to show flexibility in the implementation of Indus Waters Treaty. In J&K, there is also a demand for extending the existing autonomy framework which deserves to be debated and accommodated. However, while expanding the parameters of state political autonomy, the same principle should be applied to provinces and districts within the state.

In PoK there is a crisis of constitutional and political status which is the result of absence of a clearly defined framework of relations between PoK and federal government in Pakistan. There are grave economic and developmental problems besetting the area. The Constitutional status of PoK needs to be spelt out in unambiguous terms and its constitutional and political relations with the federal government need to be defined. The curbs on democratic and civil rights need to be removed. There is equally an urgency in ensuring the democratic participation of people in governance. A shift has to take place from *Jihad* to development and political participation. In this connection, the budget earmarked for the 'liberation of Kashmir' (which in common parlance is defined as *Jihad-e-Kashmir* and the budget is estimated to be to the tune of 2,500,000 rupees) should be devoted to the development of PoK. All these measures may be applied to the third Kashmir, i.e., Gilgit-Baltistan also.

The 'look inward' approach will generate an atmosphere in which the people would be concerned for development, participation and peace rather than bloodshed and confrontation. In

the changing world order , the new and creative paradigms need to be devised to resolve conflicts and contributing in creating an atmosphere of peace, progress and brotherhood.

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