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THE LEGAL STATUS OF GILGIT-BALTISTAN IN THE KASHMIR DISPUTE UNDER PAKISTAN

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ABSTRACT

In administrating a disputed territory, the authority governing the territory is required to ensure the extension of fundamental and human rights to the controlled territory under the obligations of International Law. The case of Gilgit Baltistan is unique in a way that it is managed by Pakistan as its de facto part due to its historical linkage with the Kashmir Dispute resulting in an uncertain Lego-political position of the region in the Dispute as well as in the federation of Pakistan. This paper is a comprehensive inquest into the legal aspect of GB using the concepts of International Law, UN mediation and the verdicts of Municipal Courts regarding the Lego-political positioning of the region. As GB is a part of the Kashmir Dispute, the UN resolutions regarding the dispute also extends to the region. Pakistan is under the obligation to ensure good governance and extension of fundamental rights to the part of the erstwhile state of J&K under its administration (AJK & GB) according to the UN resolutions. The Supreme Court of Pakistan has also directed the government of Pakistan to extend the fundamental rights entrenched in the Constitution to the region and to treat the people of GB as par with the other citizens of Pakistan. However, due to the linkage of GB with the Kashmir Dispute, the government of Pakistan could not fulfil the UN obligations and implement the Court's decision about the region's legal and political future.

Keywords: Kashmir Dispute, Legal Status of Gilgit-Baltistan, UN Mediation, UN Resolutions on Kashmir, International Law, Municipal Court Decisions, Supreme Court of Pakistan, Constitutional and Fundamental Rights.

Introduction

The Kashmir Dispute is one of the prominent disputes recognized internationally. While examining the origins of the dispute between Pakistan and India, it is very important to define the nature of the dispute, The dispute originated during the partition of sub-continent in 1947 when the princely states of India were given a choice to either join India or Pakistan and the Maharaja of a Muslim majority state of J&K signed the "Instrument of Accession" with the union of India. It is significant to note here that the uprisings of the population of the state of J&K against the rule of the Maharaja began way before the partition, thus making the accession controversial. The Kashmir dispute instigated with the events of uprisings of the people against the rule of the Maharaja in early 1947, the tribesmen from Pakistan entering J&K to help the

people against the Maharaja, the Maharaja's signature of the accession to India and finally the first war fought between India and Pakistan in the state of J&K. As the tribesmen from Pakistan closed in on Srinagar in late October 1947, the Maharaja fled to Jammu and signed the accession instrument with India (Hussain, 1998). Along with the Instrument of accession, the Maharaja requested the Indian government to help him militarily against the alleged invaders. Indian army landed in Srinagar (Hussain, 1998) which formally started the war. India, then took the matter of the state of J&K to the UN while condemning the actions of Pakistan regarding the issue. Indian request to the UN was centered on Article 35 of the UN Charter which falls under Chapter VI dealing with the "peaceful settlement of disputes" and not under the Chapter VII which relates to the acts of aggression of a state (Hussain, 1998). When India raised the issue of J&K in the UNSC, it came under the ambit of International Law.

As a result of ceasefire between India and Pakistan in 1949, the former state of J&K was divided into two parts i.e. Indian administered Kashmir and Pakistan administered Kashmir, which are administered by India and Pakistan respectively. The Pakistan administered Kashmir was further divided into two parts i.e. Azad Jammu and Kashmir (AJK) and Gilgit Baltistan (GB). AJK was liberated by the help of Tribesmen from the northern part of Pakistan while GB was liberated by its local population along with the help of some British Military Officers in November 1947. Due to its historical linkage with the state of J&K, GB has been administered by Pakistan as its de facto part as the region along with other parts of the former state of J&K is awaiting a United Nation (UN) recommended plebiscite in order to find out the will of the people to either join India and Pakistan in the future. According to International Law and the UN resolutions passed for the dispute of Kashmir between India and Pakistan, the territory of GB is disputed and is under the administration of Pakistan till the resolution of the dispute. Pakistan has been administering the region as its de facto part through different ordinances during different political governments over the years, resultantly depriving the people of the region from fundamental and human rights. From 1990s till date, different verdicts by Municipal Courts of both AJK and Pakistan have directed the government of Pakistan to provide the fundamental rights equal to the other citizens of Pakistan imbedded in the Constitution. Despite the legal obligations under the UN resolutions and the decisions of domestic courts of Pakistan, the government of Pakistan has failed to deliver the basic rights equal with the other residents of Pakistan, to the people of GB which is fueling the feeling of uncertainty in the legal standing of the region in Pakistan causing unrest in the masses. This paper is an attempt to find out the legal status of GB in the Kashmir Dispute under UN and International Law as well as its legal positioning under Pakistan according to the judgements of the courts of Pakistan and AJK.

Kashmir Dispute: The Legal or Political Question

It is important to discuss here that whether the Kashmir Dispute is legal or political. According to International Law, the disagreement of two states or more on a factual or legal point can create a dispute which can affect the international peace and security. This clears that a dispute can be of legal or political nature. A dispute where the disagreement was laid on the basis of International Law through any International body which has the authority to resolve the dispute is legal while in any other situation where the dispute is based mainly on the clash of interests of the states which are party to the respective dispute is political (Agarwal, 2017).

The nature of a dispute being political or legal relies on the fact that how the party states respond to the dispute. If the states want to settle the disagreement according to the International Law, then the dispute will be considered legal but if the states respond to the disagreement against the International Law, then it becomes more of a political nature. The nature of the dispute being legal or political is significant because of the reason that in

International Law, the resolution of differences can only be made if the dispute is of legal nature (Agarwal, 2017). If the Kashmir Dispute is seen in the light of the above discussion; it can be concluded that the dispute is both of legal and political in nature.

The Kashmir Dispute is legal because of two reasons, first the Indian claim on J&K is based on the instrument of accession signed by the Maharaja with it which is of legal nature and second, the Indian request to UN made it a matter of discussion under International Law according to the UN Charter Article 35¹. It is of political nature also because Pakistan does not recognize the accession of the Maharaja to India on the grounds that it differs from the will of the people of the state of J&K and even after being members of the UN, both India and Pakistan claim J&K on the factual grounds that are not under the obligations of International Law. Despite that the dispute is both legal and political in nature, the political aspect remained on the upper hand always because of the disagreements of both India and Pakistan towards the legal obligations under UNSC resolutions on the dispute and also the fact that the origin and history of the dispute occurred at a time where the politics of Cold War remained dominant, keeping the political factor of the dispute in the limelight.

The discussion implies that the legal aspect of the Kashmir Dispute remained oppressed throughout history and little has been added to it in literature. This requires an inquiry into the legal aspect of the dispute and because of the reason that this study is mainly focused on GB; it is now inevitable to examine the legal status of GB in the Kashmir Dispute.

International Law, the role of UN and Kashmir Dispute

The role of International Law as an international body to ensure peace and security considerably increased in the late 20th and early 21st century. The foremost purpose of International Law was to establish an international system with the help of which the international security and peace could be maintained and the creation of international organizations like the League of Nations and the UN are its prime examples. After the failure of League of Nations, the UN came forward as the major international organization in order to stabilize security and ensure the revival of peace after the two world wars. The disputes between states can be resolved by two types of approaches, peaceful or pacific means and coercive or compulsive means according to international law.

The first chapter of the UN Charter describes the purpose and principles of the UN. Article 1 para 1 of the Charter explains that the reason the UN is established is to maintain peace globally by trying to resolve disputes while taking actions. Article 2 para 3 of the UN Charter emphasizes on the member states to resolve their disputes through peaceful ways while also maintaining the global peace and security (UN Charter, 1945). Chapter VI of the UN Charter comprehensively explains the mechanisms under international law to resolve disputes amongst member states peacefully. Article 33 of chapter VI of the UN Charter counts different methods of resolution of disputes between states and the role of the Security Council through its recommendations for the peaceable settlements for these disputes (UN Charter, 1945).

India took the Kashmir Dispute to the UN under Chapter VI of the UN Charter calling for a peaceful settlement of the issue so it was inevitable for the UN to intervene in the dispute for its resolution in accordance with International Law. Article 35 of the UN Charter illuminates that any member state can bring upon the concentration of the UN Security Council or UN General Assembly towards any dispute while both of the bodies or any one of them can make recommendations to settle the dispute under the auspices of International Law. On January 1st 1948, in a letter addressing the President of the UNSC, India claimed that Pakistan is supporting and backing the invaders militarily which were fighting against the Indian army in the state of

J&K. India demanded that UNSC should intervene and prevent Pakistan from the backing of the Pashtun tribesmen inside J&K.

India explicitly accused Pakistan of permitting the tribesmen route into the state of J&K while using its territory as a base and also that the tribesmen were given the arms and trained by the Pakistan army. India demanded abrupt removal of these invading forces from J&K while also accusing Pakistan of breaking the standstill agreement with the Maharaja of J&K. India also claimed that if all these demands were met by Pakistan then it will help reestablish the state of J&K to normality and will allow the Kashmiri people to express their will in accordance with the democratic moods of plebiscite or referendum while also keeping in view the portents of International law (Hussain, 1998).

While replying to the Indian accusations, Pakistan rejected all the Indian claims and answered that Pakistan is not assisting the tribesmen rather it is trying to demoralize them from invading further. It also replied to the Indian accusations by stating that few of the invaders might be Pakistani nationals and they might be fighting alongside the Kashmiri people for their war of freedom but they all are doing this in their individual capacity and territory of Pakistan is not being used by them neither the Pakistan army is backing them in any manner. The Pakistan Government also accused India of not giving its fair share of military equipment according to the partition rules which caused depletion in the arms of Pakistan army, thus how can the Pakistan army arm the tribesmen if they do not have sufficient arms for themselves.

Pakistan also replied to the Indian accusation of its violation of the standstill agreement by saying that the agreement was a political tool of the Maharaja to suppress the Muslim population of his state and to create a situation which will be favorable to call upon India for its military assistance. Pakistan also accused India of many violations under the Article 35 of the UN Charter (Hussain, 1998). It blamed India for involving in the massacre of Muslims, trying to undo the partition, forcibly occupying the state of Junagarh and attacks of Indian Air Force on its territory. Pakistan also claimed that the accession of J&K with India is fraud because the Maharaja did not consider the will of the people of the state which resulted in uprisings against him and the invading Indian army causing violence in the state of J&K. Pakistan demanded that the UNSC should intervene to stop the Indian activities in the state of J&K. It also asked the UNSC to ensure that the Kashmiri people should demonstrate their free will in order to accede to either India or Pakistan without any pressure from outside the state (Hussain, 1998).

The Indian appeal was in accordance with the Chapter VI of the UN Charter, so the UNSC started a long debate about the dispute in order to find out the suitable method which can persuade both Pakistan and India to deter and discourage from further escalating the situation in the state of J&K and to come to a point of agreement. The non-binding nature of Chapter VI compelled the UNSC to only recommend the parties, the means to find a peaceful agreement while if only the dispute was put forth under Chapter VII of the UN Charter, which calls for the resolution of acts of aggressions, then the UNSC could enforce its actions. It clarifies that the role of the UN was to act as a peace-making mediator rather than enforcing its actions against the will of the parties to the dispute.

UN Mediation on Kashmir

After debating over the accusations of both India and Pakistan, the UNSC adopted the first resolution on Kashmir Dispute on January 17th, 1948. The resolution recommended both Pakistan and India to end the escalation of aggressions in the state of J&K and to also ensure the improvement and normalcy of the situation in the state. The UNSC also recommended India and Pakistan to take measures in order to sustain the situation in J&K from further escalation. The Council asked both India and Pakistan to inform it of any sort of “material

change" in the state of J&K and consult the council if necessary (UNSC resolution 38, 1948). The UNSC adopted its second resolution on January 20th, 1948 on the Kashmir Dispute. The UNSC formed a commission named as United Nations Commission for India and Pakistan (UNCIP) as recommended by the resolution.

The commission consisted of three members with Pakistan and India nominating a member each and the third member by the consent of both of them. The UNSC directed UNCIP to keep it inform about the developments in the state of J&K, to act under its authority and also to regularly submit proposals and conclusions to the it about the state of affairs of J&K. It was also the job of the UNCIP to investigate and work in accordance with the Article 34 of the UN Charter and to mediate in the dispute of Kashmir between India and Pakistan without interference in the proceedings of the UNSC (UNSC resolution 39, 1948). India and Pakistan submitted their drafts of the resolutions to the President of the UNSC after these first two resolutions were adopted by the UNSC.

The draft submitted by Pakistan called for the complete withdrawal of the Indian forces, the tribesmen fighting them and any other outsiders irrespective of whether they are from. Pakistan also called for the resettlement of the people of Kashmir who left the state because of the war and to create a neutral administration in Kashmir to hold an unbiased plebiscite to know the will of the population of J&K in either joining India or Pakistan. On the contrary, the Indian draft was mainly focused on the termination of the acts of violence and aggression caused by the so called 'invaders' in the state of J&K. India opposed the recommendation of a neutral administration in Kashmir and emphasized on holding the said plebiscite under the influence of Indian forces while keeping the UN as an observing force only.

The Indian draft was opposed by the members of UNCIP because of its biased nature. The third resolution on the Kashmir Dispute by the UNSC was adopted on April 21st, 1948. This resolution also highlighted the issue of restoration of peace and ending of hostilities in J&K. It also increased the members of UNCIP from three to five. It directed UNCIP to visit the region of conflict and offer its services for mediation in the process of making a peaceful environment in J&K to hold the plebiscite. The resolution also called upon both India and Pakistan to cooperate with UNCIP. It asked the government of Pakistan to withdraw all the tribesmen and any Pakistani nationals from the state of J&K who are fighting there and to ensure freedom to the people of Kashmir and to decide the accession to any one of India or Pakistan in aftermaths of a plebiscite.

On the contrary, the resolution allowed India to preserve minimum number of troops which are necessary to hold the plebiscite with the help of the local administration while also keeping the situation of law-and-order stable. It also specified that the UN Secretary General will appoint a plebiscite Administrator who will act as an officer of the J&K state and India and Pakistan governments will have to agree with it (UNSC resolution 47, 1948). Another resolution on the Kashmir Dispute by the UNSC was adopted on June 3rd 1948. The resolution called upon India and Pakistan to reaffirm the previous resolutions and to cooperate with the UNCIP in all ways possible. Pakistan pointed out the biasness of the resolution to the UNSC but its objections were not overseen but eventually both India and Pakistan accepted these resolutions.

Resolutions adopted by the UNCIP on Kashmir

UNCIP adopted two very important resolutions on the Kashmir Dispute after detailed negotiations and debate sessions of the UNSC and UNCIP members with representatives of both India and Pakistan. The first of these resolutions by the commission was adopted on 13th August 1948. This resolution had three parts; the first part called for a ceasefire agreement

between India and Pakistan to put an end to the yearlong war and violence in the state of J&K. The commission recommended both India and Pakistan to agree on ceasefire and to respectively refrain their controlled forces from further aggression. The commission will then appoint military observer groups to oversee the said ceasefire directive.

The second part was about a truce agreement between Pakistan and India. The resolution asked the Pakistan government to extract all of its forces from J&K which can make a 'material change' in the state. Pakistan government should also withdraw the tribesmen and its nationals from J&K who are fighting there and after this is done, the state of J&K will be administered by the local administration until the UN recommended plebiscite is held. After Pakistan vacates all of its forces and tribesmen from the state of J&K, the commission asked India to also withdraw its troops in phases and to retain a minimum number of troops to help the local Kashmiri administration in maintaining the situation of law and order.

The third and final part of the resolution endorsed the idea that the future of the state of J&K will only be decided according to the will of the people of J&K (UNCIP resolution, 1948). The resolution was abruptly accepted by India but Pakistan objected on it by saying that it is not guaranteeing an unbiased plebiscite because India was allowed to retain its forces. The debate prolonged because of the disagreement of Pakistan but the UNCIP was successful in persuading India and Pakistan on a ceasefire which started from January 1st 1949 and eventually ended the war. On January 5th 1949, the UNCIP adopted another resolution over the Kashmir Dispute which stated that a free and neutral plebiscite can only be carried out when the UNCIP will observe that the part one and two of the August 13th resolution are fully implemented upon by India and Pakistan both. It also stated that the Secretary General of the UN will appoint a Plebiscite Administrator with the consultation of the UNCIP.

The Plebiscite Administrator will have the powers to organize the said plebiscite in the state of J&K. After both India and Pakistan fulfill the part one and two of the August 13th resolution, the Plebiscite Administrator and the UNCIP working together, will decide the fate of Indian troops and the forces fighting in Pakistan controlled areas (UNCIP resolution of 5th January, 1949). India and Pakistan both accepted the resolution but the resolution was never implemented because India and Pakistan kept blaming each other for its violations. India always kept the 'withdrawal of all Azad forces' points ahead and never really tried to fulfill any of the two resolutions of UNCIP. The commission failed to demilitarize the state of J&K and the UNSC requested its President to observe the situation who in turn, suggested the extraction of both Indian and Pakistani forces in phases to ensure that the population of the state of J&K does not panic.

Pakistan acknowledged the suggestion while India did not. After these developments, the UNSC on 14th March 1950 approved another resolution which dissolved the UNCIP and established UN Representative Offices for observing the demilitarization in J&K. The UNSC resolution number 91 of 30th March 1951, resolution 96 of 10th November 1951 and resolution 98 of 23rd December 1952 were all about the demilitarization and division of troops on both sides of the ceasefire line on the recommendations pertaining to the reports of the UN Representative for India and Pakistan. The resolution approved by the UNSC on 24th January 1957 was about the self-determination of the people of J&K in deciding their fate about joining either Pakistan or India with the help of the right of a fair plebiscite.

The resolution adopted by the UNSC on 2nd December 1957 was about the implementation of both resolutions of UNCIP dated 13th August 1948 and January 5th 1949. The resolutions numbered as 209, 210, 211, 214 and 215 of UNSC were about ease of tensions during and after the 1965 Indo-Pak war along the J&K ceasefire line. The UNSC resolutions numbered 303 and

307 were adopted in 1971 as the United Nations Military Observer Group in India and Pakistan (UNMOGIP) observed violation of both India and Pakistan along their borders.

Shimla Agreement and the Validity of the UN Resolutions

The Shimla Accord or Agreement was signed between India and Pakistan after the 1971 Indo-Pak war which resulted in the separation of East Pakistan (now Bangladesh) from West Pakistan. The war started in East Pakistan and spread to the areas of West Pakistan (J&K) also. India and Pakistan both captured each other's territories on both sides of the 1949 ceasefire line thus rearranging it. India was reluctant that the ceasefire line is totally repositioned and it should be turned into international border while Pakistan was of the opinion that some part of the ceasefire line was disturbed and more than 90 percent of it was still undamaged (Mustafa, 1972).

Pakistan and India both felt the need of a peace agreement which can be helpful in stabilizing the relations of the two countries. On July 2nd 1972, Z.A Bhutto, the then President of Pakistan and Indra Gandhi, the Prime Minister of India signed a treaty in Shimla which was called the 'Shimla Agreement'. The agreement had the notion of improving mutual relations between the two parties through bilateral consent.

The general misconception about the treaty is that it was a purely bilateral agreement and according to it, India and Pakistan wanted to resolve their issues through two-sided talks and other means useful without any third-party involvement. But if looked carefully into the text of the agreement, it is concluded that is not the case. India always rejects the UN resolutions or UN involvement after the signature of the Shimla Agreement saying that the agreement nullified the UNSC and UNCIP resolutions because by signing the treaty, both the parties have agreed on solving the issue bilaterally. The Shimla Agreement does not supersede the UNSC and UNCIP resolutions because under the UN Charter, India and Pakistan are to accept these resolutions.

The paragraph 1 (i) of the Shimla Agreement says that the relations of India and Pakistan will be governed by the UN Charter while the Article 2(2) of the UN Charter calls upon its members to fulfill the obligations directed by the UN in good faith. Most importantly, Article 103 of the UN Charter states that, "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail" (UN Charter, 1945). The Article 103 is distinguishing that if any of the members of the UN are under obligations of any international treaty or agreement and these obligations are in conflict with the obligations of those members under the UN Charter, then the obligations under the UN Charter will have precedence over any other international treaty or agreement.

This indicates that even after the Shimla Agreement, the UNSC and UNCIP resolutions are still valid and both India and Pakistan have to agree upon and accept them in good faith. Moreover, paragraph 1(ii) of the Shimla Agreement calls for the settlement of the Kashmir Dispute between the parties bilaterally thus denying the people of Kashmir their right of self-determination. Paragraph 1(i) of the agreement agrees that the UN Charter will direct the relations between India and Pakistan while the Article 1(2) of the UN Charter calls for the right of self-determination of people, meaning the agreement itself violates the UN Charter. The people of Kashmir were not included in the agreement and according to International Law, India and Pakistan both cannot give consent on their behalf (Hussain, 1998).

It specifies that the UNSC and UNCIP resolutions on the Kashmir Dispute supersede Shimla Agreement and are valid and UN can also be involved as a third party while both India and

Pakistan have to resolve the Kashmir Dispute in accordance with the UNSC and UNCIP resolutions.

Legal Status of Gilgit Baltistan in the Kashmir Dispute

It is important to overview the historical linkage of GB to the state of J&K and the Kashmir Dispute to examine the legal status of GB in the Kashmir Dispute. The linkage of GB with the state of J&K remained disputed and ambiguous throughout history. The link of GB (former NA's) with the state of J&K dates back to the Amritsar treaty of 1846 according to which the British sold the territory of J&K to the Dogra ruler Maharaja Gulab Singh of Jammu. Prior to this treaty, there was no political or economic link of GB with J&K was found as the territory was governed by local Rajas and rulers for over a millennium. The Sikh troops invaded the NA's (GB) region in early 1800s as they wanted to extend their territorial limits far north but never really captured the entire region. After the Amritsar treaty, the Dogra ruler started to expand his territory by trying to annex more parts of NA's (GB) by invading northeast.

The Dogra expansion was successful in the Baltistan Ladakh areas while they were not able to conquer localities such as Hunza, Nager, Darel, Tangir, Yasin etc. because these areas were ruled by local rulers who resisted them. Later on, with the help of the British representatives, the Dogra forces were able to occupy some areas of the above mention regions but even then, they could not capture whole of NA's (GB). The British were the first to make the status of NA's (GB) ambiguous by signing a deed with the Dogra ruler for the sale of J&K to him. The treaty gave the Dogra ruler the areas east of Indus River and west of Ravi River by the British while most of NA's (GB) region lies north and west to Indus River, thus making the boundaries and limitations of the J&K state unclear.

After the Amritsar treaty was signed, the Dogra were successful in capturing some areas of NA's (GB) meaning that the areas which were conquered after the signature of the treaty, were not legally part of J&K state rather forcefully occupied by the Dogra forces. In 1935, the British acquired the region of Gilgit Wazarat from the Dogra ruler on a lease agreement of 60 years due to the fear of a Russian and Chinese expansion into these territories up far north. Because of the partition plan in 1947, the British gave back these areas to the Dogra ruler but uprising started in the state of J&K against the Dogra ruler because the local population were of the opinion that the ruler might accede to India as the locals were in favor of being acceded to Pakistan due to the Muslim majority of the region.

This became true after the Maharaja accede to India and flew out of the state but the locals along with some British Military Officers and the Local Scouts trained by the British, revolted against the Maharaja and liberated the area in November 1947. The local administration then called the Government of Pakistan to take control of the region which the later did on 15th November 1947.

UN Resolutions and the Question of Gilgit Baltistan

The uprising against the Maharaja in the state of J&K predates the partition because of the harsh and merciless rule of the Dogra ruler in the state. The population of the NA's (GB) was against the Dogra administration because the ruler's enforced laws and taxes against their will. When the partition plan was announced in early 1947, the population of NA's (GB) realized that the Hindu Dogra ruler may choose India over Pakistan and they wanted to become a part of Pakistan. Thus, when the Maharaja actually signed the accession with India, they revolted against the ruler, liberated the area and willingly asked Pakistan to take administrative control of the region.

To liberate the other regions, the local tribesmen from Pakistan started infiltrating the state of J&K. On the other hand, the Indian army landed in J&K to oppose the tribesmen and as a result,

war broke out between India and Pakistan over the state of J&K. India then took the matter to the UN and internationalized the Kashmir Dispute. The UNSC after detailed discussion and debates approved several resolutions on the dispute in order to resolve the matter according to the auspices of International Law.

After India raised the issue of the state of J&K to the UN, the UN included all the territory of the former state of J&K including NA's (GB) as a part of the dispute between India and Pakistan. In general, there is no such mention of the NA's (GB) specifically in the UN resolutions about the Kashmir Dispute because according to the UN, whole of the territory of the former state of J&K including the parts controlled by India as well as Pakistan after 1948 war started in the state is included in the dispute till its resolution. This is the reason the UNSC or UNCIP resolutions never mentioned the terms 'NAs of J&K' or 'NAs of Pakistan' in their resolutions. The resolution 39 of the UNSC directed the establishment of the UNCIP as mentioned above.

UNSC resolution 47 called India and Pakistan to cease hostilities in the whole of J&K including NA's (GB). It also directed both India and Pakistan to ensure an environment in the state of J&K which can pave way for an impartial plebiscite according to the norm of self-determination of the people of the state including NAs. In this regard, the UNCIP resolution of 13th August 1948 is very important. This resolution enlisted a three-part criterion with the help of which, the dispute can be resolved but it was pending to the agreement of both India and Pakistan practically. The resolution called for the ceasefire and ending of resentments in J&K by both India and Pakistan.

A ceasefire was agreed on January 1st 1949 between India and Pakistan in J&K following the resolution. The ceasefire resulted in the placement of the NA's (GB) under the control (de facto) of Pakistan (Raman, 2004) which the later was already administrating after the former asked to overtook its administration after its liberation from the Dogra forces in November 1947. Pakistan officially took the de facto control of the NA's (GB) in April 1949 by signing the Karachi Agreement with the Government of Azad Kashmir. The UNCIP resolution of 13th August 1948 also called for a truce agreement between the two adversaries which stated that Pakistan should withdraw its forces and tribesmen from the area of J&K under its control because they can cause a 'material change' in the region which will be against the previous UNSC resolutions. Part II A (3) of the UNCIP resolution of August 13th 1948 stated that after the withdrawal of its forces, Pakistan should hand over the administration of the area of J&K under its control to the local authorities which will eventually administer the area under the observation of the UNCIP (UNCIP resolution of 13th August, 1948). It is evident that the UNCIP directed Pakistan to give the administration of the territory of J&K under its control to the local authorities including the NA's (GB). Pakistan took over the administration of NAs in April 1949 by the virtue of the Karachi Agreement; therefore, this part of the UNCIP resolution was never fulfilled. The third and last part of the UNCIP resolution stated that the future of the state of J&K will be decided by the people of the state with the help of a plebiscite after both the parties will agree to the ceasefire and truce agreement enshrined in the resolution.

The legal and political future of the state of J&K including the NA's (GB) was to be determined after Pakistan fulfills the conditions of the resolution, which it never did because of the rigidness of India, pending the legal as well as political status of the NA's (GB) to the resolution of the Kashmir Dispute thus linking its legality with the dispute.

The UNCIP resolution was successful in persuading India and Pakistan governments to agree on a ceasefire starting from January 1st 1949. The resolution could not specify the region of NA's (GB) as the UNCIP was unsure that whether the region was under the "effective control" of Pakistan. The UNCIP itself admitted in its third interim report that, it is doubtful of whether

Pakistan was controlling the NA's (GB) in the late 1948. It was of the view that the evacuation of the Pakistan's forces from the territory of J&K meant that the forces of Pakistan fighting in the western part of J&K, not the northern part as the Pakistan forces in the west were in direct confrontation with the Indian troops. This was the reason that the NA's were not mentioned in the earlier resolution of the UNCIP.

Pakistan was definitely controlling the NA's (GB) militarily by that start of 1949 and it was administrating the region with the help of local authorities but not with the help of the J&K government as directed in the UNCIP resolutions (Sahni & Cherian, 2007). The UNCIP resolution of 5th January 1949 wanted to ensure that the previous resolution of the commission should be implemented and carried out by both India and Pakistan. The resolution stated that after the execution of the former resolution, the UNSC will assign a Plebiscite Administrator in accordance with the local administration of J&K. According to this resolution, India and Pakistan should implement the ceasefire and truce agreement cited in the previous resolution and after that, they should transfer the administration of the whole state of J&K to the local authorities so that a plebiscite could be held in the state.

The administration was directly controlled by Pakistan and not by the local J&K government as the UNCIP resolution directs in the case of NA's (GB). India and Pakistan both never committed themselves to fulfill the resolutions of UNCIP because of the fear that whoever fulfills it first, will eventually lose that state of J&K and as a result, the legal status of NA's (GB) in the Kashmir Dispute remained uncertain. After the termination of the UNCIP in 1950, the UNMOGIP observed the ceasefire line of the state of J&K including the NA's (Westcott, 2020).

The UNSC resolutions which were adopted afterwards did not mention the issue of the NA's (GB) specifically but called for the demilitarization of the region along with the other regions under Indian and Pakistan's control. In fact, except the UNCIP resolutions and its interim reports, no other UNSC resolutions dealt with the issue of NA's (GB) separately. The UN always treated the NA's (GB) as a part of the former state of J&K whose future will be decided by the plebiscite to be held according to the UNSC and UNCIP resolutions but Pakistan administrated the two territories of J&K (AJK and GB) under its control, separately. It is because of two reasons mainly, the first being that the NA's (GB) willingly acceded to Pakistan after fighting their own liberation war with the Dogra forces, while the second reason is that because of its historical link with the former state of J&K, Pakistan can gain its favorable votes from GB in case of any plebiscite about the Kashmir Dispute in the future.

Legal Agreements on Gilgit Baltistan by Pakistan and their Effects

The Pakistan government took the control of NA's (GB) from the N.W.F.P administration and started administrating the region directly in April 1949 by the virtue of the Karachi Agreement in the aftermaths of the ceasefire of hostilities in the former state of J&K. The Karachi Agreement discussed the administrative relations between AJK and Pakistan governments and it was signed on April 28th 1949. Prior to this agreement, the UNSC and UNCIP had passed several resolutions calling for cessation of resentments, normalization of internal situation of peace, demilitarization by both India and Pakistan and the holding of a neutral plebiscite in the state of J&K. These UN resolutions made it clear that the future of all the parts of the former state of J&K controlled by both India and Pakistan (including NA's), will be decided through the will of the population of the state of J&K with the help of a plebiscite to be held subject to the fulfillment of the recommendations and directives of the UNSC and UNCIP resolutions.

India and Pakistan both went under the trust obligation of the UN that they will deliver good governance and supervision of the parts they control of the state of J&K until the resolution of the Kashmir Dispute. By signing the Karachi Agreement in 28th April 1949, the Pakistan

government decided against the obligations of the UNSC and UNCIP resolutions. The agreement was signed by the representatives of the Pakistan government, the Muslim Conference and the AJK government. As the NA's (GB) were under the administrative control of N.W.F.P government under a political agent appointed by the Pakistan government, AJK government had no legal authority of transferring the administration of NA's (GB) to the direct control of the Pakistan government (Raman, 2004).

The legality of the agreement is questionable because of the fact that it clearly stated the rules for the administrative relations between AJK and Pakistan but did not justify the direct control of NA's (GB) by the Administration of Pakistan. The sub clause 8 of section 3² of the agreement is a one-line sweeping statement which puts the whole of NA's (GB) under the administration of Pakistan without any detailed regulation and policy. The legality of the Karachi Agreement is uncertain because the agreement did not conquer with the notion of the free will of the people as mentioned in the UN resolutions as it had no representation of the people of NA's (GB) and it was signed by alien authorities keeping the population of the region in the background. The people of the region do not ratify the agreement as they fought their own war of liberation against the Dogra Maharaja and struggled for their own political position post partition thus the people of the region has the right to sign an alternate agreement with the Pakistan government because of their geographical importance in the contemporary times (Hayat, 2016).

In the aftermaths of the China-India war of 1962, China captured the Aksai Chin area of the territory of Ladakh. This area is connected next to the northern borders of NA's (GB) and China. The borders between China and Pakistan had to be rearranged after 1962, so both the countries negotiated for the resettlement of their borders. Pakistan and China entered an arrangement by the virtue of which, the former handed over roughly about 2500 square kilometers area of NA's (GB) to the later in the region of Shaksgam. As the Karachi Agreement vested the matters of defense of both AJK and NA's (GB) to Pakistan, the government of Pakistan exercised its powers and gave the 2500 square kilometers area of NA's (GB) to China (Raman, 2004) without consulting the local administrations and the will of people.

The legality of the Pak-China border agreement is vague in the purview of the UN resolutions as it is a violation of the UNSC and UNCIP resolutions because the Pakistan government cannot make changes in the disputed territory of NA's (GB) as the territory falls under the Kashmir Dispute. The state narrative of the Pakistan government about the Pak-China border agreement is that it does not negates the UN resolutions as it is a temporary agreement subject to the resolution of the Kashmir Dispute and it includes Article 6(Sino-Pak agreement, 1963)in which both the governments of China and Pakistan have agreed that once the Kashmir Dispute is resolved between Pakistan and India, they both will revive the border dialogue and as a result, the agreement the agreement will be replaced by a new treaty.

The Legal Status of Gilgit Baltistan under the Pakistan Administration

It is clear that GB is a part of the Kashmir Dispute because of its historical linkage with the former state of J&K as chunk of its territory was ruled by the J&K administration over the course of history. The British concreted this link by giving the territory of GB to the Dogra Maharaja due to its perception of invasion of adjacent empires through the area. When the British partitioned the sub-continent in 1947, the oppressed rule of the Maharaja and the Muslim majority of the region became the reason of the local revolt against the Maharaja which resulted in the liberation of the region from the Dogra rule. May it be the weakened administrative structure of GB at that time or the weakness of the local revolutionary leaders, the region invited the newly born state of Pakistan to take the administration of the region.

The historical and political linkage of GB with the former state of J&K was evident at the time of the willing assent of the region with Pakistan. The Pakistan government linked it with the Kashmir Dispute after India took the territorial dispute to the UN which in turn recommended an unbiased plebiscite in the areas of the former state of J&K under the control of both India and Pakistan including GB because Pakistan wanted to win the votes of the people of GB in its favor in the event of any plebiscite in the future. After GB's amalgamation with the state of Pakistan, the region was administered directly by the federation of Pakistan and the region is still administered through Presidential Ordinances till date as discussed in detail in chapter 3.

Article 257 of the Constitution of Pakistan deals with the issue of the Kashmir but it does not mention either AJK or GB as a part of the state thus making it clear that Pakistan is de facto governing these territories of the former state of J&K. The unusual nature of legal and political history of GB is because of three reasons mainly, the first being its willing accession with Pakistan after fighting its own war of liberation without any outside help unlike other parts of the former state of J&K, the second reason is historical linkage of Kashmiri rule over the region and the third reason is the de facto administration of the region by Pakistan separating it from AJK.

This part will discuss the legal aspect of GB's standing under the administration of Pakistan by discussing the international law's perspective which can be applicable to the region's unusual administrative control by Pakistan as well as the municipal law's perspective for the region by discoursing the AJK's courts and SC of Pakistan's verdicts on the legal status of GB over the years.

De facto control of Gilgit Baltistan by the Federation of Pakistan

In terms of administrative control of a territory, two types of administrative deficiencies can occur while administering the territory, de facto and de jure. De jure occurs when legal lacunas are present in any legal document (i.e. constitution of any state) or agreement according to which an authority is administering a territory while de facto control of a territory occurs when lacunas in factual practices exist even if the territory is not documented in any official document or agreement. Pakistan is administering the region of GB as its de facto part along with AJK because there is no mention of either of them in the constitution of Pakistan because of their association with the Kashmir Dispute.

Article 1 of the Constitution of Pakistan maps the territorial boundaries of the state and the region of GB or AJK is not declared as a constitutional part of the state in the article. Not being a part of the federation of Pakistan constitutionally designates that GB is a de facto part of Pakistan and is governing the area through impartial agreements and Ordinances throughout its political history. Article 257 states the relation of Pakistan with the state of J&K saying that the final status of the state of J&K will be certain after the population of the state agrees to join to the federation of Pakistan (Constitution of Pakistan, 1973). There is no mention of AJK and GB in this Article which clearly indicates that the future constitutional status of GB rests with the final resolution of the Kashmir Dispute meanwhile Pakistan will administer the region as its de facto part. Pakistan is treating GB as its de facto part administratively because it is under the compulsion of the UN resolutions that it will govern the area until the final solution of the Kashmir Dispute with the help of a plebiscite as mentioned in the UNSC and UNCIP resolutions in the future (Hayat, 2016).

International Law about de facto control of a Territory: A Case of Gilgit Baltistan

In International Legal System, states are the primary units and International Law is applied to the administration of the states. A de facto government is a type of government in which the government is factually controlling or administering a territory completely but it is not

internationally accepted as a legal government of the said territory because of its disputed nature (van Essen, 2012). As GB is administered by the government of Pakistan, the latter is governing the former as a de facto part but it is not internationally accepted as a legal government of GB because in the International Legal System, GB is a part of the Kashmir Dispute and the only legal authority or government of GB will be defined after the final settlement of the dispute according to the auspices of UN resolutions through a plebiscite.

Customary International Law has very importance as it is considered as one of the sources of International Law in the International Legal System. Customary International Law consists of international obligations which ascend from the practice of state in the International Legal System. It incepts from the legal obligations of states which they commence from reliable practices and it is derived from state practice and the legal obligations (opinion juris) of the states of the International Community (Legal Information Institute, n.d.). Whenever a disputed territory is controlled by a state through de facto means, it becomes very essential to point out the reality that the state is actually controlling or administering the said territory or not.

The state which is governing the disputed territory under its administration as its de facto part must be look upon as the final authority irrespective of whether it is controlling the disputed territory lawfully or not. To authorize the administrative ability of the state controlling the disputed territory, the “rule of physical control” in International Law is used as a Customary International Law. The actual existence of this rule can be found in the form of an agreement or treaty between the state and its controlled disputed territory (Neumann, 2016). In the case of GB, which is controlled by Pakistan as its de facto part (disputed territory), the “rule of physical control” of the Customary International Law can be found in the Karachi Agreement of 1949 with the help of which Pakistan started administering GB directly as its de facto part pending the resolution of the Kashmir Dispute.

The reason behind the application of the rule is to assure the progress and prosperity of the population under the de facto control while keeping in view, the ground realities of the disputed territories. When a territory is controlled by a state or an authority or a government, it implies that it had to extend all the fundamental rights and obligations under International Law to the disputed territory in the same manner it is providing in the constitutional parts of its legal territory (Neumann, 2016). Pakistan is Governing GB as its de facto part, so it is responsible under International Law to provide fundamental rights to the people of GB even though GB is not a part of Pakistan constitutionally. The state administering a disputed territory must take into account, the welfare and reimbursements of the people of the disputed territory while taking any decision on behalf of them which can alter the legal situation of the territory (Neumann, 2016).

In the case of GB, the Pakistan government is already under the trust requirements of UN that it will provide good governance and fair administration to the parts of the former state of J&K under its control (including GB) until the resolution of the Kashmir Dispute. The government of Pakistan cannot take any decision on behalf of GB without consulting the population as the Customary International Law suggested before. This clears that the Pakistan administration is responsible under International Law to provide and extend all the rights and facilities to the people of GB, as long as it is under its de facto control, the same constitutional rights as the other citizens of the state of Pakistan, pending the final solution of the Kashmir Dispute.

The Verdicts of Domestic Courts on Gilgit Baltistan

The municipal courts of AJK and Pakistan over the years, have given verdicts about the political and legal status of the NA's (GB). As Pakistan is administering the region as its de facto part, it is

essential to examine the decisions of the municipal courts of both AJK and Pakistan in order to understand the Lego-political status of GB under Pakistan administration.

Azad Jammu & Kashmir High Court's Verdict on the Status of Gilgit Baltistan

Two residents of NA's (GB), Malik Muhammad Maskeen, Haji Amir Jan and a resident of Muzaffarabad AJK Sheikh Abdul Aziz filed a case in October 1990 in the AJK HC about defining the standing of NA's (GB). The supplicants appealed that if the NA's (GB) were included in the former state of J&K at the time of the partition of the subcontinent, then the region's control should be under the AJK government. The AJK government, the Pakistan government and the leaders of the central political parties were nominated as the defendants by the AJK HC. In reply, the Pakistan government was of the view that the Constitution of AJK (1974) defined the limitation of its jurisdiction and the territory of NA's (GB) do not come under the jurisdiction of the AJK HC, thus the Court's writ is not applicable to the region (Baid, 1995, 147).

The AJK government in response to the plea replied that the NA's (GB) were historically included in the former state of J&K but the administration of the region is under Pakistan by virtue of the Karachi Agreement of 1949. It also responded by stating that the AJK's Constitution (1974) supersedes the said agreement so the Pakistan government should hand over the administration of NA's (GB) to the AJK government (Baid, 1995, 147). In its reply as a defendant, the Muslim Conference argued by mentioning a letter which was sent to the President of Pakistan by the President of AJK, that the Pakistan government and its representatives in NA's (GB) have the final authority despite of the fact that the colonial rule (FCR) was abolished in the region and this is causing an increasing sense of denial among the population of the region.

Due to administrative issues, the difficult terrain and the Pakistan government's security concerns for the area, the AJK government transferred the administration of NA's (GB) to Pakistan. As the above-mentioned reasons now does not exist, the Pakistan government should transfer back the management of NA's (GB) to AJK because the region is a part of the former state of J&K (Baid, 1995, 148). Another defendant, the Jamat-e-Islami in its response, contended that the Karachi Agreement was not signed according to the will of the population of the J&K state and it is against the essence of the Kashmir issue as the agreement was an act of individuals who did not have the right to do so on the behalf of the people of the territory. The Jamat-e-Islami further argued that the agreement is a violation of the UNSC and UNCIP resolutions on the Kashmir Dispute (Baid, 1995, 148).

The HC of AJK opposed the Pakistan government's response about the limitation of its jurisdiction by arguing that the 1974 Interim Constitution of AJK has convened the jurisdiction of the Court and it has the authority to give judgements about the fundamental rights of all the population of AJK and NA's (GB) as the state subjects of the J&K state (Baid, 1995, 166). The HC, in its decision on March 8th 1993, accepted the petition and directed the government of AJK to (Baid, 1995, 167):

- I. Undertake the administration of the NA's (GB) while amalgamating it with AJK and the Pakistan government should assist the AJK government in doing so.
- II. According to the Interim Constitution (1974), the people of NA's (GB) should be given their fundamental rights and they should have their representatives in the Council, Assembly, Bureaucracy and other government institutes according to the law.
- III. The AJK government, in accordance with the Interim Constitution, should take measures in forming judicial and administrative institutes in the NA's (GB).

Arguments in favor of the Verdict (GB Government Committee report, 2015)

1. The former state of J&K was divided into Ladakh, Kashmir, Jammu and Gilgit, thus NA's (GB) are included in the state.
2. The Gilgit Agency was leased to the British in 1935 by the Maharaja of J&K however the region was given back to him in 1947 and he in turn, sent his representative to administer the NA's (GB).
3. In the Karachi Agreement of 1949, the relationship of AJK and Pakistan was defined and it was decided to transfer the administration of NA's (GB) to Pakistan.
4. Karachi Agreement was superseded by the Interim Constitution Act of 1974; the administration of NA's (GB) should be transferred back to the AJK government by terminating the agreement.
5. The UN resolutions, the Shimla Agreement and the Pak-China border treaty between Pakistan and India, all have ratified that the NA's (GB) are a part of the former state of J&K.
6. All the Constitutions of Pakistan (1956, 1962 and 1973) do not show the NA's (GB) as its territory.
7. The British and the government of the state of J&K carried out an agreement in 1877, with the help of which the British appointed its representative (Political Agent) to the localities of the NA's (GB). The agreement was signed due to the geographical importance of the region for the British.
8. In all the surveys of India held before partition and also in the settlement records of 1925, the territory of the NA's (GB) was presented as a part of the state of J&K.
9. The Maharaja of J&K was bestowed with the power of extracting of natural resources by the British, he also had the power to appoint the rulers (Mirs) of the local states and the rulers had to pay tribute to him in return annually. The flag of the J&K state was held in Gilgit during the lease of Gilgit to the British by the Maharaja.
10. In the maps of survey of Pakistan, NA's (GB) were shown as the part of J&K and not made known as a territory of Pakistan.
11. When India protested against the signing of Pak-China border agreement of 1963, Pakistan responded by stating that the treaty do not influence the status of the Kashmir Dispute which will be finalized with the help of recommendations entrenched in the UNCIP resolutions.
12. The AJK President, in his letter to Pakistan' President, has sufficiently explained the standing of the NA's (GB) historically.
13. The Lahore Treaty and Amritsar Treaty of 1846 ratify that the NA's (GB) are a part of the J&K state.
14. The representative of Pakistan government in the UNSC also included the NA's (GB) as a part of J&K in a speech to the UNSC on January 1948.
15. The Maharaja of the state of J&K took over the control of the Gilgit Wazarat by appointing his Governor in the region in August 1947 and the Maharaja used to issue the letter of appointments to the local rulers of the region.

Arguments against the Verdict (GB Government Committee report, 2015)

1. The Court overlooked the history of the NA's (GB) before 1840.
2. The Court's proceedings missed many occasions of events after the Amritsar Deed of 1846 and also did not assess many mentioned events correctly.
3. The Court did not document the modifications originating from the different norms, culture and traditions.

4. The harsh and difficult territory of NA's (GB) and its effects were also discounted for by the Court.
5. In the matters of NA's (GB) deciding to either join the J&K state or AJK in 1947, the will of the local population was entirely disregarded.
6. The Agreement of Karachi (1949) had no representatives from among the people of NA's (GB).
7. After the war of liberation of NA's (GB) in 1947, the people of the region showed their will to join Pakistan not AJK, so they requested the Pakistan administration to take over the region.

The Verdict of Azad Jammu & Kashmir Supreme Court

The Pakistan government challenged the AJK HC's verdict in the SC of AJK. The plea was filed in the SC of AJK by the Ministry of KANA. On September 14th 1994, the AJK SC delivered its verdict by stating that even though the NA's (GB) were a territory of the former state of J&K, they are not included as a territory of AJK. Therefore, the AJK HC does not have the jurisdiction to listen to the petition so the Court's decision will be overturned (GB Government Committee report, 2015).

Arguments in Favor of the Verdict (Haque, 2012)

1. According to the Interim Constitution Act (1974), any resident or a person who is executing duties in the linkage with matters of AJK could be ordered to obey the laws of the AJK state.
2. The AJK Interim Constitution does not contain NA's (GB) as its part as the region is a part of J&K state historically.
3. According to the Interim Constitution Act, the AJK HC does not have the authority over the NA's (GB), so a petition filed by a resident of the region cannot be entertained by the AJK Courts.
4. The Pakistan government is administering the NA's (GB) under the Karachi Agreement and will remain under the control of Pakistan until the agreement is terminated by its signatories.
5. According to the UN, the entire territory of J&K is disputed so it is unsure that these territories which were the former state of J&K and not part of AJK, will be beneath the administration of AJK in the future.

The Supreme Court of Pakistan's Verdict on the Legal Status of Gilgit Baltistan

Petitions no. 11 and 17 of 1994 were filed by the founder of Al-Jehad Trust Rawalpindi, Mr. Habib Wahab al Khairi and nine other petitioners in the SC of Pakistan under the Article 184(3) of the Constitution. The petitions were about requesting inquiry of the SC of Pakistan about the following issues regarding the NA's (Hong, 2012):

- i. To extend the basis and fundamental rights entrenched in the Constitution to the NA's (GB).
- ii. To affirm the Constitutional status of NA's (GB) under Pakistan.
- iii. To assert that the population of NA's (GB) is equal citizens of the federation of Pakistan and are entitled to indulge in the affairs of the state.
- iv. To give NA's (GB) a status of provisional province of Pakistan.

The Verdict of Supreme Court of Pakistan

The SC of Pakistan, in its renowned judgement on 12th May 1999 state that; Several Pakistan's acts are valid to the NA's (GB) such as Pakistan Citizenship Act of 1951, which was applied to the region in 1979 under the Ministry of KANA, the people of the region should be considered as the citizens of Pakistan as they have Pakistan's national identity cards and

have reserved allocations in the institutions of Pakistan (Al-Jehad Trust v. Federation of Pakistan para 12, 1999). Moreover, the Constitution of Pakistan enlists the fundamental and constitutional rights of its citizens in its Articles 9-25 (Al-Jehad Trust v. Federation of Pakistan para 13, 1999), and as mentioned above that various Pakistani decrees including the Citizenship Act of 1951 are applied to the NA's (GB), the Court directs that the people of NA's (GB) are citizens of Pakistan and they have the legal capacity to appeal for the fundamental rights mentioned in the said Articles (9-25) of the Constitution (Al-Jehad Trust v. Federation of Pakistan para 14, 1999).

The NA's (GB) have borders which connects the region with USSR, China, India and Tibet, thus making the geographical location of the region very sensitive and it is the reason why the region was governed differently in the past. The Court cannot choose the form of government for the region as well as its representation in the lower house (parliament) because a UN supervised plebiscite is yet to be held in the region. These queries can be decided and inspected by the government of Pakistan and the Court can only direct the government to ensure the rights of the population of NA's (GB) mentioned in the Constitution (Al-Jehad Trust v. Federation of Pakistan para 26, 1999). The SC directed that the federation of Pakistan should instigate the essential alterations in the Constitution or the pertinent law/regulation/order to safeguard the fundamental rights of the population of NA's (GB) inside six months. The fundamental rights of the people of NA's (GB) which are entrenched in the Constitution of Pakistan should be extended to the region with the help of an autonomous judiciary which will be selected by the representatives of the people of NA's (Al-Jehad Trust v. Federation of Pakistan para 27, 1999).

Supreme Court of Pakistan's Verdict on Gilgit Baltistan's Status (2019)

The government of Pakistan promulgated the GB Order on June 1st 2018, an Ordinance which replaced the GBESGO of 2009. The GB Order from the day of its inception faced harsh criticism from the people and representatives of GB. The Order was said to be 'PM Centric' because it gave the absolute power of administration to the PM of Pakistan. Moreover, the Order was going to abolish the GB Council and integrate its power to the GB Assembly, which was opposed by the members of the Council. The Order also reevaluated the definition of a 'citizen' from a "person having the domicile of GB" to a 'person' according to the Citizenship Act of 1951, thus creating the feeling of distrust about outsiders settling in the region (Joshi, 2019).

The Supreme Appellate Court (SAC) of GB accepted a petition filed by a member of GB Council under the Article (61) of GBESGO 2009 in which the petitioner asked the Court to declare the GB Order 2018 illegal. The Court also restored the former GBESGO 2009. The government of Pakistan challenged the verdict of the SAC of GB in SC of Pakistan and also appealed the SC to restore the GB Order 2018. The SC then restored the 2018 Order by stating that it was the government's obligation to guarantee that the population of GB should be seen as equal to the other citizens of Pakistan (Bhatti, 2018).

The Verdict of the Supreme Court of Pakistan (2019)

The SC of Pakistan gave its verdict under a bench of seven Judges headed by the then Chief Justice of Pakistan Justice Saqib Nisar on January 7th 2019. The Court's verdict begins by stating that even the former Indian PM Jawaharlal Nehru committed to carry out a plebiscite in the state of J&K but India is rigid and unable to fulfill the UN recommended plebiscite which is the reason behind the deprivation of the people of GB and their fundamental rights (Joshi, 2019). The Court refined its verdict from the previous case of Al-Jehad vs Federation of Pakistan (1999) and the disagreements about the GB Order of 2018 (Joshi, 2019). Also, at the hearing of the verdict, the representative of Pakistan government presented an amended draft of 2018

GB order which the government had prepared for the betterment of the political and administrative structure of GB. According to the draft, the Pakistan government aims to give a provisional provincial status to GB until the resolution of the Kashmir Dispute and in addition, extend all the constitutional rights entrenched in the Constitution of Pakistan. However, this process will require amendment to the Constitution subject to having a clear majority in the Lower House (Parliament) and will take time to proceed. The government is of the intention to give the people of GB their fundamental rights equal to the citizens of Pakistan as the Court's verdict extended the powers of SC of Pakistan to GB and as a result, the people of GB now can contest the judgments of SAC of GB in the SC of Pakistan (Bhatti, 2019).

Table: Timeline of the Court Decisions on the Legal Status of GB

1993	AJK High Court directed AJK Government to take over the administration of GB.
1994	AJK Supreme Court overturned the decision of AJK High Court.
1999	Supreme Court of Pakistan directed the Government of Pakistan to extend the fundamental rights stated in the Constitution of Pakistan to GB without affecting the stance on the Kashmir Dispute.
2019	Supreme Court of Pakistan reaffirmed its decision of 1999 and extended its Jurisdiction to GB.

Conclusion

The region of GB was never part of British or Dogra reigns in its entirety as both regimes administrated parts of the region with help of local rulers. The boundary limitations of the former state of J&K set in the Amritsar treaty by the British did not include more than half of the territory of GB, causing uncertainty in the status of GB in J&K state. GB is a disputed territory according to the UN therefore the application of International Law and scope of several UN Resolutions to the dispute was comprehensively explained. Being a part of Pakistan administered Kashmir, it was likely that GB would be governed under the same administrative setup however, AJK was given the administrative structure of a separate state whereas GB was directly governed by Pakistan. This is because of two main reasons, the first being that the people of GB liberated the region themselves without any outside help and willingly acceded to Pakistan and secondly, Pakistan is of the view that in the event of a plebiscite to be held in the state of J&K, the majority votes of GB will be in favor of acceding to Pakistan.

The de facto nature of AJK and GB obligates Pakistan to ensure the good governance and development of both until the resolution of the Kashmir Dispute according to International Law as well as the UN resolutions. This involves an inquiry into the view of Municipal Courts of AJK and Pakistan regarding the territories of J&K under Pakistan. The HC of AJK was of the view that GB should be a part of AJK while SC of AJK favored the government of Pakistan in administering GB differently. SC of Pakistan directed the government to extend the fundamental and constitutional rights as well as its powers to the region of GB in its verdicts of 1999 and 2019 respectively. It is regrettable to note that no effort was made to implement several verdicts of the top court wherein it instructed provision of constitutional rights in a way that would not alter Pakistan's stance on Kashmir dispute.

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¹ Article 35 of the UN Charter falls under Chapter VI which talks about the pacific settlements of disputes or disagreements between two states or more if the disputes possess threat to the international peace and security. Article 35 emphasizes that any state, regardless that it is signatory to the UN or not, can bring about any type of dispute before the UNSC or UNGA for discussion.

² The clause states that “All affairs of the Gilgit and Ladakh areas under the control of the Political Agent at Gilgit.”