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POJK: Distinguishing myth from reality

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Abstract

To Pakistan, Pakistan-Occupied Jammu and Kashmir is not a pride, but a possession, and obsession over possession only brings discussion. India has a great deal to do for it and the world at large..... The ill-fated regions of Gilgit, Baltistan, Mirpur, Skardu, Ghizer, Tangir, Diamer, and other such territories, which is, in reality, a part of the State of Jammu and Kashmir under the Indian territory, has been under the ravishment and aggressive control of the Pakistan for almost the past 7 decades. The Republic of India, an emerging global leader for peace in the international arena having faith in the belief – “Ahimsa Parmo Dharma”, has always been cautious and considerate about the lives of the humankind. The myths revolving around the word “PoK” at the commonplace, the historical background for the never-ending claim of Pakistan in regard with, and the repeated violations of the various charters, international conventions and covenants has been tried to put in pieces. The paper also takes into account the provisions of Geneva Protocol, the roleplay of UNO, and the bi-lateral agreements that has been mutually agreed upon by the interested parties. The various instances of human rights violations and tortures as reported through various channels of media communication has been briefly discussed herewith.

Keywords: Territory, fundamentals, standstill agreement, belligerent occupation, *Animus Belligerendi*, and self-flagellation

1. Introduction

Pakistan's illegal occupation of the Indian territory of Gilgit, Baltistan, Mirpur, Muzaffarabad, and various other areas situated in the ill-fated Jammu and Kashmir of the revered late Maharaja Hari Singh's rule, has been carried on for a torturous 70 years. The illegal aggressive force with which Pakistan has ravished that part of the Indian land and invited more vultures (like the invasive expansionist China) to gorge out its flesh, has scourged the poor people of Pak-Occupied Jammu and Kashmir (hereinafter, referred as “POJK”) for about 7 decades; but India still has to rescue its people.

In order to find a solution, we must be completely sure of certain aspects:

1. Who is going to provide a solution?
2. How can the solution come about?
3. When and at what cost, etc.?

As to answer the first question, the solution undoubtedly has to come from India, given that Jammu and Kashmir is an integral part of the Indian Territory. The answers to the remaining questions can come from military strategists, but public opinion plays a big role in the framing of government policy in order to implement the theories of the strategic experts. In order to generate responsible and intelligent public opinion, the general public must be made aware of the myths and realities concerning POJK. This article aims to accomplish that goal, in a brief manner. There are certain fundamentals, which may be divided into broad categories, that people must comprehend.

2. Objectives of the Study

The following are the objectives of the research on the given topic:

- To analyse the situation of the citizens of India staying in Gilgit, Baltistan and other such territories, attracting the world community towards gross violation of human rights and loss of revenue by the Republic of India.
- To unveil the reality of the tussle behind the two neighbouring nations of which the facts has been misstated.
- To understand the zenith of the cause which is likely to create a proclaimed war-like situation affecting the global peace.

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3. Research Methodology

The study is based on the primary and secondary sources of information. Here, we shall study the various steps that are generally adopted by a researcher in working on his research problem along with the logic behind them. It is necessary for the researcher to know not only the research method/techniques but also the methodology. The data collected from the secondary sources of information is classified and presented in the form of simple tables for easy understanding. In addition to this, the literature is collected through journals, books, articles, seminar reports.

4. Detail Analysis of the Study

This paper analyses the rich, complicated history and complex legalities of Gilgit Baltistan, and the larger Kashmir issue. It seeks to understand the events in the region since 1947 and how both India and Pakistan have dealt with the issue on the international stage. It covers the history of the region until the 1980s, when Pakistan began subjecting the region's people to organised cultural demolition. The paper relies heavily on primary sources, including telegrams exchanged between British officers and the Indian government in the months before Partition. These sources reveal how India may have been misled to believe that Pakistan would not seize control of all or parts of Kashmir following the partition.

4.1 Why is Jammu and Kashmir called merely as 'Kashmir'?

The fundamental problem arises in the fact that most people don't know which areas are included in Pak-Occupied Jammu and Kashmir. The State of Jammu and Kashmir is the northern-most state of the Secular Republic of India. The reason, Indians think only in terms of Kashmir Valley, is that the British legacy was to concentrate all attention on that part of the State, even though, it comprises even less than 10% of the State of Jammu and Kashmir. Thus, a misnomer developed under the Congress rule, and, later, under the prevalence of the Muslim Conference Party (later known as National Conference Party). Gradually, even the common people as well as the UN Resolutions started calling the State of Jammu and Kashmir simply as 'Kashmir'.

Gilgit, Baltistan and Ladakh, which make up the maximum portion of the area of the State were virtually ignored not only in the title nomenclature of the State, but even in terms of development. There are strategic reasons for this, which are too lengthy and technical for the common man to go into. Suffice to say that Jammu and Kashmir is much more than just about the Kashmir Valley and the Pir Panjal Range.

4.2 Kashmir – The Land of Water and Jammu – The Land of Grasslands

Gilgit, Baltistan and Ladakh form the rocky paradise of the State, while, Kashmir's main resource is water and water alone, and, Jammu is good for agriculture, but, also famous for its paintings and other arts & crafts including the famous Pashmina scarfs (that people mistakenly believe to be from Kashmir).

4.3 Gilgit, Baltistan and Ladakh – The Land of Rock and Gold

It has been recorded that when Alexander invaded the East, while reaching towards India, he encountered great and

wonderous tales of a mountainous region people, whom the Greeks termed as 'Gold Miners'. They were said to inhabit the land of gold. Those regions are these rocky spheres of India. Even way back then, these regions were an integral part of the Indian territory. Apart from gold, these rocky portions of unsurpassed beauty, have huge mineral reserves, that are much more economically profitable than the Kashmir and the Jammu region.

4.4 What is POJK?

The entire region of Gilgit, Baltistan, Mirpur, Muzaffarabad, Kotli, Poonch, Chitral, Jammu, Ladakh and Kashmir, etc. come under the integral Indian State of Jammu and Kashmir. By signing the Instrument of Accession, His Highness Maharaja General Sir Hari Singh signed the agreement, by virtue of which Jammu and Kashmir was retained as an integral part of post-partitioned India. Thus, India did not acquire sovereignty over Jammu and Kashmir, but merely retained sovereignty over it.

In August of 1947, Pakistan and the State of Jammu and Kashmir signed by and between them, a 'Standstill Agreement'. Pakistan violated that agreement because the State of Jammu and Kashmir chose to stay with India. Pakistan aggressively invaded India in 1947 itself. The invasion took place in the region of Jammu and Kashmir. Pakistan captured 1/3rd part of the region, and, today, substantial as well as strategic regions, i.e., Gilgit, Baltistan, Mirpur, Kotli, parts of Jammu and parts of Kashmir as well as parts of Ladakh are still under hostile Pakistani Occupation. The Chinese occupy parts of Jammu and Kashmir, which is called as Aksai Chin region. In point of fact, Baltistan is a part of Ladakh, just like Leh and Kargil. People mistakenly believe that the major area under Pakistani Occupation is only restricted to Kashmir Valley. Such is not the case. The people of Kashmir are the least affected, whereas, the area of Gilgit, Ladakh (including Baltistan area of Ladakh) are worst affected. 'Pakistan-Occupied-Jammu and Kashmir' (POJK) is the world's longest running belligerent occupation of human history.

4.5 What is Belligerent Occupation?

Belligerent Occupation is an extension of war or armed conflict. In the province of international jurisprudence, POJK is a classic case of belligerent or hostile occupation, by military force.

4.6 Animus Belligerendi

A particular conflict between two powers may be war (or not) depending upon the intention of the contesting parties. Thus, States who challenge one another with their military might are deemed to be at war.

5. Declaration of War Without the Use of Force

It is interesting to note, however, that a State may declare war without actually using military power. For example, during the Second World War, nearly 50 States declared war against the Axis powers, but, only 20 States actually used armed forces.

5.1 Unilateral Declaration of War

As soon as two States express the intention to be at War with each other, they are deemed to be at War. Let it be understood that an actual attack is not necessary to deem them to be at War. The mere expressing of the intention is

enough. Even if one of the parties expresses its will, the status of War is created ^[1].

5.2 Wars are waged without declaration at times

India was invaded by Pakistan in 1947, 1965, 1971 and 1999 without any declaration.

The practice of waging 'war without declaration' or 'undeclared invasion' was commonplace during the Second World War. It was the universal hope that the creation of the UNO would put an end to this practice, but that dream has not materialised. Pakistan has defied the UN, ever since the inception of the infant Pakistan was lent funds and human resources by India to start its life as a new nation.

5.3 The War waged by Pakistan in 1947 against India in the State of Jammu and Kashmir:

It is interesting to note that ever since Pakistan backed and supported armed raiders entering into and ravaging Jammu and Kashmir in the latter days of August, 1947; war had effectually started and the aggressive invasion of J&K was already underway. In the matter of 'Military and paramilitary activities in and against Nicaragua', the International Court of Justice observed:

An armed attack must be understood as including not merely action by regular armed forces across an international border, but also the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to an actual armed attack conducted by regular forces, or 'its substantial involvement therein' ^[2].

6. Pakistan violated the Draft Declaration on Rights and Duties of States

Article 14 of the Draft Declaration on the Rights and Duties of States stipulates that every State has the duty to conduct its relations with other States in accordance with International Law and with the principle that the sovereignty of each State is subject to the supremacy of International Law. Pakistan's regular army attacked on the part of the neighbouring Indian State, and, they captured not just the territory, but, they looted the civil population, who were the citizens of India, for more than 7 decades. Those citizens of India, veiled with the status of secondary citizen, are living in poverty and facing the discrimination by the State of Pakistan, in Gilgit, Baltistan, Bhimber, Kotli and many other areas of the Union Territory of Ladakh.

7. Pakistan repeatedly violated the UN Charter

The Preamble of the UN Charter lays down that 'States shall live together in peace with one another as good neighbours'. Pakistan violated this fundamental principle on which the foundation of the UNO is based within days of Pakistan's formation, by invading the Indian State of J&K. Further, Article 74 of the Charter states that, "the members of the United Nations also agree that their policy in respect of the (non-self-governing) territories..." must be based on the principle of good neighbourliness. Pakistan violated this Article too. Some other provisions of International Law that Pakistan has violated by the said 1947 aggressive invasion were as follows:

1. A State is under a duty to prevent its territory from being used for hostile expeditions against another State since the Draft Declaration on Rights and Duties of

States prepared by the International Law Commission in 1949 stated that 'every State has a duty to refrain from fomenting civil strife in the territory of another State...'

2. A State is under a duty to prevent its territory from being the cause or the instrument that results in economic injury to neighbouring territory ^[3].
3. A State is under a duty to prevent its activities from causing any damage to its neighbouring States or in areas beyond the limits of its national jurisdiction ^[4].

8. Continual of a State of War between India and Pakistan

Pakistan continued hostilities against India in 1948 even when it was specifically prohibited by the UN resolutions. The Security Council imposed no embargo or reprisals against Pakistan, for this conspicuously criminal conduct. That was a green signal to Pakistan that it could violate International Law as it wished and the UN would not even so much as reprimand it. Pakistan, therefore, had no qualms about contravening all the canons of civilized nations when it again waged an outright invasion of India in 1965. What did the UN do? Absolutely nothing.

9. Pakistan's actions against India amount to 'International Delinquency'

The Second Hague Conference of 1907 in Convention III set forth the rules to be followed for the waging of war, or invasion, against any State. Article 1 of the Convention provided that, "The contracting powers recognise that hostilities between them must not commence without a previous and unequivocal warning, which shall take the form either of a declaration of war, giving reasons, or of an ultimatum with a conditional declaration of war". According to the renowned jurist Oppenheim, a State which deliberately orders the commencement of hostilities, without a previous declaration of war or a qualified ultimatum, commits an 'international delinquency' ^[5].

9.1 Does India have a right to defend itself and militarily remove Pakistani forces from POJK?

Yes, India has every right to take back control of its own territory. Therefore, India can very well use military intervention to rid Gilgit, Baltistan, Mirpur (the region where the Mangala Dam is created), Hunza, Nagar, Muzaffarabad, the Haji Pir Pass, and the numerous other parts of POJK of the scourge of hostile occupation.

9.2 Any military force from India into POJK will be merely Defensive Force, not categorised as War!

Woolsey has stressed on the fact that when peaceful means fail and there is the need for self-defence, then a 'just or right' war may be waged (by a State) to prevent evil being inflicted upon its inhabitants or to bring back an injuring party to the right state of mind by the infliction of deserved force ^[6]. Although Woolsey has used the word 'war', there is international consensus that military action that is used in self-defence is not equal to waging an offensive war. Thus, any action of India in regard to its domestic territory of POJK is not an aggression, not a war, but it will be defensive armed action which at the very most will be termed as armed action falling short of war.

In view of the fact that Pakistan has repeatedly and consistently violated the line of control and still continues to

do so, it is safe to say that no international body is overseeing or controlling the situation and that a kind of 'State of War' has continued to exist between India and Pakistan. It is beyond a doubt that a continued and constant 'threat to the peace and sovereignty of India' has emanated from the actions of Pakistan's armed forces present in POJK for the last 70 years. Under international law, this situation is interpreted to mean that in no way has a state of peace existed between India and Pakistan. POJK is an instance and a factual continuation of Pakistan's hostilities towards India. The canons of International Law all condemn the abominable continued hostility of Pakistan against India. This behaviour of the Pakistan Government is insolently criminal conduct and a blatant violation of all the international treaties, conventions, covenants of international law.

9.3 Pakistan is constantly violating the 'Treaty of Mutual Assistance'

Article 1 of the draft of the 'Treaty of Mutual Assistance', 1923, declared that aggressive war is an international crime and all the parties to the Treaty would undertake that none of them would be guilty of its commission. The Preamble of the Treaty expressly mentioned its purpose, which was to facilitate the application of Articles 10 and 16 of the Covenant.

10. Pakistan continues violating the Geneva Protocol

The Protocol for the Pacific Settlement of International Controversies, namely the Geneva Protocol of 1924 also criminalises the act of an aggressive war. Article 11 of the Protocol and the Locarno Treaty of 1925 prohibit aggressive invasion, except in specific cases expressly mentioned therein. The Sixth Pan American Conference held in February 1928, adopted a resolution wherein it declared that 'war of aggression constitutes a crime against mankind' and 'all aggression is illicit and as such is declared prohibited' [7]. The Preamble of the United Nations Organization's Charter states that "We, the people of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind". Further, the Charter provided that, "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations" [8]. The General Treaty for the Renunciation of War [9], signed on August 27, 1928 at Paris condemns aggressive warfare/invasion. It is imperative to note that the treaty is currently binding.

10.1 Does India need to declare its military action in POJK?

The above paragraphs go to show that any military action in POJK that comes from Indian Armed Forces does not need to be announced or declared action. This is because aggression needs to be declared and in fact, aggression is illegal. But any action on the part of the Indian Armed forces can only be categorized as defensive action. Defensive action in one's territory, which happens to be under hostile occupation, does not need to be declared beforehand. In point of fact, India's military action in POJK is admitted by the international community to be the only

desirable/possible means of liberating the people of POJK from hostile and torturous military control of Pakistan.

10.2 Torture and Human Rights Violation in POJK

The people in Gilgit, Baltistan and the rest of POJK have to endure a torturous plight if a family member falls sick. The public-sector healthcare facilities here are in shambles. Particularly the people of Gilgit and Baltistan, which are both a part of illegally occupied Jammu and Kashmir, have little means to get themselves treated in case of serious illnesses. Officially there are 14 doctors over an area of 27,000 sq. miles but in actual terms even those are not available at work. Gilgit, the main town, has only one city hospital which is visited by at least 2000 patients on a daily basis. However, this hospital also remains poorly staffed, poorly equipped and unable to meet the needs. The medical infrastructure has been the same for decades due to no fund allocation by the occupying Pakistani aggressors. Even the medicines that are purchased in bulk are found to be substandard in the laboratory tests. The 2015 announcement by the Pakistani government of a 100-million-dollar grant to build a medical college and hospital in every district of Gilgit has also come to naught [10].

Bobbie Abrahams wrote that in August 2016, hundreds of protesters took to the streets in the Gilgit-Baltistan region of POJK to oppose rampant human rights abuses as well as to demand political rights, but above all to demand that the Pakistani army leave Gilgit's soil [11]. The news article also claimed that Shia dominated regions namely Gilgit town, Astore, Diamer and Hunza of the Gilgit-Baltistan region, were greater sufferers of torture and human rights violations by Pakistan forces.

Visitors to the picturesque Hunza Valley say that the historic Karakoram Highway is dotted with villages that are literally wearing Shia martyrdom on their sleeves. Villages have put up sign posts listing their people who have been killed in sectarian violence, many of them pulled out of buses, identified either by their names or by self-flagellation marks men acquire during Muharram, and gunned down to slogans such as 'Shia Kafir' [12]. All human rights observers are unanimous in their reports that the people of Hunza, Gilgit, etc. (meaning all of POJK) are devoid of political rights.

Abdul Hamid Khan, Chairman of the Balawaristan National Front, wrote in 2012, that there is absence of representation, Judiciary and free media in POJK and that there is no access of Human Rights organizations to the people of POJK. He also writes that this can be attributed to the UN failure, which has helped Islamabad to hide its illicit practices in POJK. He further tells of the heinous torture and crime committed by the Pakistani soldiers against the people of POJK. He writes that Pakistan has issued identity cards to the people of POJK that identifies which religion they belong to and which caste of Muslim. He states that these are death cards issued by the Pakistan authorities. Some of the occupied people are killed at sight whenever the army personnel wish (even without cause) and some are handcuffed and their throats slit. He wrote that apart from killing of armed groups that act against the Pakistani Occupation, even peaceful protesters are gunned down indiscriminately. In addition, he told of the unspeakable torture that they suffer on POJK [13].

In May 2017, the UNPO published an article that stated that, "...the Pakistani authorities reap short-term benefits from

the illegal military and economic involvement of China in Gilgit-Baltistan, a situation which contributes to the state's security forces being able to commit human rights violations on a massive scale without impunity. To make things worse, the efforts of NGOs, scholars and Members of the European Parliament to denounce the exploitation of local resources, the use of the Anti-Terrorism Act to randomly arrest people and the attempt to wipe out the Baloch identity are systematically silenced by Islamabad's security agencies." Another striking aspect that was written about in this article was relating to CPEC, which declared that, "Members of the European Parliament (MEP) in a conference titled 'Opposition against CPEC in Pakistan' held at the European Parliament in Brussels on March 1, 2017, highlighted the fact that the projects under the CPEC were being built largely against the will of the locals of Baluchistan, Sindh and Gilgit-Baltistan. The speakers said that on the pretext of the CPEC, there was a deliberate move by Pakistan to re-settle Punjabis and Chinese nationals in the region, thus attempting to dilute and eventually wipe-out the Baloch identity as well. Wajahat Hassan, Head of the Gilgit-Baltistan Thinkers Forum (a GB leader-in-exile) while expressing grave concern over the cases of human rights violations in Gilgit-Baltistan, accused Islamabad of allowing foreign countries, particularly China, to exploit the resources of the region. He also stated that the Pakistani government had initiated a process of altering the demography of Gilgit Baltistan, with the objective to increase its influence. In same tone and tenor Balouch representative Mehran Baloch opined that the construction of the CPEC in Baluchistan and Gilgit-Baltistan was illegal..." The article concluded by mentioning that, "Alberto Cirio, MEP, described the CPEC as a project in which, under the pretext of 'development', the State was indulging in corrupt practices for short-term gains, even at the cost of human rights violations against the people of Gilgit-Baltistan and Baluchistan. He also expressed concern about the charter of the Special Security Division (SSD), apparently set up to protect Chinese workers in Pakistan. He stated that the number of personnel in the SSD was higher than the number of Chinese workers in Pakistan, indicating that it would probably be used for other purposes, including suppressing of the locals." [14]

11. Concluding Remarks

Above mentioned is just a tip of the iceberg when it comes to understanding the reality of POJK and public opinion being formulated free from myth and false propaganda. Given even such brief facts as have been mentioned herein, it is evident that any prudent person will consider it high time that the international authoritative and regulatory bodies must compel Pakistan to vacate POJK immediately. There is a high risk and great probability that the region of Gilgit and Baltistan can become a cause of conflict and flashpoint between two nuclear nations, in which, one is the residence of more than 130 billion and the world's largest democracy. The region of Gilgit and Baltistan is under the administration of the Pakistan, there is a blockade between India and the rest of world and it is a great loss for cultural exchange and global business in the world. Hence, it's a high time that the world community should interfere in between the ongoing tussle and taste the fruit of democracy.

12. References

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2. ICJ Reports, 1986, pp. 103-104.
3. See Trail Smelter Arbitration case (decision given in). See also 'Lake Lanoux case, 1941.
4. See Principles 21, 22 of the Stockholm Declaration on Human Environment of 1972. The principles enshrined in this Declaration were reaffirmed by the 'Nairobi Declaration' of 1982.
5. Op. cit., p.299.
6. Introduction to the Study of International Law: 6th Edition, p. 176.
7. Dr. Agarwal HO. International Law and Human Rights, 12th edition, 2005, p. 521.
8. Article 2, para 4.
9. Popularly known as the Pact of Paris or the Kellogg-Briand Pact.
10. This paragraph is synthesized form the information obtained from Article Published by Ventuno on 11 Aug, 2015 at 05:21 PM IST, entitled 'Lack of Medical Facilities Makes Life Difficult for People in Gilgit Baltistan', republished in 'Bihar Prabha'. More details available on <http://news.biharprabha.com/2015/08/lack-of-medical-facilities-makes-life-difficult-for-people-in-gilgit-baltistan/> last referred on 14/08/2015 at 13:00 IST.
11. More information can be found at <http://www.indiatimes.com/news/india/everything-you-need-to-know-about-the-anti-pakistan-protest-in-the-occupied-gilgit-baltistan-259926.html> last referred on the 5th of July, 2017 at 18.30 IST.
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14. This paragraph is quoted from the article published in the UNPO – Unrepresented Nations and Peoples Organization. More information on the article can be found at <http://unpo.org/article/20068> last referred on the 5th of July, 2017 at 18.30 IST. Also see <https://www.dawn.com/news/738060> for details of the killing of POJK activists.