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# THE EVOLVING INDIA-SAUDI ARABIA BILATERAL RELATIONSHIP IN THE 21ST CENTURY

SHAHID ILYAS\*

## Abstract

*The paper aims to explore the fundamental elements determining the direction of India-Saudi Arabia relations in the 21st century. It is also an attempt to prove that relations between the two countries are determined, by and large, by realism, rather than cultural or religious affinities. In that regard, the paper has probed in some detail the history of bilateral relations between the two countries. Through the review of bilateral high-level visits and the resultant joint statements, memorandums of understanding, and joint declarations, an attempt is made to help readers see that the two countries are well on the path of an enduring strategic partnership, which encompasses determination to fight terrorism together, defence cooperation, synchronisation of the two countries' economic visions, and cooperation in the fields of energy, manufacturing, education, culture, science, and so on. The paper seeks to add to the existing literature on the subject by helping policymakers understand the direction of the bilateral relationship between India and Saudi Arabia.*

**Key Words:** *India, KSA, bilateral relations, visits, joint statements.*

## Introduction

With the end of the Cold War in the aftermath of the disintegration of the former Union of Soviet Socialist Republics (USSR)

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a decade before the turn of the century, tectonic changes have been witnessed in International Relations and global economy. National politics and international relations are seen in the context of theories such as 'The End of History and the Last Man' and 'The Clash of Civilizations', propounded by Francis Fukuyama and Samuel P. Huntington, respectively. Both have elements of truth in them. We can explain certain conflicts in different places of the world in the light of these theories. However, international relations, both its theory and practice, are more complex than to be grasped with the help of watertight theories. It is so because countries from different civilisations cooperated and forged close strategic partnerships and there are instances in which countries from within the same civilisation have engaged in conflict. Therefore, it seems that these theories could neither entirely explain the world neither during the Cold War nor after it ended. We can see clearly that not civilisations but economic interests and national security determine states' decisions for standing where they do, as we will see in the case of India and the Kingdom of Saudi Arabia (KSA). Hard core national interest, defined in terms of economic gains and national security, is what determines the direction a country takes.

India and KSA were part of opposing camps during the Cold War. Although New Delhi pretended to be subscribing to the principles of non-alignment and was one of the leading members of the Non-Aligned Movement (NAM), its close cooperation with the USSR was evident from its defence procurements from the latter and their mutual support on international forums. Moreover, the distance India maintained from the West is well documented. The KSA, on its part, though a member of NAM, maintained a close relationship with the Western bloc which remained, as it continues today, the ultimate security provider to the Kingdom. Therefore, the KSA and India found each other in opposing camps during the Cold War, which ended with

the disintegration of the USSR. The fiercely anti-Western Iranian Revolution of 1979 further pushed Saudi Arabia towards the West.

The West was always eager to take India into its fold. But India, given its colonial past and its obsession with preserving its hard-won independence, was reluctant to be an ally of either bloc. Another factor that kept India at a distance from the capitalist West was its founding fathers' socialist leanings. This was a complex environment for both India and Saudi Arabia to maintain a balanced relationship while remaining in opposing blocs. India was specifically in a precarious position as it could not afford to be seen as a country that stood in an opposing bloc to Saudi Arabia, the custodian of the sacred places of Islam, given the sizeable Muslim population of India. This last factor was also the reason why India was pro-Palestine and distanced itself from Israel. In short, though tilting towards the Soviet bloc, India strived to remain neutral vis-à-vis Saudi Arabia in the opposing political bloc.

The precariousness in the India-Saudi Arabia bilateral relationship subsided significantly with the disintegration of USSR and the new economic path that India adopted in the early 1990s. Henceforth, liberal economics not socialist protectionism and Cold War bloc politics was to determine India's bilateral relationships. Therefore, it was only a matter of time for New Delhi and Riyadh to start working on a closer economic and strategic relationship. Today, the two countries have a sizeable bilateral trade, with Saudi Arabia one of the top oil suppliers to India.

## **Background**

India and Saudi Arabia established formal diplomatic relations soon after the independence of India in 1947. India and the Arabian Peninsula has had trade and cultural exchanges for millennia. In the process, Islam expanded in the Indian sub-continent, which further deepened the relationship. King Saud was the first to have visited India in 1955. Jawahar Lal Nehru paid a return visit to the kingdom in 1956.

Those were the initial days of the Cold War and the two countries were still testing the waters of international geopolitics. Only one more high-level visit took place during the Cold War era. It was when Indian Prime Minister Indira Gandhi paid an official visit to the Kingdom in 1982. So, given the complex dynamics of the Cold War era, which was characterised by ideological divides, merely the above three visits between the two countries took place in almost half a century. No significant breakthrough in terms of a strategic partnership or a dynamic economic relationship was made.

India had nothing much to offer to Saudi Arabia and the Middle Eastern region generally. It bought most of its petroleum products from the USSR. As one analyst put it, "India purchased the bulk of its hydrocarbon needs (15-25 per cent) from Russia, and had nothing substantial to offer to the Arab world: trade, goods, services, technology, or economic assistance."<sup>1</sup> To summarise, India was constrained by its backwardness, its own domestic politics, and the dynamics of the Cold War.

India's relations even with Israel were not cordial. That was so because no government in New Delhi could afford to have fraternal relations with Israel, which could hurt the sentiments of its sizeable Muslim minority. As put by one writer, "India's relationship with Israel was frozen due to its pro-Arab and Pro-Palestinian position."<sup>2</sup> It was only after the formal end of the Cold War—more specifically, with the state visit paid to KSA by Prime Minister Manmohan Singh in 2006—that India and Saudi Arabia began to build their bilateral relationship on sound economic and strategic footings.

### **Bilateral Visits and Joint Statements**

India's relations with the Middle East, in general, and the KSA, in particular, started with the end of the Cold War. Post-1990 relations are what matters the most today as India started its economic reforms and began to open up to the outside world. Its economic reforms led to higher GDP growth rates and increased urge for finding new



sources of energy. Similarly, Saudi Arabia emerged from ideological wars, such as its support to anti-Soviet Jihad in Afghanistan. Therefore, a detailed analysis of the bilateral state visits by the heads of governments of the two countries will help in understanding how India and Saudi Arabia reached the level of the current bilateral relationship, which has acquired the status of a 'strategic partnership'.

### **King Abdullah Visits India (2006)**

After the state visit by Prime Minister Indira Gandhi to KSA in 1982, the bilateral relationship by and large remained stagnant for more than two decades. The KSA extended sustained diplomatic support to Pakistan against India on Kashmir. This further strengthened the KSA's leanings towards the Western bloc. The Indo-KSA bilateral relationship was mostly limited to India's oil imports from the KSA and Indian Muslims' pilgrimage to Mecca.

King Abdullah was the first to lay the foundations of the 21<sup>st</sup>-century bilateral relationship with India. This has steadily grown and is characterised more by national interests, as defined in terms of economic benefits and national security, rather than by ideological or religious inclinations. According to the BBC, King Abdullah was "the first Saudi King to visit India in 51 years and [was] the guest of honour at Republic Day celebrations"<sup>3</sup> in 2006. The visit was characterised by a lot of pomp and show and the direction which the bilateral relationship was taking was discernible during the visit. "I consider myself to be in my second home,"<sup>4</sup> the King was reported by media to have stated. The King, aware of the almost half a century of frozen relationship between the two countries—which at times witnessed bitter episodes in the context of the KSA's support to Pakistan over Kashmir, its support to anti-Soviet jihadists in Afghanistan, both going contrary to the Indian sensitivities of the time—took recourse to the historically warm relations between the two countries predating the Cold War. "The relationship between India and the Kingdom of Saudi

Arabia is a historic one, we have been old friends and, God willing, this visit will renew these historic ties,"<sup>5</sup> stated the King.

Students of India-Saudi Arabia relations are aware of the changed geostrategic and geo-economic environment of the world in the post-Cold War era. The geostrategic dynamics of the world at the time when the king paid a state visit to India in 2006 were different than those in 1982, the year when Prime Minister Indira Gandhi paid a state visit to KSA. Back then, India was obsessed with its non-aligned policies and with a protectionist economy at home. India had got in the USSR a reliable supplier of hydrocarbons. In 2006, the USSR was no longer, and India had come a long way in implementing economic reforms and opening up to the outside world. These reforms had produced unprecedented economic growth rates, which necessitated increased and steady supply of hydrocarbons. Both Saudi Arabia and India were mindful of the changing international environment and the convergence of their economic interests.

### **Delhi Declaration**

Upon the conclusion of the aforementioned visit by King Abdullah, the two sides signed the so-called Delhi Declaration. The declaration seldom mentioned a strategic partnership as the relationship was at a very early stage of evolution at the time. Instead, it emphasised mainly on cooperation in the technical and economic fields. As reported by a leading Indian English language news daily, in the Delhi Declaration "the two sides have agreed to ensure reliable, stable and increased volume of crude oil supplies through evergreen long-term contracts."<sup>6</sup> The declaration further stated that "both countries would strive to increase cooperation in the field of technology, especially in information technology, agriculture, biotechnology, and non-conventional energy."<sup>7</sup>

As can be seen in the Delhi Declaration, the two countries abstained from including any political or strategic objectives and instead focused more on strictly economic and technical aspects of

their nascent bilateral relationship. However, given their emphasis on economic synergies, especially India's increased dependence on Saudi oil and their mutual determination to ensure the unhindered flow of the same, can be said to be a precursor to the evolution of their future closer and strategic relationship. This was so because the two countries had not yet got rid of legacies from the past—as Saudi Arabia was still a close strategic ally of Pakistan, extending its support on the Kashmir dispute, and India was not yet ready to make drastic changes in its policy approach towards Saudi Arabia given its complex relationships with the other countries of the Middle East, especially its bilateral relationship with Iran.

Other analysts link Saudi outreach to Asia, especially to the two Asian giants India and China, to the increased pressure from the West for a halt to alleged funding to extremist groups emanating from the Kingdom. The itinerary of King Abdullah also included a visit to China. According to one analyst, "Saudi thinkers may believe that an Asian alternative will make the kingdom less susceptible to Western pressure on such issues as democratization and terror financing."<sup>8</sup>

Kashmir has always been a sensitive subject for New Delhi. According to Indian authorities, the situation in the valley would have been different had Islamist extremists not spearheaded an armed struggle. Since long, the Kingdom of Saudi Arabia has extended financial support to Islamic schools across the Muslim world, including the ones situated in India. During the aforementioned visit by the king, the issue of these funds ending up in Kashmiri militants' hands was raised. It was in that context, according to experts on the subject, that the King of KSA and the Indian Prime Minister signed an MoU "dealing with terrorism, transnational crime, and underworld operations."<sup>9</sup>

The two countries were also reported to have agreed "to cooperate toward the conclusion of a comprehensive convention on international terrorism before the U.N. General Assembly and to establish an international counterterrorism center as called for by the

International Conference on Counter-Terrorism held in Riyadh in February 2005.”<sup>10</sup>

As can be seen from a brief analysis of King Abdullah’s visit to India in 2006, the two countries were laying the foundations of an enduring strategic partnership, leaving behind the rivalries that emanated from the Cold War. A realisation had emerged in the two countries, as can be discerned from the visit, that they needed to come closer for the benefit of both. Both wanted an unhindered trade in hydrocarbons and efforts towards eradication of terrorism served the interests of both.

### **Prime Minister Manmohan Singh Visits Saudi Arabia (2010)**

The next move in the evolving India-Saudi Arabia bilateral relationship and the strategic partnership was made when Prime Minister Dr Manmohan Singh paid an official visit to Riyadh in Feb/March 2010, at the invitation of King Abdullah bin Abdul Aziz Al Saud. The prime minister was shown a rare deference by the Saudi royals when he was invited to address their parliament, the Majlis Al-Shura. Dr Singh was conferred an honorary doctoral degree by King Saud University.

### **Riyadh Declaration**

The optics of the visit by Prime Minister Singh indicated elements of strengthening the bilateral relationship. In the documents that were signed between the two countries, including the so-called Riyadh Declaration, a reference to ‘strategic partnership’ was made more profusely. According to the Riyadh Declaration, “Keeping in view the development of relations between the two countries, and the potential for their further growth, the two leaders decided to raise their cooperation to a strategic partnership covering security, economic, defence and political areas.”<sup>11</sup>

The declaration was a clear statement by the two countries of what exactly they expected from this important relationship. It clearly stated the areas in which the two countries planned to work together. These included economic cooperation, cultural exchanges, ensuring the smooth flow of hydrocarbons, and, more significantly, joint combat of terror and defence cooperation. The document referred to the realities of the 21<sup>st</sup> century and the fact that the two countries needed to work together. The document stated that the bilateral visits between the two countries at the dawn of the 21<sup>st</sup> century “heralded a new era in Saudi India relations, that is in keeping with the changing realities of and unfolding opportunities of the 21<sup>st</sup> century.”<sup>12</sup> What were these ‘changing realities’ and how were they to cope with them together? The Riyadh Declaration contained a detailed menu of the fields in which the two countries were determined to work together. Apart from the traditional wish list contained in such declarations—such as pledges for enhanced economic cooperation, cultural and educational exchanges, and so on—the more significant part of the declaration is the one in which the two countries have determined to work together for combating extremism and terrorism. According to the document, “The two leaders renewed condemnation of the phenomena of terrorism, extremism and violence affirming that it is global and threatens all societies and is not linked to any race, color or belief. The international community must, therefore, resolutely combat terrorism.”<sup>13</sup>

It further resolved that “the two sides agreed to enhance cooperation in exchange of information relating to terrorist activities, money laundering, narcotics, arms and human trafficking, and develop joint strategies to combat these threats. They welcomed the signing of the Extradition Treaty and the Agreement for Transfer of Sentenced Persons.”<sup>14</sup>

As India’s economy was well on the path of reform, GDP growth rates had steadily grown. Therefore, to keep the reform and

growth momentum, a steady inflow of hydrocarbons had to be ensured. Keeping this in view, the Riyadh Declaration spoke of ensuring uninterrupted flow of petroleum products to India. According to the document, "The two leaders further emphasised the importance of strengthening the strategic energy partnership based on complementarity and interdependence, as outlined in the Delhi Declaration, including meeting India's increasing requirement of crude oil supplies, and identifying and implementing specific projects for cooperation including in the areas of new and renewable energy. India invited Saudi Arabia to participate in crude storage facilities in India. They directed the Joint Working Group on Energy to continue adopting all appropriate means to achieve the same."<sup>15</sup>

During Dr Singh's visit to Saudi Arabia, the two countries reasserted their stance of paying heed to human life, irrespective of creed, religion, and ethnicity. According to the Indian daily *The Hindu*, "The Riyadh Declaration which came four years after 'Delhi Declaration' when King Abdullah had visited New Delhi in 2006 said the two leaders noted that tolerance, religious harmony and brotherhood, irrespective of faith or ethnic background, were part of the principles and values of both countries."<sup>16</sup> Therefore, this emphasis on human values, rather than adherence to a certain faith, as a determinant of foreign policy choices, especially on the part of Saudi Arabia, needs to be noted, especially by those subscribing to the belief that Saudi Arabia's behaviour in conducting foreign policy is determined by religious considerations. That may no longer be the case.

Apart from the Riyadh Declaration, the two sides signed several bilateral agreements and MoUs. These included a memorandum of understanding for cooperation between the Indian Space Research Organisation and King Abdul Aziz City for Science and Technology for cooperation in peaceful space exploration and joint

research in information technology, and an extradition treaty was signed between the officials of the two countries.

### **Prince Salman bin Abdulaziz Al Saud's India Visit (2014)**

The state visit by the (then) Prince and the current King Salman bin Abdulaziz Al Saud to India in February 2014 was the next highest level visit by a Saudi dignitary after the January 2006 visit to India by King Abdullah bin Abdulaziz Al Saud. The visit aimed at solidifying the steps taken towards forging a strategic partnership between the two countries as initiated during the previous bilateral visits. According to experts on the subject, apart from the economic convergences between Saudi Arabia and India, which included a bilateral trade of "over \$43 billion in 2012-13,"<sup>17</sup> and the fact that "Saudi Arabia is India's largest crude oil supplier accounting for about one-fifth of total imports in 2012-13,"<sup>18</sup> the high-level visits by Saudi Arabian dignitaries to India and other Asian countries, including China, "underscores the Kingdom's pivot to the east. Long before the American pivot, Saudi Arabia has reoriented its economic and political priorities to South and East Asia."<sup>19</sup>

Saudi Arabia has traditionally been a close ally of the West, especially the US, given the dynamics of the Cold War and the perpetual turmoil in the Middle East that has moulded security thinking in Saudi Arabia, coupled with the Western dependence on Saudi oil. The US-Saudi Arabia relations, however, have not been without phases of crises, which, according to commentators, have led to second thoughts in Saudi Arabia with regard to its sole dependence on the West for its security and economic interactions. Bruce Riedel, a leading US-based South Asia expert, while commenting on the aforementioned visit by the prince said, "The Crown Prince's travels provide a subtle means of reminding Washington that it is no longer the only game in town for Saudi national security policy. The US-Saudi relationship remains a critical element in the kingdom's foreign policy

despite difference over Syria, Egypt, Bahrain, the Israeli-Palestinian peace process and Iran in the last year. Abdullah and Salman do not want to see further bumps in the American-Saudi partnership, but they also want to make certain they have other options besides reliance on America. Looking east is critical to that policy diversification."<sup>20</sup>

### **Prime Minister Narendra Modi Visits Saudi Arabia (2016)**

The visit by Prime Minister Narendra Modi to Saudi Arabia in April 2016 was a re-affirmation of the fact that the two countries were determined to take their bilateral relationship forward. Without disturbing India's long-held approach of not picking sides in the Middle Eastern disputes, India has maintained a balanced relationship with all the countries of the Gulf Cooperation Council, Iran, and Israel.

With its newfound status as an emerging economy, providing technical expertise in a range of high-tech establishments, coupled with being a large and attractive consumer market, Indian leadership is keen to emphasise the areas in which New Delhi could support these countries. According to one analyst, by scheduling to meet Indian workers in Saudi Arabia, "Modi will also try to highlight that Indian companies are contributing to the training and employment of locals (especially women) by visiting another Indian company's all-female business process service center."<sup>21</sup>

In the context of the bilateral visits between the two countries, and the increased interactions in different sectors, including the economy and security, experts have analysed the reasons as to why India has become one of the favourites for the individual West Asian countries.

In the article cited above, the writer has alluded towards some convincing factors. It states that "with many Middle Eastern countries pivoting to Asia or at least giving it a fresh look, India arguably has more leverage than it has ever had in the past. There have been a



number of reasons why these countries have been looking east recently:

1. traditional strategic partnerships in flux and questions about the U.S. role in the region;
2. the economic slowdown in Europe and the U.S. following the 2008 financial crisis;
3. changing global energy consumption patterns;
4. growing concerns about terrorism in the region;
5. And, in Israel's case, the boycott, divestment, and sanctions movement."<sup>22</sup>

According to another writer, "India has been a natural choice for an economic and developmental partnership in Saudi Arabia's efforts to diversify its relationships by engaging various Asian countries."<sup>23</sup> Therefore, Prime Minister Narendra Modi's visit to KSA in April 2016 must be seen in the broader context of the politics of West Asia.

During his two-day visit to the Kingdom, Prime Minister Modi met King Salman and other important dignitaries in the Saudi government. Mr Modi, signifying the historic ties between the two countries, was reported to have presented a "gold-plated replica of a mosque in the Indian state of Kerala that was built by Arab traders in the early 7<sup>th</sup> century."<sup>24</sup> In a significant move and an apparent attempt to send home the message about the highest importance the Saudis attached to their bilateral relationship with India, King Salman conferred on PM Modi the highest Saudi civilian award, the King Abdulaziz Sash. According to reports appearing in the media at the time, "the sides signed five agreements, including plans to cooperate in intelligence sharing related to terror financing and money laundering, as well as a labour cooperation agreement and another to promote bilateral investments in the private sector."<sup>25</sup>

After the visit, the two sides issued a joint statement which highlighted the achievements the two countries had gained over the past years with regards to the evolution of the bilateral relationship. It also highlighted the areas of mutual interests of the two countries in which they wanted to move forward.

### **Joint Statement (2016)**

The Joint Statement was distinct in that the two countries, for the first time, highlighted in unequivocal terms the elements and outcomes which the two countries wanted from their bilateral relationship. A number of points pertaining to the war on terror, money laundering, combating extremism, and joint defence activities were included. For example, on terrorism, the statement states that “the two leaders expressed strong condemnation of the phenomenon of terrorism in all its forms and manifestations, irrespective of who the perpetrators were and of their motivations.”<sup>26</sup> It further stated that “they called on all states to reject the use of terrorism against other countries; dismantle terrorism infrastructures where they happen to exist and to cut off any kind of support and financing to the terrorists operating and perpetrating terrorism from their territories against other states; and bring perpetrators of acts of terrorism to justice.”<sup>27</sup> To jointly fight the scourge of terrorism, which posed a threat to both countries, they resolved in their joint statement “to enhance cooperation in counter-terrorism operations, intelligence sharing and capacity building and to strengthen cooperation in law enforcement, anti-money laundering, drug trafficking and other transnational crimes.”<sup>28</sup>

Concerning defence cooperation, the joint statement states that “the two leaders agreed upon the need to intensify bilateral defence cooperation, through the exchange of visits by military personnel and experts, the conduct of joint military exercises, exchange of visits of ships and aircraft and supply of arms and ammunition and their joint development.”<sup>29</sup> For cooperation in

maritime security, the document goes on to say that “the two leaders agreed to enhance cooperation to strengthen maritime security in the Gulf and the Indian Ocean regions, vital for the security and prosperity of both countries.”<sup>30</sup>

Upon closer scrutiny of the document cited above, it is evident that the two countries have ultimately come out in the open with their intention to forge a closer strategic partnership encompassing all fields of statecraft, including the economy, education and culture, war on terror, defence cooperation, and maritime collaboration.

### **Prince Muhammad bin Salman’s Visit to India (2019)**

The visit by the Crown Prince Salman more recently was arguably the most significant in that the two countries were more categorical in their resolve to forge and take forward an enduring strategic partnership. A relationship that de-hyphenated the bilateral relationship from third countries and specific pledges were made for the Saudi Kingdom to invest hundreds of billions of dollars in India. The state reception was offered to the visiting prince in which, contrary to tradition, Prime Minister Modi himself went to the airport to receive the visiting guest amid the sounds of traditional Indian *tabla*<sup>31</sup> indicated the level of warmth that existed between the two countries.

During the visit, the two sides decided to hold a summit meeting every two years, and to set up a Strategic Partnership Council, thus formalising the pronouncements of the two countries for a strategic partnership. The Crown Prince, in a joint press conference with Prime Minister Modi, “announced a \$100 billion investment in India in areas including energy, refining, petrochemicals, infrastructure, agriculture and manufacturing.”<sup>32</sup> According to Prime Minister Modi, while speaking in the same press conference, “Saudi Arabia has agreed to become part of the International Solar Alliance, initiated by India to promote solar energy.”<sup>33</sup>

From the developments in the India-Saudi Arabia relations which encompass all fields of life including economy, energy, defence, counter-terrorism, cultural, educational, and scientific exchanges, one can easily discern the signs of the emergence of a long term strategic partnership, a partnership that fits well into the American vision about the world, a world of alliances, and one characterised by competition and containment. Both India and Saudi Arabia are close strategic partners with the US. The words of Prime Minister Modi while saying that "India and Saudi Arabia ties will be a factor for stability, peace and security in our region and the world,"<sup>34</sup> are meaningful. His reference to stability in the region and the world connotes the extra-regional nature of the bilateral relationship.

When seen in the context of American efforts to deal with Iran, China, and Russia, the partnership between two important Western allies in Asia such as India and Saudi Arabia cannot be more welcome to American strategic agenda in the region. Some will refer to India's strong relations with Iran. But in international affairs, relationships are seen through the prism of national interest. The rhetoric of brotherly relations, based on religious affinities or historical bonds, have little value in the conduct of interstate relations. The recent sanctions regime enacted by President Trump against Iran, which hit Iranian oil exports and the eventual compliance by India by significantly curtailing its energy imports from Iran is one example of how national interests precede everything else as far as inter-state relations are concerned. Therefore, it seems that despite India's assertions not to abandon Iran, *realpolitik* seems to be guiding its foreign policy. At the moment, India seems to be fast inching closer to choose Saudi Arabia over Iran, although it is not likely to proclaim the same. As far as Saudi Arabia is concerned, its close strategic and defence association with the West is likely to further drive it closer to India, rather than China, despite the vibrant trade relationship between China and Saudi Arabia.

## **Muhammad bin Salman-Narendra Modi Joint Statement**

A look at the Joint Statement issued at the conclusion of the aforementioned visit is instructive in that it sheds some light on the geo-strategic nature of the relationship and some sensitive subjects covered. For example, the statement highlights the joint activities in the defence field. It states: "The two sides welcomed the recent developments in India-Saudi co-operation in the defence sector, particularly in the fields of exchange of expertise and training, especially after the MoU on Defence Cooperation signed during the visit of His Majesty King Salman bin Abdulaziz Al Saud to India in February 2014. In this context, they welcomed the outcomes of the recently held 4th Joint Committee on Defence Cooperation in Riyadh on 2-3 January 2019." On cooperation between the two navies, the statement says that "the two sides agreed to hold the inaugural joint naval exercises at the earliest and agreed to further expand bilateral exercises in other domains."<sup>35</sup>

Cooperation in the defence field between India and Saudi Arabia in the past would have raised eyebrows given India's close defence ties with Israel and Riyadh's close defence cooperation with Pakistan. It appears that the activities of Iran in West Asia and Israel's aggressive posture towards Iran, not dissimilar to Saudi approach to the Iranian regime, have led countries like India, Saudi Arabia, and Israel to come closer. India seems to be working as a bridge between Saudi Arabia and Israel. One indication of this happening is a recent step by Saudi Arabia in which it allowed India to use its airspace for its flights to and from Israel, even though Saudi Arabia does not recognise Israel.

The issue of terrorism inspires peculiar feelings in the two countries, as both have been threatened and attacked by terrorists at different times. Saudi Arabia has a long-held grudge against Iran, which it accuses of harbouring terrorist proxies to use for geostrategic gains in the region and for seeking to destabilise Saudi Arabia.

Similarly, India has for a long time accused Pakistan of using terrorism as an instrument of foreign policy and as a tool to destabilise India. So, it is in this context that references to joint anti-terror measures in the Joint Statement need to be looked at. For example, it states:

“Affirming that the menace of extremism and terrorism threatens all nations and societies, the two sides rejected any attempt to link this universal phenomenon to any particular race, religion or culture. Both sides called on all states to reject the use of terrorism against other countries; dismantle terrorism infrastructures where they happen to exist and to cut off any kind of support and financing to the terrorists perpetrating terrorism from all territories against other states; and bring perpetrators of acts of terrorism to justice.”<sup>36</sup>

It further states:

“The two sides also noted the need for concerted action by the international community against terrorism including through early adoption of the UN Comprehensive Convention on International Terrorism and underlined the importance of comprehensive sanctioning of terrorists and their organisations by the UN.”<sup>37</sup>

The joint statement has underlined its satisfaction over progress on goals set out in the previous declarations and MoUs and has reiterated the two sides’ commitment to take the relationship forward on the path of further cooperation in a range of fields including cooperation in energy, renewables, technical support, culture, education, and so on. As a goodwill gesture, the Crown Prince ordered the release of hundreds of Indian prisoners in Saudi jails and pledged to increase haj quota for Indian citizens in proportion with the latest census statistics.

## **India-Saudi Arabia Bilateral Trade and Economic Relations**

Trade and investment constitute the backbone of the India-Saudi Arabia relationship. Many factors have contributed to Saudi Arabia's strategic decision to launch ambitious economic plans, such as Prince Muhammad bin Salman's vision 2030, to reduce its reliance for revenue on hydrocarbons. This thinking was born out of the fact that the world is better disposed to the use of cleaner energy sources than the fossil fuels that lead to environmental pollution. Moreover, the US, historically the main importer of Middle Eastern oil, has long made the strategic decision to reduce its reliance on import of Middle Eastern oil. Therefore, it has increased its domestic production which has led to a significant decrease in import. So, the Saudi leadership understood the new ground realities and have focused on, firstly, to boost its sales to the newly emerging economies such as India and China, and secondly, on diversification of its economy to include the promotion of tourism, venture into the manufacturing sector, and to invest the huge amounts parked in their national kitty in lucrative destinations such as India. Therefore, India and Saudi Arabia are on a trajectory of strong economic and investment ties.

The trade balance between the two countries is tilted in favour of Saudi Arabia because India imports a significant quantity of oil from the Kingdom. "India imports nearly 83% of the oil it consumes, making it one of the biggest importers of oil in the world."<sup>38</sup> "Saudi Arabia is a key pillar of India's energy security, being a source of 17 per cent or more of crude oil and 32 per cent of LPG requirements of India."<sup>39</sup> But the two countries are working on increasing the overall volume of bilateral trade by diversifying their trade relations.

Development of tourism in Saudi Arabia is one of the main planks of the Kingdom's vision 2030 and its drive to diversify its economy. Indian companies are investing in the tourism sector. The Crown Prince has identified the Red Sea coastline for development as

a tourist destination on the style of Dubai. According to reports, Saudi Arabia is "seeking Indian investments in developing a vibrant entertainment industry; this also includes an amusement hub near Riyadh, called Qiddiya entertainment city. An Indian company is already coming up with over 300 cinemas in the Kingdom."<sup>40</sup>

As far as cooperation in the energy and petrochemicals is concerned, "Saudi Aramco will buy a 20% stake in the oil-to-chemicals business of India's Reliance Industries Ltd., including the 1.24 million barrels-a-day Jamnagar refining complex on the country's west coast."<sup>41</sup> According to details, "Reliance values its oil-to-chemicals division at \$75 billion including debt, implying a \$15 billion valuation for the stake."<sup>42</sup>

India has signed up for all-out support of the Saudi Crown Prince's Vision 2030, as has the latter to India's multiple visions for economic and technological advancements such as Make in India and the so-called Solar Alliance launched by Prime Minister Modi. Launched by the Saudi Crown Prince Muhammad bin Salman, the Vision 2030 aims at transforming the Saudi Kingdom in basic ways, encompassing strategic partnerships, hajj and umrah, human capital development, national character enrichment, improving quality of life, financial sector development, housing, fiscal discipline, national transformation, public investment fund, privatisation, national companies' promotion, and national industrial development. To achieve the goals listed in the vision 2030, the Saudi government encourages other countries to contribute to its promotion in win-win arrangements.

Prime Minister Modi has twice visited Riyadh in just three years, to participate in the investment summit which the Saudi government has organised over the past few years to promote its vision 2030. In a significant development, the two countries signed a document that provides for setting up a Strategic Partnership Council. As reported in the media, "The two sides signed a record number of 12



agreements across sectors including medicine and diplomatic academies. Investment-related pacts worth \$ 15 billion were signed on the sidelines of Future Investment Initiative meet. Riyadh has emerged as a key partner for India in the Gulf with Saudi Arabia under Crown Prince Salman is opening new doors of opportunities and seeking wider globalisation."<sup>43</sup>

### **Strategic Partnership in the International Context**

The evolving relationship between India and Saudi Arabia is not happening in isolation of how the rest of the world looks like. There was a time when the two countries could not be categorised as friends, let alone having any hope of forging a strategic partnership. The post-Cold War world and especially the post 9/11 world has changed both the countries drastically.

The economy alone cannot be the factor in the evolving Saudi-India partnership. The international context, which has lately come to be characterised by international power politics and the phenomena of competition and containment, as clearly spelt out by President Trump with regard to containing China, also seems to be an important element in the evolving India-Saudi Arabia strategic partnership. Saudi Arabia in the Middle East and India in South Asia and the broader Indo-Pacific region are the main pillars of the US foreign policy in the region. Both countries in their respective regions are characterised as close American allies in the National Security Strategy of the United States of America, a critical document recently released by the Trump administration.

The document gives a brief overview of America's priorities in the world, and the danger it is facing to its leadership. According to the document, "a geo-political competition between free and repressive visions of world order is taking place in the Indo-Pacific region. The region, which stretches from the West coast of India to the Western shores of the United States, represents the most populous and economically dynamic part of the world. The US interest in a free

and open Indo-Pacific extends back to the earliest days of our republic.<sup>44</sup> In this context, while highlighting the importance of India in ensuring that goal, it states, “We welcome India’s emergence as a leading global power and stronger strategic and defence partner.”<sup>45</sup> About the politics and economics of the Middle East, the document states, “We will encourage states in the region, including Egypt and Saudi Arabia, to continue modernizing their economies.”<sup>46</sup> In the defence arena, it states, “We will retain the necessary American military presence in the region to protect the United States and our allies from terrorist attacks and preserve a favourable regional balance of power.”<sup>47</sup> About Iran, the document states, “We will help partners procure interoperable missile defence and other capabilities to better defend against active missile threats. We will work with partners to neutralize Iran’s malign activities in the region.”<sup>48</sup>

A brief reading of American documents such as the one just quoted and the alliances, counter-alliances and the pursuit of strategic partnerships between countries, such as the one between India and Saudi Arabia, helps in connecting the dots. With regard to India and Saudi Arabia, the decision by the Trump administration to ignore the Khashoggi incident while dealing with Saudi Arabia, India’s discontinuation to stop importing oil from Iran in line with the US sanctions, the toning down of rhetoric in New Delhi about the Iranian port of Chabahar, Saudi Arabia allowing overflights between Israel and India, and the close defence and strategic partnership between Riyadh and New Delhi are pursuing, point to the fact that the two countries are developing their bilateral relationship in ways that help the Western and US vision for the international system. A vision that seeks the continued relevance of American-led liberal international order, which China, Iran, and Russia purportedly seek to alter.

## **Conclusion**

This paper sought to explore the development of India-Saudi Arabia relations over the past two decades. The purpose of such a

review was to help readers understand the direction this relationship is taking. Of particular significance is the fact that the two countries once belonged to opposing camps in the international order. Both Saudi Arabia and Pakistan associated with the Western block. That is why Saudi Arabia was one of the closest allies of Pakistan on international forums, especially over the Kashmir issue and generally in the overall gamut of India-Pakistan relations. Secondly, India always kept good friendly relations with Iran. Later on, India's policy was not to entangle itself in the Middle Eastern rivalries and to maintain cordiality with each country independent of bilateral relations with these countries.

With the onset of Prime Minister Modi-led BJP in India, New Delhi seems to have abandoned the policy of caring too much about annoying one actor by having relations with another. The same feeling seems to exist in Riyadh. India would always take into consideration sensitivities in Tehran while dealing with Saudi Arabia. That seems to be changing. The case in point is New Delhi's willingness to embrace Saudi Arabia as a full-fledged strategic partner, encompassing all fields of statecraft, including defence, counter-terrorism cooperation, economy, and diplomacy. Moreover, India's initial reservations on Iran sanctions, but eventually complying with American demand to cut energy imports from Iran is another instance of the fact that New Delhi might have left behind its legacy of keeping equal cordiality with the Middle Eastern countries, especially with regard to Iran and Saudi Arabia.

Another case in point that indicates a strategic shift in Riyadh is its embrace of New Delhi as a full-fledged strategic partner without apparently paying too much heed to Pakistan's sensitivities. Islamabad and Riyadh always supported each other bilaterally and in international forums. Riyadh still is a close partner of Islamabad, one of its indication is its recent extension of financial support to the government of Pakistan at a time when Islamabad faced critical current account issues. Pakistan and Saudi Arabia have cooperated

militarily and Islamabad has repeatedly reiterated its determination to help protect the Saudi Kingdom, especially the sacred places situated in the kingdom, in case Saudi Arabia engages in conflict. But recent developments between Pakistan and India, including the Balakot incident, Pakistan's reprisal, and the more recent legal steps which New Delhi has taken in Kashmir, and Saudi Arabia's aversion to condemning Indian actions as it did in the past, indicate a change of policy in Riyadh with regard to conflicts between India and Pakistan.

The cordiality in Saudi Arabia's relations with India, as discussed in the foregoing, does not emanate from any hostile feelings towards Pakistan. It is rather the result of changing international strategic landscape, the economy of India, economic and social reform agenda in Saudi Arabia as outlined in its vision 2030, and the environment around Saudi Arabia, including the Iran issue, which has pushed the Kingdom closer to New Delhi. What Islamabad needs to do is to revisit its economic and strategic policies. A vibrant economy is attractive to all. Secondly, having good friendly relations in the neighbourhood and internationally is another factor making a country an attractive economic and strategic destination. Pakistan needs to make determined efforts towards resolving its issues with its neighbours, especially with India, even though the BJP led government in New Delhi would not allow any opportunity for that to happen. It further needs to focus on ensuring the kind of economic growth that other countries in the region, including China, Bangladesh, and India have ensured. Their economic vibrancy has made these countries destinations of choice for other countries, including for Saudi Arabia.

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# INDO-US CIVIL NUCLEAR DEAL: DELAYED PROGRESS AND IMPLICIT GAINS

NABILA JAFFER\*

## Abstract

*The post-Cold War geopolitical environment and China's emergence as an economic powerhouse was the principal catalyst of the Indo-US civil nuclear deal. The civil nuclear deal was a business deal between India and the United States. The purpose was to fulfil India's increasing energy demands by opening up to the international nuclear market and to purchase nuclear power plants from the US. However, the operationalisation of the deal could not take off for more than a decade after the conclusion of the agreement in 2008 due to India's Civil Liability for Nuclear Damage Act of 2010. On the contrary, the deal helped India achieve many of the unstated goals. This deal enabled India to import fissile material for its dual-use technologies under the limited safeguards of the International Atomic Energy Agency (IAEA) after getting a waiver from the Nuclear Supplier Group (NSG). The deal also enabled India to apply for the full membership of NSG without being a signatory to the Nuclear Non-proliferation Treaty (NPT) with the strong backing of the US, which makes it an exceptional case. This paper aims to analyse how this deal served the strategic objectives of India and the US despite the delay in the operationalisation of the deal for more than a decade. This paper argues that the deal happened under the*

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*cover of business in civilian nuclear technology while the actual aim was to empower India against rising China as a part of the US containment policy. The paper explores how India's military nuclear programme is benefiting from its nuclear material trade and how it is harmful to the strategic stability in South Asia.*

**Keywords:** *civil nuclear deal, implicit gains, nuclear power plants, fissile material, unsafeguarded nuclear programme, nuclear technology*

## **Introduction**

The operationalisation of the civil nuclear deal between India and the United States, approved on 1 October 2008, was delayed for more than a decade. The stated purpose behind the deal was India's quest for producing a vast quantity of energy by reaching out to international trade in civil nuclear technology and material. However, during the period, it only achieved most of its unstated goals and failed to build new reactors for electricity production. Despite the increasing demand for energy since 2010, India's civil nuclear liability law's inconsistency with international conventions had put limits on foreign technology transfer to India. Even after redressing the liability issues, the progress in the implementation process is still slow. The ground-breaking negotiations between President Barack Obama and Indian Prime Minister Narendra Modi in 2015 and 2016 resulted in contractual arrangements for six reactors, which were due to be signed in 2017.<sup>1</sup> After further delay, both countries reached an agreement on 13 March 2019 to build six nuclear reactors. Progress started because of the personal interest of the US President Donald Trump who is interested in selling more energy products to India that is ranked the third-biggest buyer of oil.<sup>2</sup> Russia also agreed in October 2018 to sign a pact with India to build six Russian-design nuclear reactors on a new site.<sup>3</sup> On President Trump's visit to India in February 2020, in a joint statement, Trump and Modi gave green light to the Nuclear Power Corporation of India Limited (NPCIL) and Westinghouse

Electric Company to prepare a commercial and technical proposal for the construction of six nuclear reactors in India.<sup>4</sup>

Due to the persistent delay in the operationalisation of the deal, the true potential of the civil nuclear deal has not been realised. Nevertheless, this deal materialised many of India's unstated goals since 2005. First, the deal opened doors for broader commercial, strategic, and defence cooperation between India and the US. It enabled India to trade in civil nuclear technology without signing the Nuclear Non-proliferation Treaty (NPT) and the Comprehensive Test Ban Treaty (CTBT) that marked the Indian nuclear programme as an exceptional case since the establishment of the nuclear non-proliferation regimes.<sup>5</sup>

Following the nuclear agreement, the US support granted India a waiver from the Nuclear Supplier Groups (NSG) safeguards to import fissile material and civil nuclear technology. Therefore, the deal opened doors for India to establish nuclear cooperation with other members of the NSG and accorded India a 'de facto status' of a nuclear weapons state (NWS).<sup>6</sup> Nuclear cooperation with the US further emboldened India to demand NSG membership despite being a non-signatory of the NPT. Moreover, the deal also encouraged India to spearhead its aspirations to become a permanent member of the United Nations Security Council (UNSC) in its drive to become a global power. Most importantly, the strategic partnership with the US accelerated the modernisation of India's missile technology and space technology programmes.<sup>7</sup> The most alarming aspect of the cooperation is that India's capability of nuclear trade with NSG members also helped an increase in its nuclear weapons stockpile and its upgrade.

The existing studies on nuclear cooperation between India and the US do not cover the gaps in the implementation of the actual goals of the nuclear deal. Most of the studies have focused on the criticism of the deal and its implications for the nuclear non-proliferation in the

world. Nevertheless, the dichotomy in stated and unstated gains from the deal has not been addressed. It is important to study how India remained at an advantageous position by entering into the international nuclear market through an NSG waiver, while the US has not been able to construct nuclear reactors in India so far.

It is in this context that this paper attempts to analyse the delay in the implementation of the stated goals of the Indo-US civil nuclear deal and the deal as a gateway for expansion of Indian nuclear programme for military purposes. After a brief historical background and theoretical perspective of the nuclear cooperation between the two states, it highlights the progress in the implementation of the 2008 Indo-US nuclear deal. It covers new developments in the implementation of the deal since 2014, the achieved goals, and varied implementation process. Furthermore, the paper examines how nuclear cooperation with the US enabled India to transform the civil nuclear deal for gaining advantages in redefining its nuclear position, nuclear arms build-up and its modernisation. The convergence of interests between India and the US to balance against rising China is highlighted as a major driver behind the deal and the strengthening of India's defence capabilities vis-à-vis China as an outcome. The paper addresses the major question that how the nuclear deal served the purpose of India and the US despite the delay in implementation of its stated goals.

### **Indo-US Civil Nuclear Deal: Converging Interests**

The Indo-US nuclear cooperation—once suspended in 1974 due to India's so-called peaceful nuclear tests that had also led to the formation of NSG based on the technology export-control policy—was re-established due to convergence of interests between the two countries in the new millennium. Nuclear cooperation between India and the US dates back to 1950s when the US promoted India's use of atomic energy by building a nuclear reactor for India. The US not only provided nuclear fuel to India but also allowed Indian

scientists to study at US nuclear laboratories.<sup>8</sup> India conducted a nuclear test after six years of the signing of the NPT in 1968, which prohibited nuclear weapons states (NWS) from trade with countries non-signatory to the NPT. In 1968, India refused to sign the NPT, claiming it was biased. The US was then legally bound to cut cooperation in nuclear energy. However, it was not a permanent setback to their nuclear cooperation.<sup>9</sup>

Relations between India and the US remained estranged throughout the Cold War and rejuvenated from 1991 to 2001. The US policy vis-à-vis South Asia, particularly India, radically changed in the wake of the challenges of terrorism and China's economic expansion. The economic and commercial interests of the US also played a great role in forging new ties with India.<sup>10</sup> The US companies anticipated multibillion-dollar reactor-building contracts with India.<sup>11</sup> Hence, driven by its national interests, the US ended its longstanding non-proliferation orthodoxy by announcing the historic and controversial Indo-US civilian nuclear deal in a joint statement by former US president George W. Bush and former Indian prime minister Manmohan Singh on 18 July 2005.<sup>12</sup> The US Congress approved the deal on 1 October 2008. It was also popularly called 123 Agreement (123 was a section of the US Atomic Energy Act, which was revised by the Congress to permit nuclear trade with India). The deal not only facilitated nuclear cooperation between India and the US but also with others by getting an approval of the International Atomic Energy Agency (IAEA) and the NSG.

These arrangements enabled India to benefit from international civil nuclear trade after four decades of exclusion. India planned the expansion of its nuclear sector for civil use through high-capacity imported reactors and indigenous programmes. In the beginning, France, Russia, and the US facilitated their high-capacity reactor imports.<sup>13</sup> Later, India concluded nuclear cooperation agreements with Argentina, Australia, Canada, Czech Republic,

Japan, Kazakhstan, Mongolia, Namibia, South Korea, United Kingdom, and Vietnam.<sup>14</sup>

The deal obliged India to separate its civil nuclear facilities from military ones and agreed to place 14 of its 22 nuclear reactors under the IAEA safeguards. India did not need to alter its nuclear programme for military purposes but the deal only obliged it to maintain its self-declared moratorium on future nuclear weapons testing. As per US law, further tests would lead the US to pull out of the nuclear deal.<sup>15</sup> It is an exceptional case in which India continued with the nuclear programme for military purposes and received nuclear materials under the limited scope of IAEA safeguards from NSG members despite being a non-signatory to NPT.<sup>16</sup> Therefore, the attention and criticism it invited worldwide were inevitable. The deal was criticised for the reason that India had misused its nuclear cooperation with the US previously in 1974 when it conducted its first nuclear test at Pokhran. The critics feared that a similar deal might increase and modernise India's nuclear programme for military purposes.<sup>17</sup> Despite the US clarification on bringing India under the umbrella of the IAEA to foster cooperation in nuclear non-proliferation, the deal shows double standards and deviation from Article 1 of the NPT.<sup>18</sup> The deal undermined the global non-proliferation regime and also endangered strategic stability in South Asia for its discrimination against Pakistan for similar treatment. In later years, the deal was also criticised because India has not fully separated its civilian nuclear facilities from the military nuclear programmes. It has placed several of its nuclear facilities for civilian use under safeguards but it has retained many dual-purpose unsafeguarded facilities.<sup>19</sup>

Despite controversies and reservations, India and the US fostered strategic cooperation, while the sale and purchase of nuclear reactors were still in process. Progress remained slow because of India's Civil Liability for Nuclear Damage Act, 2010, that so far had

dissuaded the US nuclear firms from any commercial investment in India.<sup>20</sup> However, the deal was a gateway to a strategically beneficial interaction between the two countries. According to a structural realist perspective, a special interaction of states with other states through special policies can add to its power, wealth, and influence.<sup>21</sup> Such interaction may not yield equal material gains for both countries. Yet, the alliance forms due to the convergence of interests in certain areas with both explicit and implicit goals. It might be to warn the potential opponent or to use some states as balancers against opponents. The US entered into the civil nuclear deal with India not only to gain economic benefits but also to increase India's power against rising China. Similarly, India, in addition to an increase in its nuclear arms capabilities against China, also wanted to get acceptance for its nuclear programme, to become eligible to enter into the NSG, and potentially to become a member of the UNSC. Although the material gains from the civil nuclear deal are not symmetrical, owing to the delay in the implementation process, both states in terms of structural realist perspective have similar interests of balancing power against the common contender China. This deal also serves India's purpose of reinventing its relevant position in the international system.

### **India's Civil Liability for Nuclear Damage Act, 2010, and the Tracking Issue**

India's appetite for energy is increasing with the growth of its economy and population. India requires diverse sources of energy to meet its electricity demands. One of the sources was nuclear energy but India demanded insurances from the suppliers of nuclear reactors. India had put in place liability laws against the consequences of a nuclear accident in a broader public policy interest keeping in view the incident of Fukushima nuclear disaster in Japan with huge losses. India itself had experienced consequences of the Bhopal disaster in 1984 in which 15,000 deaths occurred, resulting in complex legal battles for

compensation.<sup>22</sup> Therefore, India's civil liability law provided a legal mechanism for compensation of victims of any nuclear accident.

Initially, the undetermined liability claims against the suppliers of nuclear reactors remained a major hindrance in the operationalisation of the 2008 civil nuclear deal.<sup>23</sup> The US could not proceed on the two designated sites by India in 2009 to build nuclear reactors. To resolve this ambiguity, the Indian parliament passed Civil Liability for Nuclear Damage Act in August 2010.<sup>24</sup> But the US criticised this Act because of its incompatibility with the international liability regime.<sup>25</sup> The Act failed to balance the interests of both suppliers and operators in any nuclear accident. Although Indians set the Act in line with general international standards, in which the operator was responsible for nuclear damage arising out of a nuclear incident, some of its provisions were at variance with prevalent international standards. Therefore, it hindered progress for many years. After ratifying the Convention for Supplementary Compensation for Nuclear Damage (CSC) on 4 February 2016, India needed to bring its liability law in line with it. It is an international treaty on liability and compensation for nuclear damage, adopted on 12 September 1997.<sup>26</sup> India remained adamant on amending the 2010 liability legislation. It, however, created an insurance pool to indemnify the companies that will build reactors in India against liability in case of a nuclear accident.<sup>27</sup> The delay in overcoming the legal obstacles shows that India was not eager to buy nuclear reactors from the US, which was the stated purpose of the civil nuclear deal.

Another major obstacle and more difficult than liability was the issue of tracking and accounting of nuclear material supplied by the US or produced in the US-supplied reactors in India. The US had demanded an administrative arrangement under the Indo-US civil nuclear deal to provide necessary information regarding the supplied nuclear material. The US insisted that unless it knew where the

material was located, it would not be able to provide physical security requirements and so would not be able to get a licence for nuclear reactor sale to India from the US Nuclear Regulatory Commission. India did not accept the tracking arrangement because it was of the view that the limited IAEA safeguards were enough to guarantee the peaceful use of the imported fissile material.<sup>28</sup>

### **Ending the Impasse in Nuclear Energy Cooperation Post-2014**

The status of the stalled Indo-US nuclear cooperation radically changed after Narendra Modi came into power in India. Prime Minister Narendra Modi and former President Barack Obama, in their first bilateral summit on 30 September 2014, decided to end the impasse on the implementation of the civil nuclear cooperation agreement.<sup>29</sup> In their meetings in 2015, both countries reached a ground-breaking understanding on removing all hurdles in their nuclear cooperation. Both sides agreed to start work on the operationalisation of the civilian nuclear agreement between the two countries.

According to news reports, President Obama exempted India from the US inspection or a tracking condition. This was a big favour by the US to address the 'tracking clause in the administrative arrangements' in the same IAEA safeguards. According to this, India will be liable to share the same data with its international partners that it provides to the IAEA. Under this arrangement, the US would no longer be able to track the nuclear material to ensure its non-use for military purposes.<sup>30</sup> In return, Prime Minister Modi approved a publically-funded insurance pool to cover the liability under Section 17(b). This insurance pool untied foreign suppliers from nuclear damage compensation.<sup>31</sup> It would cover supplier liability of up to \$244 million and additional costs of up to \$300 million would be arranged from the International Monetary Fund (IMF).<sup>32</sup> In this regard, the state-



owned General Insurance Corporation-Reinsurer (GIC-Re) and other Indian insurance companies will provide insurance services to Nuclear Power Corporation of India Limited (NPCIL) for covering liability under the provisions of the Act.<sup>33</sup>

After removing the legal obstacle, both governments focused on preparatory work for six nuclear reactors in June 2016. It was an icebreaker in reviving the nuclear deal in more than a decade.<sup>34</sup> Despite ending the impasse and addressing legal barriers, the process delayed further due to financial difficulties with Westinghouse and Japan's procedural issues in ratifying the deal with India. The project remained in doubt when Westinghouse filed for bankruptcy in 2017. After Canada's Brookfield Asset Management bought Westinghouse from Toshiba in August 2018, Westinghouse was encouraged by the US Energy Secretary Rick Perry to build six AP1000 reactors in India in the state of Andhra Pradesh.<sup>35</sup>

## **Mutual versus Asymmetrical Gains**

The Indo-US nuclear deal marks both mutual and asymmetrical gains for India and the US. The differences in the implementation process had hindered both India and the US from achieving the listed objectives of civil nuclear cooperation. The US, however, time and again argued that the purpose of the deal was to bring India under the nuclear non-proliferation safeguards and to enable it to produce clean energy from the civil nuclear technology. The US also had economic and commercial interests attached to the deal. By the mid of the 1990s, based on the assessment of technical experts, the Department of Atomic Energy in India had approved the purchase of eight imported reactors for the indigenous programme. It provided an opportunity for the US companies to win at least two nuclear reactors contracts out of eight.<sup>36</sup> According to Jeffery T. Bergner, Assistant Secretary of Legislative Affairs, "only the two could produce 3,000-5,000 direct jobs and 10,000-15,000 indirect jobs in America."<sup>37</sup>

The US has yet to create jobs from the nuclear reactors contracts with India. However, the Indo-US nuclear deal opened the doors for the US to make \$15 billion worth of defence sale to India until 2018.<sup>38</sup> More recently, India and the US signed defence deals worth \$3 billion on 25 February 2020 on President Donald Trump's visit to India. It includes the purchase of twenty-four MH-60 Romeo helicopters from the US for \$2.6 billion for Indian Navy and another contract to acquire six AH-64E Apache helicopters for Indian Army for \$800 million.<sup>39</sup> That makes the US the second-largest arms exporter to India after Russia. One of the mutual gains out of these defence sales was to strengthen India against rising China. On the contrary, the so-called effort of the US to bring India under nuclear safeguards is not effective because India has not completely separated the nuclear facilities for civilian use from the military ones.

On the other hand, the delay in the operationalisation of the deal provided India with an opportunity to revisit the utility of the imported reactors to produce energy. In the last 10 years, India has also realised that the cost of generating electricity from foreign nuclear reactors was high as compared to those based on indigenous designs.<sup>40</sup> The existing low prices of electricity in India had also put in question the decision of buying expensive nuclear reactors from foreign markets that cost more by committing liability insurance. Keeping this in view, India was more interested in importing nuclear fuel for its indigenous nuclear facilities instead of opting for multibillion nuclear reactors in the last several years.

India's 3-stage nuclear programme can contribute 25 per cent or more electricity to the national electric grid by 2040. They can utilise the indigenously designed and built nuclear reactors by using India's abundant thorium fuel supply. Currently, however, the indigenously designed and built pressurised heavy water reactors (PHWRs) are in stage-1 for power production, that is, contributing only 2.5 per cent of the total electricity demand to the national grid. The enlargement of

the stage-1 programme would require an optimal level of “balance in fuel supply, reprocessed fuel, nuclear waste, and the cost.”<sup>41</sup> Therefore, keeping in view its interests, India wanted an unhindered fuel supply from the international market to expand its nuclear programme to stage-3 and to resolve its liability issue. This suggests that the delay in the implementation of civil nuclear deal did not cause any cost rather it provided an opportunity for India to expand its indigenous nuclear capabilities.

### **Achievement of Implicit Goals by India**

The progress in the civil nuclear trade between the US and India occurred after more than a decade of the agreement in 2005. However, India achieved many of the implicit goals through special favours it leveraged from the US in the given period. India felt elevated in the region and globally after attaining distinctive treatment from the US and the nuclear export control regimes. Bilateral relations have moved very far after the signing of the agreement, even though India’s liability law has remained a hurdle in the purchase of nuclear reactors from the US for more than a decade. The biggest achievement of India was the removal of sanctions on the import of the nuclear-related advanced technology and its entry into the global nuclear market. Another major development was a boost in trade between the two countries and the US becoming the largest trading partner of India after the deal. Not just commercial relations enhanced between them but people-to-people contacts also intensified after the deal. Defence cooperation was augmented and the US became the second-largest supplier of arms to India along with increasing cooperation on counter-terrorism and intelligence-sharing. The US also de-hyphenated its relations with India and Pakistan by refusing a similar deal with Pakistan and neutralised its position on Kashmir. America started viewing India as a parallel great power in Asia with China. It not only facilitated India to expand its nuclear programme but also boosted India’s position globally as an important emerging power.<sup>42</sup>

The civil nuclear deal brought India under the limited scope of IAEA safeguards but, in return, India gained more incentives than obligations. India completed the Separation Plan ahead of the December 2014 deadline and ratified the IAEA “India-specific Additional Protocol” in June 2014. Resultantly, India got a strong US support in its pledge to become part of the NSG in June 2016.<sup>43</sup> India had formally placed the application for membership in the 48-nation group on 12 May 2016 with active support from the United States, Britain, Russia, France, and other world powers. President Barack Obama cordially received India’s application to join the NSG in his meeting with Indian prime minister in 2016 and established that New Delhi fulfils the criteria to join the group. The US also convinced other NSG members to support India’s application at the NSG plenary session in 2016.<sup>44</sup> Had China not been adamant on opposing Indian application to NSG membership<sup>45</sup> by calling it discriminatory, India would have become a member.<sup>46</sup> In his trip to India in February 2020, President Trump reaffirmed US support for India’s permanent membership on a reformed UNSC. He also extended strong US support for India’s entry into the NSG without any delay.<sup>47</sup>

India sought NSG membership on the pretext of its ongoing nuclear business with NSG members. Hence, the nuclear deal enabled India to advance its efforts for becoming an NSG member without signing the NPT. On the other hand, the special treatment of India due to US support hinders Pakistan’s NSG membership. Despite making NSG membership formula flexible that would not allow India to block Pakistan’s eligibility for membership, Pakistan will require similar civil nuclear trade with members of NSG after getting exemption from its full-scope safeguards requirements.<sup>48</sup>

The Indo-US nuclear deal also facilitated India to become a member of Missile Technology Control Regime (MTCR), a 34-nation group on 27 June 2016. India failed to get NSG membership due to China’s opposition but it made its entry into another important

multilateral nuclear regime.<sup>49</sup> Admission to the MTCR will enable India to buy high-end missile and unmanned aerial vehicle (UAV) technology and enhance its joint ventures with Russia. It will also permit India to market weapon systems such as the BrahMos supersonic cruise missile, which will greatly help in the modernisation of nuclear weapons of India.<sup>50</sup> India also showed its willingness to join the other two regimes the informal Australia Group (Chemical and Biological weapons) and the Wassenaar Arrangement designed for export control of conventional arms and dual-use goods and technologies.<sup>51</sup> The US economic interests and China's containment policy played a huge role in giving incentives to India. India, however, prudently turned the deal to its advantage with no tangible benefits to the US nuclear companies in the last several years due to a delay in the operationalisation and diverging interests in the implementation process.

### **Expansion of India's Nuclear Capabilities**

Since India has retained much of its indigenous nuclear programme outside of the safeguards, it can stockpile large quantities of 'weapons-grade nuclear materials'.<sup>52</sup>

The Indian nuclear programme is the largest and oldest unsafeguarded nuclear programme in the entire developing world. India has maintained both the military and a substantial part of its civil nuclear programme outside of IAEA safeguards.<sup>53</sup> Besides its existing military programme, which is unsafeguarded, India is also pursuing several new unsafeguarded nuclear plants and facilities as part of its 3-stage nuclear power plan. Therefore, the unsafeguarded civilian nuclear facilities of India make it impossible to confirm that these materials are not used in weapons.<sup>54</sup> Two factors establish that the Indo-US nuclear deal can contribute to the expansion of India's nuclear capabilities. The first one is the flawed separation plan and the second is the usage of imported nuclear fuel in unsafeguarded civilian nuclear facilities.

### **Flawed Separation Plan**

Despite India's pledge in the nuclear deal with the US to put the civilian nuclear facilities under safeguards, it has classified its nuclear programme into three streams, i.e., the civilian safeguarded, the civilian unsafeguarded, and the military. Due to lack of transparency and overlap between the three streams, some civilian facilities even working under certain provisions of IAEA can contribute to India's stockpile of unsafeguarded 'weapon-usable material'. The separation plan is flawed because it only included some of India's nuclear power reactors associated with fuel production and spent fuel storage. The IAEA safeguards are mainly applied to the nuclear facilities and the material supplied by other states. A number of nuclear facilities, including eight of its India's Pressurised Heavy Water Reactors (PHWRs) that serve a civilian or commercial function, are unsafeguarded. According to a Belfer Center Report of 2016, India's PHWRs are used as sources of 'weapons-grade plutonium' for its military programme. The report also points out India's Fast Breeder Reactors (FBRs) and thorium fuel cycle programmes into the category of civilian unsafeguarded that are also capable of producing unsafeguarded 'weapons-usable material'.<sup>55</sup> However, those FBRs with the capability to produce plutonium for nuclear weapons operate outside of the safeguards because they function under the military facilities. A report of Project Alpha of the King's College, in its efforts to highlight the areas of concern in India's nuclear programme and its membership in NSG, found that even after "India's separation plan, there remains a high degree of connection between civil and military activity, especially in nuclear and missile sectors."<sup>56</sup>

Moreover, a Belfer Center report also highlighted the availability of "five plus or minus three tons of unsafeguarded separated plutonium (and considerably more unsafeguarded spent fuel) from the power reactors, which is available to its nuclear weapons programme and could hypothetically be used to significantly increase

the size of India's nuclear arsenal." <sup>57</sup> This suggests that India might be deliberately accumulating some of this material to enhance its capability to increase the number of nuclear weapons anytime. As many of India's PHWRs for civilian purposes are allegedly provided weapon-grade plutonium for its military programme, "India's civilian unsafeguarded programme" is also a matter of concern. <sup>58</sup>

The purpose behind keeping fissile material production facilities outside the safeguards is to use the facilities for producing weapons-grade material at any time. Moreover, India's stockpile of the reactor-grade plutonium would continue to grow and remain outside of safeguards because of its strategic significance. According to a study by a Pakistani nuclear analyst Mansoor Ahmed for the Belfer Center of Science and International Affairs, US, India has a fissile material stock worth 2,600 nuclear warheads. <sup>59</sup> However, the figure can vary according to different methodical calculations. Similar claims by Mansoor Ahmed in Pakistani daily *Dawn* in 2014 that India had enough fissile material to produce 2,000 nuclear weapons were challenged by the Bulletin of the Atomic Scientists through a review of the math of the produced fissile material and its required quantity as per warhead. The study quoted the Institute for Science and International Security (ISIS), which estimates that until "the end of 2014, India likely possessed about 550 kilograms of weapons-grade plutonium, 100 to 200 kilograms of HEU intended for use in thermonuclear weapons, and 2.9 metric tons of separated reactor-grade plutonium. The study assessed that this fissile material was sufficient to produce about 75 to 125 nuclear warheads, with 100 nuclear weapons as the median estimate." <sup>60</sup> In contrast, another study titled *Indian Unsafeguarded Nuclear Programme* states, "India has enough indigenous uranium to cover its weapons and energy requirements of more than a century, placing Indian nuclear arsenal at around 500 warheads," which is still a big number. <sup>61</sup>

### **Imported Fuel in Unsafeguarded Nuclear Facilities**

India has planned to produce a total of 14.6 Gigawatt electricity by 2024 and 63 Gigawatt by 2032 from a “combination of safeguarded and unsafeguarded reactors that would lead to 25 per cent nuclear share of electricity generation by 2050.”<sup>62</sup> The 3-stage nuclear programme has envisioned utilising thorium that is abundant in India. However, technically it requires fissile material to sustain a chain reaction upon the bombardment of neutrons. In this process, thorium can be transformed into a fissile radioisotope but cannot itself continue the chain reaction. In a thorium reactor, a fissile material like uranium or plutonium requires to be covered up by thorium. For this purpose, India can use imported uranium or plutonium to drive the chain reaction to produce energy while at the same time can transform the fertile-material into fissile-material.”<sup>63</sup>

To continue the process, these reactors would have to produce excessive material of plutonium to fulfil its fuel needs.<sup>64</sup> Therefore, the process can also be used to produce both electricity and unsafeguarded-plutonium. This indicates an overlap between the civilian safeguarded stream and the civilian unsafeguarded stream with a potential to increase weapons-grade nuclear material. As India reprocesses spent fuel from its safeguarded power reactors, the quantity of separated plutonium under safeguards will rise. This shows that the use of safeguarded nuclear material in these reactors can also contribute to the weapons-grade material for military purpose. In this regard, FBRs with a dual function of using and producing large quantities of plutonium can become major proliferation concern.<sup>65</sup>

India has operated PHWRs for decades now. The 500 MW Prototype Fast Breeder Reactor (PFBR) at Kalpakkam has already commenced. Four more FBRs have been approved in 2016 two at Kalpakkam and two elsewhere. This would mark the entry of India’s nuclear programme into the second stage. However, it will be a long process, requiring many more FBRs and at least another four decades



before it develops an optimum quantity of fissile material inventory to start the third-stage. It is reported that India will not wait long. Therefore, it will prefer to obtain fissile material from the international nuclear market. Presently, there is no commerce in plutonium due to the lack of legal mechanisms. The NPT prohibits the transfer of fissionable-material that also includes unsafeguarded-plutonium. However, India can import the material under the legal cover for the 'safeguarded nuclear facilities'.<sup>66</sup> Besides, "the overlap between civilian and military nuclear activities is likely to intensify as India scales up its nuclear power programme and its enrichment and reprocessing industries."<sup>67</sup>

As suggested by the reports, India's strategic weapons programmes have benefitted from the technology and assistance acquired through the civil nuclear-trade channels.<sup>68</sup> Since the US also ended its check on the supplied nuclear material to India, through tracking it can reduce a chance of keeping accurate records of the fissionable-material under the 'limited safeguards of IAEA'. India also continues resistance in accepting additional non-proliferation commitments and obligations, including the safeguards and CTBT. A clear risk is indicated in a report by King's College, which states, "nuclear material trade with India will not only increase its nuclear weapons latency but also the capacity to scale up the quantity of nuclear weapons."<sup>69</sup>

## **Modernisation of Nuclear Weapons**

To expand the horizon of its nuclear deterrence, India has stepped up to modernise its nuclear arsenal by arranging several new nuclear weapon delivery systems. According to an estimate by atomic scientists, currently, India has seven kinds of nuclear-capable systems including two aircraft, four land-based ballistic missiles, cruise missile air, and sea-based missiles, one sea-based ballistic. Reportedly, India is working on four more systems. The programme is actively pursued by

producing long-range land and sea-based missiles for possible function within the next decade as given in Table 1.<sup>70</sup>

Table 1

Type	NATO Designation	Number of launchers	Year Deployed	Range (kilometres)	Warhead x yield (kilotons)	Number of warheads
Aircraft						
Vajra	Mirage 2000H	~16	1985	1,850	1 × bomb	~16
Shamsher	Jaguar IS/IB	~32	1981	1,600	1 × bomb	~32
Subtotal:		~48				~48
Land-based ballistic missiles						
Prithvi-2	n.a.	~24	~24	350 <sup>b</sup>	1 × 12	~24
Agni-1	n.a.	~20	2007 <sup>c</sup>	700+	1 × 40	~20
Agni-2	n.a.	~8	2011 <sup>d</sup>	2,000+	1 × 40	~16
Agni-3	n.a.	~8	2014?	3,200+	1 × 40	~8
Agni-4	n.a.	n.a.	(2018)	3,500+	1 × 40	n.a.
Agni-5	n.a.	n.a.	(2020)	5,200+	1 × 40	n.a.
Subtotal:		~60				~60 <sup>e</sup>
Sea-based ballistic missiles						
Dhanush	n.a.	2	2013	400	1 × 12	4
K-15	(Sagarika)	(12)	(2018)	700	1 × 12	(12)
K-4	n.a.	(4)	?	3500	1 × ?	(0)
Subtotal:		(18)				(16)
Total						130-140

Source: Indian Nuclear Forces, 2018

The expanded nuclear programmes of India, both the safeguarded and the unsafeguarded nuclear infrastructure or facilities, have significantly increased India's capability to produce a large number of nuclear warheads. India's planned six FBRs have increased its capacity to produce plutonium for weapons. According to a report

produced by SIPRI in 2017, "India is also expanding its uranium enrichment capabilities with the construction of a new gas centrifuge facility."<sup>71</sup> Moreover, India has planned to build new 'naval propulsion reactors' for which it expanded its centrifuge-enrichment capacity. This new facility shows India's intentions "to move towards thermonuclear weapons by blending the current plutonium arsenal with uranium secondaries."<sup>72</sup>

Another SIPRI report, produced in 2019 indicates that India currently possesses 130-140 nuclear weapons, that is expected to increase to 150 in 2020. According to the same report, Pakistan possesses 140-160 and China has 290 warheads.<sup>73</sup> The increase in the size of nuclear weapons is also pushing India to acquire 'advanced delivery systems' for nuclear warheads. As, currently, India has three tiers of the nuclear weapons delivery-systems including air, land, and sea-based ballistic missile systems. It continues to increase the range of its 'land-based ballistic missile system' in which the Agni model of 'land-based nuclear-capable ballistic missiles' is preferred. Since India's nuclear deterrence is focused on China, India also seeks to develop Agni-V inter-continental ballistic missile (ICBM).<sup>74</sup> It successfully conducted the third Agni-V test on 10 December 2018, that marks as a strategic nuclear deterrent against China. The "Agni-V, a three-stage solid-fuelled missile, has an approximate range of 5,500-5,800 kilometres and can carry a 1,500-kilogram (3,300-pound) nuclear warhead."<sup>75</sup> Furthermore, "India has reportedly also been working on multiple independently-targetable re-entry vehicles (MIRV) for Agni-V in order to ensure a credible second-strike capability."<sup>76</sup>

India is also keen on increasing its naval nuclear capabilities to ensure a second-strike capability. The SIPRI reports highlights that the "Indian navy inducted its first indigenously built nuclear-powered submarine, the INS Arihant, into service in 2016."<sup>77</sup> It will carry a two-stage 700-kilometre range submarine launched ballistic missile (SLBM). Moreover, India is also developing a more advanced SLBM with a

range of up to 3500 km.<sup>78</sup> In March 2019, it signed a \$3 billion contract for the lease of an Akula-1 class nuclear-powered attack submarine from Russia for 10 years. Under the pact, Russia will deliver the Akula-1 class submarine also known as Chakra III, to the Indian Navy by 2025. Besides, India is also working on the indigenous nuclear-propelled submarine INS Arihant, which is equipped with nuclear-ballistic missiles would be ready in 2020.<sup>79</sup> The BrahMos supersonic-cruise missile is also India's joint project with Russia. Reported by NTI India, the BrahMos can travel at speeds up to Mach 3.0, is equipped with 'advanced satellite-navigation' with target range from 300-500 km. Its more categories including sea, air, and submarine-launched variants of BrahMos with an improved variant BrahMos-NG with speeds up to Mach 3.5 is under development. India is also working on its space programme and Missile Defence System with the help of Israel and Russia.<sup>80</sup>

The increase in size, capability, and advancement in Indian nuclear weapons and the delivery systems due to China factor would be detrimental to the regional strategic stability. Hence, the increase in India's plutonium production in its 'unsafeguarded nuclear facilities' with the help of the imported fissile-material and the import of advanced technology for the improved delivery-systems is creating a huge imbalance in the nuclear capabilities with Pakistan. In this backdrop, India's existing capabilities as well as the planned programmes over the next decade propel an arms race between the two South Asian rivals India and Pakistan. The continued arms race and imbalance in nuclear capabilities can also hamper peace endeavours between the two countries.<sup>81</sup>

## **Conclusion**

There was an urgent need to satisfy the growing demand for electricity in India but business interests were at the centre of the US policy for nuclear cooperation with India. The basic objectives were to capture the huge Indian market and to make it a strategic partner in its

efforts to counter China. In this regard, the business lobby of the US played a major role in determining the deal. In return for the 123 Agreement, the US sold 126 expensive jet-fighter aircraft to India. India also enjoyed all the privileges as did by the five de jure nuclear weapons states.<sup>82</sup> From 2016 onward, both the US and India signed several defence equipment exchange deals. Nevertheless, the nuclear deal could not materialise the purchase of nuclear reactors until 2019. The main hurdles created by India's liability laws were a definite setback to the US commercial interests. The deal, until now, is not in motion to address the electricity requirements in India. The two sites designated for the US reactors could not materialise. India is also aware of the price difference in procuring nuclear reactor from the US and other international suppliers, especially from Russia. According to reports, Russia has already built "two 1,000-megawatt reactors in the plant, and is under contract to install two more units there, which will bring up the total to 4,000 megawatts."<sup>83</sup>

India has so far failed to reach its goal of producing 20 gigawatts by 2020. On the contrary, "it has barely grown, from 3.3 gigawatts to the present 4.8, doing little to solve India's growing demand for electricity."<sup>84</sup> However, the deal graciously added to India's potential to expand its nuclear programme for its military purposes. After resolving the liability issue, it is observed that India would continue to go after its interests. India would press for importing more fissile-material for its 3-stage nuclear programme instead of accelerating the implementation on the resource-intensive imported reactors from the US.

The research findings show that India started the implementation process of the civil nuclear deal by addressing its liability and tracking issues on its terms. The research also finds that India can escape safeguards on many of its dual-use nuclear facilities and can also fulfil the increasing demand for fuel supply for its indigenous nuclear programme. It can also look for other options in

the international market for the import of high nuclear technology other than the US. It would not yield the desired outcome for the US and even the US dream of bringing India's nuclear programme under the international check is a vain attempt.

In its civil nuclear energy process, India can also produce large amounts of weapons-grade nuclear material, which would have dangerous consequences for strategic stability in the region. The civil nuclear deal empowered India to run its nuclear programme according to its own economic and strategic interests. It signals not only a breach of nuclear non-proliferation norms set by NPT but also set out a dangerous precedent to utilise the international market for importing fissile-material for 'unsafeguarded nuclear facilities'.

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# CONSTITUTIONAL STATUS OF GILGIT-BALTISTAN: FUTURE SCENARIOS

ZUNAIRA INAM KHAN\*

## Abstract

*This paper analyses the conundrum of the constitutional status of Gilgit-Baltistan (GB). The question is raised consistently whether GB should be considered a fully integrated part of Pakistan or part of Kashmir. There has also been a lot of debate on a de facto integration of GB with Pakistan. The paper discusses the political history and developments in the region and what could be called a progressive realisation of rights. It outlines the governance system in the Indian Occupied Kashmir (IOK), the fallout from the revocation of Article 370, and the major differences between IOK's and GB's constitutional status. Five possible policy options are presented for Pakistan, along with their respective advantages and disadvantages. In the end, specific recommendations are given regarding the next steps Pakistan needs to undertake to address the GB question.*

**Key Words:** *Gilgit-Baltistan, constitutional status, interim/provisional province, de facto integration, referendum, unconditional accession.*

## Introduction

The sparsely populated Gilgit-Baltistan (GB) region of Pakistan is immensely important. The China-Pakistan Economic Corridor (CPEC)

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enters Pakistan via Gilgit-Baltistan. GB is home to the world's highest mountains, attracts a substantial share of Pakistan's tourism and provides unique mountain products. Nearly 500 km of the Pak-China joint venture, the Friendship/Karakoram Highway, traverses through the difficult terrain of GB from Khunjerab Pass to the border of the Khyber-Pakhtunkhwa (KP) province.<sup>1</sup> Gilgit-Baltistan has been locked in the struggle of acquiring constitutional status ever since Pakistan's independence in 1947. GB's political status has stayed in a perpetual limbo because of the linkage of this region with the Kashmir issue.

The status of GB and Kashmir is a politically antagonistic and analytically challenging topic. Pakistan administers GB directly, neither as a separate province nor as part of the adjoining KP province. Thus, there are varying and conflicting views on this issue in Pakistan, India, the people in both Azad Jammu and Kashmir (AJK) and IOK, the larger international community, and the people of GB.

GB is always associated with the dilemma of the Indian Occupied Kashmir (IOK). Since it has become intrinsically tied to the Kashmir dispute, it does not seem hopeful that this matter will be decided any time soon. This paper looks into the constitutional status of GB and IOK, along with the future outlook for GB and how the Modi government's abrogation of Article 370 of the Indian Constitution affects all future scenarios for lasting peace in this region and between Pakistan and India.

## **Background**

The status of the people of GB has been uncertain for over 70 years. GB's linkage with the disputed larger region of Kashmir hinders any major change to its administration. With the advent of CPEC, this region has again come into the limelight. Strong opinions are being shared across the board from the AJK Assembly, the Indian government, and even the freedom fighters in IOK.

At the time of the partition of the subcontinent, GB was a distant and almost unreachable region, which was then ruled by the

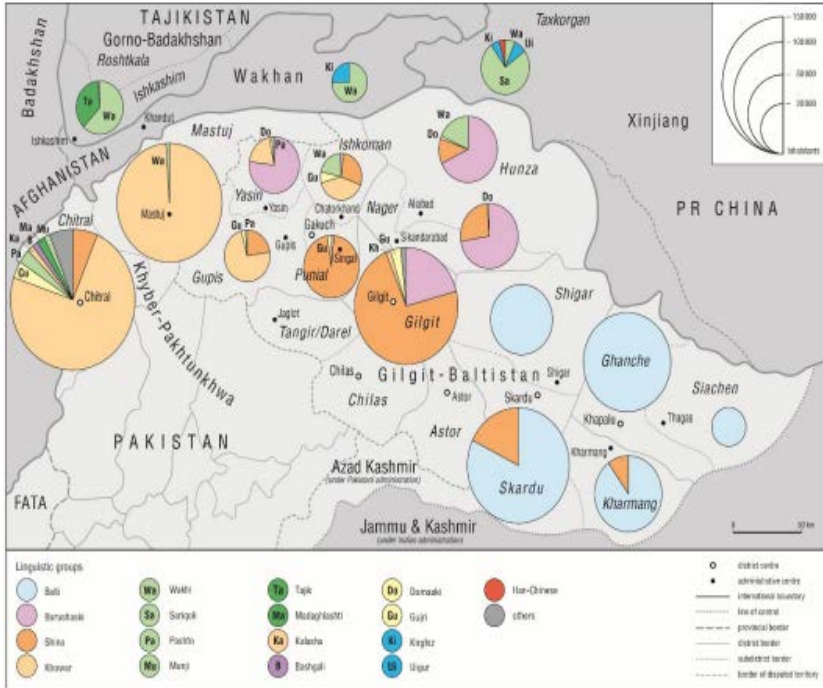


Dogra rulers. Under British Raj that ended in August 1947, GB was made a part of Kashmir by force and afterwards sold to Gulab Singh in 1846 under the Treaty of Amritsar. However, there was hardly any trade between GB and Kashmir and people-to-people interaction was negligible. There was also an immense language barrier. As the linguistic map below shows, the people of GB speak Khowar, Shina, Balti, Burushaski, and Wakhi. On the other hand, the people belonging to Jammu and Kashmir speak Kashmiri, Hindko, Pahari, and Gojri.<sup>2</sup> There was little to no shared heritage or culture. Hence, the people of GB harboured a feeling of resentment towards the merger of GB with Kashmir. Refer to Map 1 below for a visual representation of the prevailing languages within the region.

The local people, supported by the Gilgit Scouts and the Muslims who were serving in the Dogra Army, freed the Gilgit-Baltistan from India through an armed struggle. GB became a republic on 1 November 1947 and fifteen days later announced that it had acceded to Pakistan.<sup>3</sup> At the time, this request was not accepted by the Pakistani government because of the uncertainty of the Kashmir situation.

**Map 1**

**Linguistic Map of Gilgit Baltistan**



Source: *Languages*. (n.d.). from Gilgit-Baltistan Scouts: <http://www.gilgitbaltistanscouts.gov.pk/geodemo.htm> (last accessed on 2 October 2019).

**Political History of Gilgit-Baltistan**

On 16 March 1846, the British sold, for a meagre sum, the Jammu and Kashmir territory together with several hundred thousand Kashmiri subjects to Gulab Singh. This sale deed is more commonly known as the Treaty of Amritsar. This raises the question whether it is legal under international law for people’s freedom, honour, respect, and indisputable rights to be sold without their consent being involved in the process.<sup>4</sup>

Gulab Singh had annexed Ladakh in the 1830s and Baltistan in 1840. The 1846 Treaty of Amritsar led to the creation of a mini empire.

This comprised India's northern areas and asserting control over the Muslim-majority areas of Gilgit, Hunza, Nagar, and other territories.<sup>5</sup>

In the Treaty of Amritsar<sup>6</sup> between the Maharaja and the British Empire, a portion of Gilgit Agency was given to the British on lease for sixty years. This was the condition and arrangement until 1 August 1947. Right before the independence of the subcontinent, the British decided to end this lease agreement and hand over the control back to the Kashmiri Hindu Dogra Ruler. The people of Gilgit were unhappy with being returned to the Maharaja's rule and upon his decision to accede to India, their feelings erupted into a rebellion. They succeeded in maintaining control over large areas of Gilgit-Baltistan and transferred power to Pakistan on 16 November.

In 1949, Pakistan established the Ministry of Kashmir Affairs and Northern Areas (KANA) for administrative control of GB.<sup>7</sup> This area has not been included in the three Constitutions of Pakistan, nor is it represented in the parliament. The first law to be enforced in these areas, in 1947, was the Frontier Crimes Regulation (FCR). It was a perpetuation of the existing British laws. This law took away three basic rights from the people of FATA and GB, namely the rights of *appeal*, *wakeel*, and *daleel* (the right to request a change to a conviction in any court, the right to legal representation, and the right to present reasoned evidence, respectively).<sup>8</sup>

In 1967, the powers of the High Court and Revenue Commissioner were extended to the area. In 1970, the two parts of the territory, i.e., the Gilgit Agency and Baltistan, were merged into a single administrative unit, and given the name Northern Areas. The Shaksgam tract was ceded by Pakistan to China following the signing of the Sino-Pakistani Frontier Agreement in 1963.

A map of the Sino-Pak Border Agreement is shown below.



Source: Based on the map at <https://defence.pk/pdf/threads/why-did-pakistan-give-the-shaksgam-valley-to-china-what-was-indias-reaction.565519/> (last accessed on 1 February 2020).

A Northern Areas Advisory Council (NAAC) was established in 1969, and later it was retitled the Northern Areas Council (NAC) in 1974 and Northern Areas Legislative Council (NALC) in 1994.<sup>9</sup> The body did not have any legislative powers, those powers rested with the KANA Ministry.

In 1970, a Legal Framework Order (LFO) was issued by the then President of Pakistan Gen Yahya Khan and served as the *de facto* Constitution of the region. In 1970, democratic elections were

held and via this election, 16 members of the NAAC were elected. In 1972, Gilgit and Baltistan Agencies were converted into districts, along with another district, Diamer. Zulfikar Ali Bhutto abolished the princely state of Hunza and the Frontier Crime Regulation (FCR) in 1974 and announced administrative and judicial reforms. Later on, in 1977, General Zia ul Haq declared martial law in Pakistan and GB was included in it as Zone E with representation in the Pakistan Parliament, called the *Majlis-e-Shura*. Select members of the Northern Areas Council were included in the *Majlis-e-Shura*. This was one of the first steps that deviated from Pakistan's established stance on the Kashmir issue. Under a subsequent democratic government, a reforms package was brought forward as the Legal Framework Order (LFO) in 1994 and the office of the Chief Secretary and Civil Secretariats were established. The LFO allowed the Council to independently legislate on a list of 49 items.

Northern Areas Court of Appeals was established at Gilgit, on 8 November 1999, as a consequence of a case filed by Wahab Al Kahiri, late Justice Shehbaz Khan, and others through *Al-Jehad Trust Versus Federation of Pakistan*, and as per the orders of the Supreme Court of Pakistan, Government of Pakistan. The court started functioning on 27 September 2005, when its chairman and members were appointed. On 15 December 2007, by virtue of amendments in the Northern Areas Governance Order, 1994, the nomenclature of the court was re-designated as Northern Areas Supreme Appellate Court and its jurisdiction was also enlarged by conferring original and appellate jurisdiction. It was also given a status equal to the Supreme Court of Azad Jammu and Kashmir.<sup>10</sup>

After a lengthy process of discussions and consultations, the President of Pakistan issued the Gilgit-Baltistan (Empowerment and Self-governance) Order in 2009.<sup>11</sup> This order was modelled after and influenced by the setups of the provinces as well as AJK. This order explained that the Government of Pakistan had decided to allow GB

more internal autonomy due to the persistent demand of the people of GB. This was also done as a step to bring parity between GB and the other provinces. The Gilgit-Baltistan Legislative Assembly (GBLA) was formed in 2009, which is a 33-seat unicameral legislative body, granting the region self-rule and an elected legislative assembly. On 9 September 2009, the Supreme Appellate Court was conferred a similar jurisdiction equal to the Supreme Court of Pakistan through the promulgation of the Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009.<sup>12</sup>

Even keeping in mind the steps taken to grant GB internal autonomy, it cannot be considered as a separate, independent province of Pakistan. However, if the Northern Areas Council Legal Framework Order, 1994, can be considered as the first step, the present package of reforms further moves towards fulfilling the demand of local people for their constitutional rights.

The 2009 Order changed the name of the Northern Areas to Gilgit-Baltistan. It also created the posts of Governor, Chief Minister, and Ministers and the Gilgit-Baltistan Council. However, the GB Council is headed by the Prime Minister of Pakistan. The legislative ability of the GBLA was also increased from 49 to 61 items. Gilgit-Baltistan Council can separately legislate on a further 55 items. Under the 2009 Presidential Order, the Prime Minister of Pakistan advises the President on the appointment of the Governor of GB, who is the Vice Chairman of the GB Council. The reforms were passed through a Presidential Order and never deliberated upon by any Legislative body.<sup>13</sup>

It treats GB in most aspects as an administrative unit of Pakistan and holds it accountable to many of the liabilities and duties of a province. GB does not, however, enjoy the constitutional rights and powers available to the other provinces. It is a part of Pakistan because of the Karachi Agreement but it has not been accepted constitutionally. It also has no representation in the National Assembly of Pakistan.

The Karachi Agreement was purportedly executed on 28 April 1949 between the Government of Pakistan and the then Government of Azad Kashmir governing the relations between Pakistan and Azad Kashmir. It set down the division of powers between the two governments as well as the All Jammu and Kashmir Muslim Conference. Through the agreement, Azad Kashmir ceded to the Government of Pakistan complete control over Gilgit-Baltistan (then called the Northern Areas), and the control over subjects of defence, foreign affairs, and communications in its area. It was revealed for the first time in the *Verdict on Gilgit and Baltistan (Northern Area)* by the High Court of Azad Kashmir in the 1990s, which states that the agreement "appears to have been executed on 28 April 1949." Later, it was published as the Appendix XVII of *The Constitution of Azad Jammu and Kashmir* by Justice Syed Manzoor Hussain Gilani in 2008.<sup>14</sup>

### **Comparative Analysis of the Status of the IOK**

In 1947, the ruler of Kashmir acceded to India and was given a guarantee that the new state would largely retain its autonomy within India and this autonomy was protected by Article 370 of the Indian Constitution. This 'conditional' accession is a completely different scenario than that of Gilgit-Baltistan as GB unconditionally acceded to Pakistan. There were no such conditions put into place. The reason for its status being disputed is because, over the next decades, it was tied in with the Kashmir dispute. We have already discussed above how GB being considered a part of the larger historic state of Kashmir, can be disputed.

#### **Indian Occupied Kashmir**

The IOK is under Indian occupation and was, until 2019, governed by Article 370 of the Indian Constitution. India also has a specific Constitution for occupied Jammu and Kashmir, 'The Constitution of Jammu and Kashmir, 1956'. The preamble of this Constitution reaffirmed the accession of the state to India and

declared it to be an integral part of India. Within this Constitution, Article 2(a) declares that the Indian Constitution will apply to this state and gives fundamental rights to the people of India-Occupied Kashmir (IOK).<sup>15</sup> It also set up a legislative system comprised of the Sadar-i-Riyasat (Head of the State), the Prime Minister, and two houses: the Legislative Assembly and the Legislative Council.<sup>16</sup> This continued until 1965 when the IOK Constitution was amended (Sixth Constitution of J&K Amendment Act, 1965) by the then Congress government, which replaced the two positions with Chief Minister and Governor respectively.

The IOK High Court announced, in 2015, that the conversion of the post of 'Sadar-e-Riyasat' (Head of the State) into Governor was unconstitutional and asked the state legislature to take measures to uphold the Constitution.

"The Constitution of Jammu & Kashmir (Sixth Amendment) Act 1965 amended the State Constitution and replaced 'Sadri Reyasat' by Governor. The 'elective' status of Head of the State was an important attribute of constitutional autonomy enjoyed by the State, a part of 'Basic Framework' of the State Constitution and therefore not within the amending power of the State legislature," Justice Hasnain Masoodi observed in his judgment.<sup>17</sup>

### **Revocation of Article 370**

The two most significant concessions given to Kashmir in the Indian Constitution of 1950 were Article 370 and Article 35-A. Article 370 gave the IOK autonomy in all areas except defence, communication, and foreign policy. Article 35-A gave only 'permanent residents' of Kashmir the right to own property. Ever since these articles came into power, Hindu nationalists had opposed them vehemently. They argued that India could not bend its rules for the Muslim-majority Kashmir. It was during the 2019 election campaign that the ruling Bharatiya Janata Party (BJP) promised that it would



revoke Kashmir's 'special status' and clamp down on separatism within India.<sup>18</sup>

On 5 August 2019, the Government of India revoked the special status, or limited autonomy, granted under Article 370 of the Indian Constitution to IOK. The state's Constitution, as well as its penal code and state flag, was nullified, and the region is now subject to the central laws as applicable in all other Indian territories. A plan was put in motion to split IOK into two separate 'Union Territories'.<sup>19</sup> The first being Jammu and Kashmir with its separate legislature and the second being the region of Ladakh, which will be ruled directly by the Central Government.

#### STATEMENT OF OBJECTS AND REASONS

The Ladakh Division of the State of Jammu and Kashmir has a large area but is sparsely populated with a very difficult terrain. There has been a long pending demand of people of Ladakh, to give it the status of a Union Territory to enable them to realise their aspirations. The Union Territory of Ladakh will be without Legislature.

Further, keeping in view the prevailing internal security situation, fuelled by cross border terrorism in the existing State of Jammu and Kashmir, a separate Union Territory for Jammu and Kashmir is being created. The Union Territory of Jammu and Kashmir will be with legislature.

AMIT SHAH

New Delhi;  
*The 5<sup>th</sup> August, 2019*

Source: Tweeted by the BJP spokesperson, Syed Shahnawaz Hussain

In doing so, India will greatly increase the Delhi government's control over both regions. India has added to the suffering of the Kashmiris by maintaining a strict curfew and a complete media blackout since 5 August 2019. Mehbooba Mufti, the former Chief Minister of IOK, who was also a coalition partner of the BJP in the state, called 5 August "the darkest day in Indian democracy." Omar Abdullah, another former CM of IOK, called this Indian action a "total betrayal of trust" and an "aggression against the people of state."<sup>20</sup>

After revoking Article 370, India issued a new political map of occupied Jammu and Kashmir, in contravention of the bilateral agreements and UN resolutions on the matter, where it shows Azad Kashmir as a part of the newly created union territory of the occupied Jammu and Kashmir and Gilgit Baltistan in the union territory of Ladakh.<sup>21</sup>

## Map 2

### New Political Map of IOK Issued by the Government of India



Source: <http://www.surveyofindia.gov.in> accessed on 12 December 2019

Jammu and Kashmir Reorganisation (Adaptation of State Laws) Act, 2020, was passed on 31 March 2020. It repealed 29 state laws and amended 109 laws of occupied Jammu and Kashmir. This law determines new rules for obtaining domicile or residency in Jammu and Kashmir.

The reasons given by the Indian government for the revocation Article 370 have also been varied in nature. The Home Minister of India, Amit Shah, cited security concerns while the Prime Minister, Narendra Modi, highlighted economic concerns. Other

leaders claimed legislative efficiency as the cause for the revocation. Opposition politicians in India have decried the move as an attack on Indian democracy, and analysts have described it as unprecedented. Political leaders in Kashmir called the special status revocation “illegal and unconstitutional.” Mehbooba Mufti, a former Chief Minister of IOK, warned that it would render India an “occupational force” in the area and called this the “darkest day in Indian democracy.”<sup>22</sup>

### **Reaction within the State**

There have always been political differences and a lack of unity between the regions that make up the IOK. Article 370 is very much a product of Kashmiri identity politics and is viewed as being intrinsically linked to their identity and their dignity. However, when it comes to Jammu and Ladakh, it did not have the same symbolic importance. The news of its revocation was met with approval in certain parts, such as Jammu city and Leh. Although, even in Jammu and Ladakh, there were areas that opposed these constitutional changes, such as, Kargil in Ladakh, Doda belt, and Poonch district in Jammu.<sup>23</sup>

Furthermore, there was a twist in the tale, because the revocation of Article 370 was also combined with the withdrawal of Article 35-A. The latter restricted sale of land to non-residents. It also provided state residents with preference and quotas when it came to government jobs and educational institutional slots. Suddenly, there is a fear of outsiders flooding the region, of a growing land mafia, of competition with job seekers from outside and small traders and business people being subsumed by big corporate houses. There have been demands regarding a special domicile law, and that some kind of arrangement under Article 371 should be made for the new Union Territories of Jammu and Kashmir, involving restrictions on outsiders getting jobs.<sup>24</sup>

Even in Jammu’s Dogra Hindu heartland, this step has hurt their Dogra pride. Dating from the British Raj and earlier, this was one of the largest princely states and the downgrading of autonomy has

hurt parties on both sides of the aisle and Ladakh, seen to be the only gainer in this whole process, also has its reservations. Of the two districts of Ladakh, it is the district of Leh, which has been raising the demand for the Union Territory status. The politics of Kargil, however, is about the relative backwardness of this district within the region of Ladakh. Leh is seen to be the dominant and powerful partner in Ladakh and, therefore, the politics of Kargil has been defined by the struggle to attain parity with Leh.<sup>25</sup>

However, even predominantly Buddhist Leh has reservations about the removal of Article 35-A. They are concerned about the land mafia, the environment, and the heritage and culture getting affected due to the arrival of outsiders. Since the Union Territory of Ladakh has been designed without a Legislative Assembly and will be more like a centrally administered territory under the Lieutenant Governor, there is a feeling of loss regarding their representation in the state legislature and state ministry. For the first time in the post-1947 history of Jammu and Kashmir, there is a growing common demand for the restoration of the state and a special domicile law.<sup>26</sup>

The passage of this law is yet another step in the Hindutva agenda to create demographic imbalance and overturn the longstanding Muslim majority of Kashmir. Pakistan's principled stand will be helpful in the future if there ever is a plebiscite held in the disputed territories. Furthermore, the Indian action is a blatant violation of international law and the relevant UNSC resolution, which prohibit introducing material changes to the disputed territory.

## **Indian View**

Not surprisingly, India has a completely different view regarding the history of Gilgit-Baltistan and its accession to Pakistan. The Indians inaccurately hold that many of the people from GB were not in favour of the decision to join Pakistan. The Karachi Agreement of 1949 is also considered as the moment when GB's will was completely eviscerated. The Azad Kashmir government, according to

this view, gave up complete administration and control of GB to Pakistan; a move made without consulting the people of GB.<sup>27</sup>

India erroneously holds that Pakistan is illegally occupying Gilgit-Baltistan and they tout Article 257 of the Pakistani Constitution as proof. This paper asserts that IOK is a disputed territory and does not belong to India. Another reason for them to find excuses for blaming the government's intentions is that Pakistan abrogated the State Subject Rule of GB in 1974.<sup>28</sup> India viewed this as an effort to bring demographic change within GB by increasing the Sunni population as opposed to the already existing predominantly Shia population. According to one Indian source, in 1948, the GB region was approximately 85 per cent Shia, which has come down to 50 per cent in the post-1974 scenario.<sup>29</sup> India thus claims that Pakistan itself created this precedent and does not have a leg to stand on while complaining about India's treatment of IOK. However, Pakistan has publicly stated with facts and figures that the Shia population still constitutes about 75 per cent of the total regional population.<sup>30</sup>

## **Current Scenario**

### **Gilgit-Baltistan Orders 2018-19**

In February 2018, in a historical move, the then Prime Minister of Pakistan Shahid Khaqan Abbasi abolished the Gilgit-Baltistan Council and transferred all the powers to the GBLA. There was to be no role of Kashmir Affairs ministry as the Gilgit Baltistan Assembly now held the powers of legislation. The Northern Areas Supreme Appellate Court was renamed as High Court comprised of 7 judges. Appointments of judges were ordered to be made at the GB. There was also declared to be a Gilgit-Baltistan Provincial Service Commission and a Provincial Auditor General. Gilgit-Baltistan was further given the status of non-voting/co-opted membership in all constitutional bodies like the National Finance Commission, the Economic Coordination Committee, the Council of Common Interests,

and the Indus River System Authority, even though this was not part of the order. Nevertheless, critics termed this order as Prime Minister centric. Article 41 of the new order states:

The executive authority of the government shall extend to the matters with respect to which the assembly has the power to make laws, provided that in any matter with respect to which both Prime Minister and the assembly has the power to make laws, the executive authority of the government shall be subject to and limited by the executive authority expressly conferred and this order by law made and by the Prime Minister.

According to article 60 (4) of order

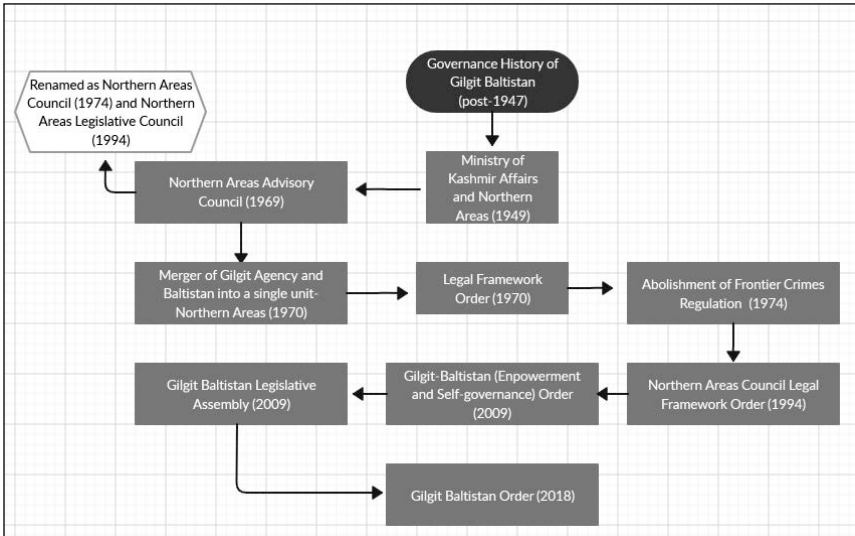
Any law which the Prime Minister is competent to enact then the law made by the Prime Minister, whether passed before or after the act of the assembly shall prevail and the act of the assembly shall to the extent of the repugnancy, be void.<sup>31</sup>

On 20 June 2018, the Supreme Appellate Court of Gilgit-Baltistan, the highest court of the region, suspended the newly-promulgated Order. The government of Gilgit-Baltistan also objected because their viewpoints were not addressed and that the area needed to be governed through an Act of Parliament and not Presidential Orders. A meeting of the stakeholders was held in February 2019 and a consensus was reached that the GB Governance Reforms 2019 may be enacted through the Parliament of Pakistan as per the aspirations of the People of GB.

The matter went to Pakistan's Supreme Court and, on 8 August 2018, a three-member SC bench, headed by the then Chief Justice of Pakistan (CJP) Mian Saqib Nisar heard the appeal and CJP Nisar

observed, "The government needs to ensure that the people of GB have the same respect and rights as all others."<sup>32</sup>

Below is a diagram depicting the timeline of the governance history of Gilgit-Baltistan (post-1947).



Given the SC’s emphasis on ‘equal rights’ to the people of GB, the Government of Pakistan proposed the Gilgit-Baltistan Governance Reforms, 2019. On 17 January 2019, the Supreme Court declared that the ‘modified order’ shall be immediately promulgated by the President on the advice of the Federal Government within a fortnight. As expected, the deadline was not met, and the Federal Government on 13 May 2019 sought time to implement the reforms.<sup>33</sup>

### The Conundrum of Gilgit-Baltistan

The governance system and administrative reforms within Gilgit-Baltistan have been slow but are now picking up pace. The integration of GB within Pakistan is still not addressed. Linking this issue with the Kashmir dispute has caused it to remain unaddressed for more than seventy years now and this has stirred great feelings of neglect and helplessness within the population of GB. This region has historically (post-independence) faced sectarian issues, weak

communication infrastructure, less development, low economic activity and general neglect by the Federal Government. However, the army, self-help, and the Aga Khan have helped it forge ahead of the rest of the country in certain areas such as education, sustainable energy production, small enterprises and marketing their produce.

Quite clearly, Kashmir and GB should not be considered interlinked, especially when GB had already gained independence from the Maharaja of Kashmir. Thus, as its people proudly and repeatedly proclaim, GB openly acceded to Pakistan in 1947. If we take into account the United Nations Commission for India and Pakistan (UNCIP), all its resolutions have addressed ceasefires between the two countries, reduction of the military presence in Kashmir but there is no specific and direct mention of the areas of Gilgit-Baltistan. Additionally, the Supreme Court of Pakistan, on 29 May 1999, directed the Government of Pakistan to take administrative and legislative steps to grant the people of GB their fundamental rights. This was an unprecedented decision and can be seen as the catalyst that led to the Gilgit-Baltistan Empowerment and Self-Governance Order of 2009.

To this day, the people of GB are not recognised citizens of Pakistan and the area does not benefit from citizen rights granted by the Constitution of Pakistan. It also needs to be understood that GB has its own identity, culture, and history, independent from Kashmir. The constant association with the Kashmir dispute leads to resentment among the GB population. It is not logical to intertwine the fates of GB and Kashmir because Kashmir is a disputed territory. On the other hand, GB was independent at the time of independence and acceded to Pakistan.<sup>34</sup>

Another way of dealing with this issue is by holding a free and fair referendum within Gilgit-Baltistan. This referendum would give the population two options of either joining Pakistan or remaining a part of Kashmir. All efforts must be taken to keep this referendum transparent and foreign observers must be invited to monitor the



process so that India would not be able to have an objection on that front. Pakistan, I propose, should also not fear holding that long-promised plebiscite in the regions under its administration, including GB and AJK. As long as it is free and fair, with UN observers present, no objection could be raised internationally. It will also demonstrate to the world Pakistan's commitment to the Kashmiri cause and our willingness to provide justice where we can. India has so far been unwilling or afraid to hold a referendum or a plebiscite in the areas under its occupation. However, Pakistan must not show that same fear.

At the end of the day, this issue is about the lives of the Kashmiris as well as the people of Gilgit-Baltistan. People on both sides of the LOC should be able to live their lives with all fundamental human rights, as well as economic and educational opportunities. Furthermore, after India's recent aggressive policy towards Kashmir, the reaction of most countries has been one of complacency. Additionally, when this issue was originally taken to the UN in 1948, the total UN members were 58 and a majority of those shared Pakistan's view. The UN Security Council passed a resolution inviting a plebiscite to give the people of Jammu and Kashmir the right of self-determination, which was not applied by either India or Pakistan. The last Security Council resolution was in 1957, and at that time the total UN membership was 82.<sup>35</sup>

In the present day, Pakistan might just have to accept that acknowledging the status quo and providing rights and autonomy to the people of AJK and GB is the best possible scenario for them. International relations can sometimes overlook moral arguments when faced with personal interest and Pakistan's value on the international stage has just decreased more and more. China's annual trade with India amounts to \$95 billion compared to \$13 billion with Pakistan. Turkey's trade with India stands at \$8.6 billion against \$1 billion with Pakistan. Malaysia-India trade at \$14 billion is 14 times more than the \$1 billion of goods and services Malaysia exchanges

with Pakistan.<sup>36</sup> These statistics cannot be ignored. They must count in the decision-making regarding all India-Pakistan disputes.

### **Should Gilgit-Baltistan be delinked from the Kashmir issue?**

One of the biggest disadvantages of considering GB as part of the Kashmir conundrum is that it leads to undermining the separate and distinctive identity of the region. GB has its own identity and history and it would be foolish to overlook that. Even within GB, the people can hardly be considered as homogeneous. They have separate origins, identities, cultures, ethnicities, histories and even religions. One can imagine the kind of issues that would arise were anyone to force a Kashmiri national identity on to this largely diverse population. However, in modern democratic states, different identities are not the only basis for determining allegiance. It is, instead, based on the citizenship and all subsequent rights that are granted to a people according to a legally and publicly accepted Constitution. Hence, taking this viewpoint, the integration of GB with Kashmir is plausible.

Most of the Shia population in GB is greatly opposed to association with the Kashmir issue. They do not want a future where they will become a minority in the larger state of Jammu and Kashmir. Contrarily, a large portion of the Sunni population would positively consider that association because they are currently living in a predominantly Shia area.<sup>37</sup>

There is also a large segment of GB society that is neither interested in the sectarian divide or the nationalist agenda. When GB was under Dogra rule they had been deprived of even their basic rights. To them, assimilation into the Kashmir state would be reminiscent of that time.

There is a lot of criticism from across the border on Pakistan abolishing State Subject Rule (SSR) in 1974. The facts are that the SSR, especially with regard to GB, was a colonial instrument that was

implemented without any legal basis and only on the postulation that GB was a province of Kashmir. Delinking of GB from the Kashmir issue will allow the people of GB to be able to forge their way ahead towards an agreement that would be more acceptable to all segments of the population, allowing them to participate more fully in their future through consensus.

### **Future Options for Gilgit-Baltistan**

The following five options can be considered with respect to deciding the future of GB within the federation of Pakistan. Each option has pros and cons that are listed below.

#### **Merger with KP**

The merger of Gilgit-Baltistan with the province of Khyber Pakhtunkhwa would essentially be an easy transition on paper. Similar to what occurred with the merger of the Federally Administered Tribal Areas (FATA) along the Afghan border and the province of Khyber-Pakhtunkhwa (KP), GB would be incorporated within that province. However, even with this move, Pakistan will appear to be trying to amass more territory and to assimilate regions within it. Critics on both sides of the Kashmir dispute will herald this as a power-hungry move. Furthermore, due to the multitude of ethnic groups that GB encompasses, this step would not be seen as providing them with autonomy or identity. The other provinces of Pakistan might also raise concerns about both FATA and GB being merged with KP.

#### **The merger of Gilgit-Baltistan and Azad Kashmir**

This step would support Pakistan's original stance of resolving Kashmir dispute through a plebiscite as directed by the UN. Large segments of Kashmiri population will welcome this decision. It may be recalled that Kashmiris not only reside in Pakistani and Indian administered territories but also in large numbers in Britain, Canada, and other countries. Several Kashmiri expatriates today occupy

politically important positions in their adopted countries. They express their opinion freely and wield great influence over international politics.

However, in this option, the people of GB will not feel like their demands have been met. They will also not feel like they have been adequately represented on the national stage. The Shia sects comprise more than 75% of the population of GB<sup>38</sup> and they will not welcome this move. There could be an upsurge in the nationalistic movements. Furthermore, India's stance on GB will be validated while Gilgit-Baltistan will become a minority in the Azad Jammu and Kashmir Assembly. This could lead to further administrative, organisational, and governance problems.

### **Providing the same Status as Azad Jammu and Kashmir**

Under this measure, GB will attain a similar status to AJK, having their interim Constitution, a President, a Prime Minister, an Assembly, a judiciary, and their flag. This would address the concerns that the people of GB have regarding autonomy and governance. This measure would also require minimum organisational and structural changes.

As mentioned earlier, even in this solution, the preliminary demand of the people of GB of accession to Pakistan will not be answered. The people have never actually demanded the status of an independent state, and due to the small population of GB, it might not even be advisable financially. There will be a lot of opposition to this decision on both sides of the border and it might make it impossible for Pakistan to justify this move to the UN, taking into consideration its primary stance on the Kashmir dispute.

### **Declaring Gilgit-Baltistan as the Fifth Province of Pakistan**

Art. 1(2)(d) of the 1973 Constitution of Pakistan states, "Territories of Pakistan shall comprise, such States and territories as are or may be included in Pakistan, whether by accession or otherwise."<sup>39</sup>

Therefore, it is legal for the integration to take place as GB has already acceded to Pakistan. The unstable future of GB will be sorted resolutely and it would serve to allay the discomfort of the people of GB regarding the current system.

However, creation of the GB province could be erroneously viewed as Pakistan going back on its long-held stance on the Kashmir dispute. The decision would also be objectionable to Kashmiris on either side of the LOC. It could also be taken as an abrogation of the Karachi Agreement of 1949.<sup>40</sup>

### **Interim or Provisional Provincial Status**

Currently, there is no effective national forum where the representatives of GB can voice their thoughts and opinions and take part in discussions about national affairs and interests. The existing system of governance within GB can be augmented by an interim or provisional provincial status. This reform would allow its representation within the parliament of Pakistan. The people of Gilgit-Baltistan feel a sense of neglect and political deprivation, which would be mitigated when they are given an official identity and representation on the national stage. It will also help the GB administration to get better assimilated within the political system of Pakistan. However, this step would require an amendment of the Constitution of 1973 and it may lead to opposition from India, the two Kashmir governments, and even the international audience. This is because they will view it as a step that weakens Pakistan's original stance on the Kashmir dispute.

It could also be considered as a step towards formalising the status quo, which is arguably what India desires. Although, if we use the term 'provisional' or 'interim' it is justified under the Karachi Agreement of 1949.<sup>41</sup> Furthermore, as long as you are keeping the provisional status, India, Kashmir or the United Nations should not have an objection as GB remains a part of the disputed Jammu and Kashmir issue. After the revocation of Article 370 and the

administrative changes of the state of Jammu and Kashmir in India, our neighbour should not be able to voice a logical argument as to why Pakistan cannot take this measure.

It is also apparent that the Kashmir issue is not anywhere close to being solved soon. Hence, this is a way through which the grievances of the people of GB can be addressed while maintaining their independent status. This step would require minimum changes to the organisational structure of GB, the slowly increasing nationalist fervour will be calmed and this option also has the support of the people of GB as their demand has always been integration with Pakistan. It will not fully address the question of GB's political status and the preliminary demand of the people for accession to Pakistan will not be answered. However, it is the best option available to Pakistan as of now.

## **Conclusion and Recommendations**

The constitutional status of Gilgit-Baltistan has been discussed and deliberated upon ever since independence in 1947. Consistently the question is raised whether GB should be considered as a fully integrated part of Pakistan or indefinitely linked with the Kashmir issue. As has been observed in other disputed regions of the world, here too, Pakistan has demonstrated a trend of what we can call a progressive realisation of rights. There has been a general trend of recognising GB's status and allowing it more power and autonomy. There has also been a lot of debate on a de facto integration of GB with Pakistan.

It may be time that Pakistan realises that as India has been making more aggressive policy decisions including the new illegal map that was released after the revocation of Article 370, which incorporated all of AJK and GB into Indian Union Territory, some concrete steps need to be taken. Pakistan does not have many options when it comes to handling the status of GB. GB cannot be integrated as a fifth province into Pakistan. It can also not completely withdraw

from GB and allow India to take over. Furthermore, GB cannot be left in its current state of uncertainty, specifically because of the rising discontent amongst its people, especially youth. Asking for support from the United Nations or friendly countries is also out of the question as the recent responses on India's lockdown of Kashmir make apparent. It is also an internationally held belief that due to the Simla Agreement, Kashmir is a bilateral issue between India and Pakistan and no other country should intervene.

Therefore, the only viable option for Pakistan at this time would be to grant Gilgit-Baltistan a provisional or interim provincial status. This would not affect Pakistan's long-held stance on the Kashmir issue as the region is not being repressed, as opposed to what is currently happening in IOK. Pakistan needs to come up with a solution as to how the status of GB can be improved and how the representation can be granted keeping in mind the will of the people.

Following are some of the recommendations that I believe, would be greatly beneficial if adopted by Pakistan:

1. In an ideal world, GB could be integrated with Pakistan as a fifth province, but as has been discussed earlier, that option is not feasible for a variety of reasons. Hence, the next best option would be allowing GB an interim or provisional provincial status. This would end the identity crisis that the people of GB feel while at the same time providing adequate representation to them. In this scenario, GB would have a right to vote and representation in the Parliament of Pakistan. This move would also be justified as India has demonstrated its constitutional jurisdiction over Jammu and Kashmir and also regions such as Ladakh.
2. The mandate of the Supreme Court of Pakistan must be extended to Gilgit-Baltistan.
3. There needs to be an adequate representation of GB in various national forums and dialogues.

4. GB should be given its fair share from the projects that affect it directly; including but not limited to CPEC, Diamer Basha Dam, various hydro projects, mining, tourism, etc.
5. As with AJK, a referendum needs to be held in GB giving the population the choice of either remaining linked with the Kashmir issue or to formalise their earlier decision to unconditionally accede to Pakistan. This needs to be done with utmost transparency and fairness; inviting foreign observers to monitor would greatly support Pakistan's cause on the international stage.



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de-facto integration of GB with Pakistan but not a de-jure change since that would affect the country's principle position on Kashmir. The committee also advised to bring the GB Legislative Assembly on a par with other provincial assemblies, all legislative subjects, other than those enumerated in Article 142 of the Constitution and that its fourth schedule might be devolved from the GB Council to GBLA. "PM Decides to Abolish GB Council," *Dawn*, 17 February 2018.

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