

The Possibility of Restoration of Baluchistan's Sovereignty under International Law

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Abstract

The ethnic, cultural and historical richness give Baluch people a distinct identity. Sadly, the socio-cultural and political history of Baluchistan has been sporadically marked by conflicts, politico-economic oppression, ethnic cleansing and genocide. The ethnicity of Baluchistan has been endangered by the atrocities averted by various rulers, colonialism and now, by Pakistan. Be it gross human rights violations, seriousness of ethnic cleansing or rise of 'ethnic nationalism', the issue of Baluchistan has largely been ignored by the international community. Baluch people have approached the United Nations agencies and the International Human Rights institutions, but the issue remains unaddressed so far. Pakistan has forcibly annexed Baluchistan and extermination of Baluch people, who ask for independence, is frequently committed by Pakistan. But there is less of evidence for this or probably, the international community has knowingly unseen it. In the light of above arguments, Baluchistan has a strong case for restoration of its sovereignty under International law. The historic right of self-determination of Baluch people is also less debated upon. The issue of oppressed Baluchistan and its suppressed sovereignty can effectively be addressed if it regains its statehood. The problem of how Baluchistan will acquire its sovereignty in international law is a difficult one which may be explained only in legal-political terms. Due to its geo-strategic importance, United States and China purposely do not want the issue to be resolved. Also, there has been little discussion and research on the method by which the new entity itself acquires statehood. This article is an attempt to address the issues of Baluchistan's standing under international law to acquire sovereignty as a nation-state. The first part of the article will address the grounds for restoration of Baluchistan's original position of an independent nation. The second part will analyse the taking of action in this situation by the United Nations Security Council. Recommendations will be dealt in the third part.

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Introduction

Talking about the contemporary history of Baluchistan, it was invaded and occupied by the British army in the year of 1839. Eventually, it was divided into eastern and western parts; western Baluchistan was given to Iran and eastern Baluchistan was kept as ‘the British Baluchistan’. In 1872, the western part was further divided between Iran and Afghanistan. In 1947, as the British rule ended, Baluchistan emerged as a separate State. The then ruler of Baluchistan, Khan of Kalat, proclaimed Baluchistan’s independence on 11th August 1947.

On August 12, 1947, the proclamation of Baluchistan’s sovereignty under the Khan of Kalat was signed by Mr. Jinnah, whereby Pakistan recognised Kalat as an independent and autonomous State. However, Kalat was insisted to merge into Pakistan by the Pakistan leaders. The king of Kalat was also invited to the upper and lower house meeting to discuss the future of merger of Kalat in Pakistan. Claims have been made that King of Kalat was coerced by Mohammad Ali Jinnah, the first Governor General of Pakistan to sign the document of accession. This forceful annexation of Baluchistan by Pakistan remains a disputed fact among the historians.

Ever since its annexation to Pakistan, Pakistan has poorly dealt the issue. Poor administration and failing policies of Pakistani government and abetment of international players add complexities to the existing issue. Since there are various dimensions to the problem of Baluchistan’s existence and cry for independence, it would be pertinent to have an in depth understanding of the past and future of the issue. The regional players who have hidden interests in the region, for instance United States and China, wilfully want the problem to remain unsolved. In the present article, an attempt is made to address the aspirations of Baluchistan’s nationalism and to examine the case for restoration of Baluchistan’s territorial sovereignty.

“Baluchistan has locus standi to file a petition for its restoration of its original status to International Court of Justice in Hague.”

Grounds for Restoration of Baluchistan’s Sovereignty

Baluchistan is slowly descending into anarchy. Pakistan is accused of suppressing its ethnic identity, and oppressing the Baluchistan’s nationalist movements. Pakistan is said to have been applying ‘repressive tactics’ in the region. Baluchistan has a strong case for restoration of its original position of an independent nation- state. Out of many supporting reasons for this, that include socio-cultural to historical reasons, the most significant reasons are the

substantial crimes that Pakistan has committed against the Baluch people. The four substantive crimes that Pakistan has and is continuing to commit in this case are as under:

1. Crime of Aggression,
2. Genocide,
3. Crimes against Humanity, and
4. War Crimes.

Crime of Aggression

Three months before the formation of Pakistan, Mohammad Ali Jinnah negotiated the independence of Kalat from the British. After a series of meetings for negotiations, a document was signed under which the government of Pakistan expressly accepted the independence of Kalat and a standstill agreement was signed between Pakistan and Kalat. Although, it is said that soon after this, King of Kalat was asked to consider the prospective of Kalat joining Pakistan.

Referring to a telegram of October 17, 1947 from Grafftey-Smith, the Political Department, in a note on Pakistan-Kalat negotiations, says that Jinnah had second thoughts regarding the recognition of Kalat as an independent sovereign state, and was now desirous of obtaining its accession in the same form as was accepted by other rulers who joined Pakistan.

Soon, Jinnah desired that King of Kalat should sign the form of accession but the King was unwilling for the same. Ghouse Baksh Bezenjo, leader of house, in his famous speech said, "We cannot sign on the death warrant of millions of Baluch by signing the merger document with Pakistan."

However, after a series of forced formal and informal conversations, Kalat was annexed to Pakistan forcibly which is usually denied by the Pakistani agencies.

On March 26, 1948, the Pakistan Army was ordered to move into the Baluch coastal region of Pasni, Jiwani and Turbat. This was the first act of aggression prior to the march on Kalat by a Pakistani military detachment on April 1, 1948.

People of Kalat who tried to oppose accession and protest to the accession were summarily silenced by the Pakistani army. Ever since 1948, Baluch people have been ruthlessly eliminated by the Pakistani army.

According to stand still Article 3 of treaty 1876; Baluch has privilege and locus standi to knock the doors of International Court of Justice for the original restoration of Baluchistan.

Also, Article 37(1) of United Nation's Declaration on the Rights of Indigenous People, 2007, states that-

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“Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.”

In the light of the abovementioned provision, Baluch people can claim their right to be recognised as well as independence. Moreover, the United Nations General Assembly’s Resolution on Declaration on the Granting of Independence to Colonial Countries and Peoples recognises the desire for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence. It also declares that:

“All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

The people from Baluch having different culture, language and ethnic identity, have been forcefully annexed to Pakistan, and they have their right to self-determination under international law. Article 3 of the United Nations General Assembly Declaration on the Rights of the Indigenous Peoples states that:

“Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

Although, to this argument, some critics say that right to self-determination exists in case of colonialism. To counter this argument, supporters of Baluchistan’s independence say that Baluchistan is no more than a colony of Pakistan.

Pakistan has forcefully occupied Baluchistan as its colony and it would also be pertinent to state that declaration on the granting of Independence to colonial countries and people adopted by General Assembly Resolution 1514 (XV) 14th December 1960 has also encouraged the nations and people who are deprived by force by alien nation....

There are innumerable facts of forceful annexation of Kalat by Pakistan but the facts are on face denied by the Pakistani agencies. Also, Pakistan never talks about the history of Baluchistan. It wants the world to forget the facts of aggression committed by it against Baluchistan.

“The true history of Baluchistan is never shared or talked about among the general public of Pakistan. Our (Pakistan’s) textbooks and other publications narrate a rhetoric which is far from the truth, and which has made the general public believe in a lie.”

The Baluch people’s protest, hue and cry still remains unheard by the international community at large. Time and again, the leaders from Baluchistan who advocate for their

independence have been arrested by the Pakistan's Government. In suppressing the voices of Baluchi people since 1948, Baluchistan has been exposed by Pakistani army to five insurgencies. The current one, the fifth insurgency, is mainly blamed on the imprudent and undemocratic dictates of General(retd.) Pervez Musharraf.

Genocide

In the process of oppressing the demands for independence by the Baluchistan province, Pakistani Government has long been committing the offences of ethnic cleansing and human rights violations against the Baluch people.

The incident of genocide is not mentioned in any formal research or study by any United Nations Agency or a non- government organisation, but it has been claimed by many local newspapers, local media and few informal studies.

Since these facts and figures are often denied by the Pakistani government, it is pertinent to note here that most of such figures are claimed by the Baluchi people themselves. Had these figures been given by some other country, suppose Indian agencies, the facts and figures could have said to be distorted and driven by ulterior motives.

Pakistani army has been since long exterminating the Baluchi people including women, the old and children. There are serious accusations of systematic killings of people from Baluchi ethnicity by the Pakistani forces.

The Pakistani army has been killing teachers and students who have nationalist ideology and this, unfortunately, is not covered by the international media. Most of the crimes committed by the Pakistani army in Baluchistan are either unreported or are given a miniscule form.

What is crucial to realise is that- amidst all the colonial subjugation by British army, forceful annexation by Pakistan, geo-political ramifications, economic oppression and exploitation of the natural resources, socio-cultural and ethnic rights of the Baluchi people has been disrespected and humiliated. The socio-cultural heritage, political history and ethnicity of Baluchistan are compromised by the State (Pakistan) itself.

...there is a perpetual conflict between Baluch people and Pakistan since 27th March 1948, due to which thousands of Baluch people have been ruthlessly eliminated, and thousands are under illegal custody of security forces and there is no such a day where the security forces of Pakistan are not wilfully killing, enforced disappearing and arbitrarily arresting the innocent Baluch people.

The continuing rights' abuse against the people of Baluch is a shame on the present international legal order that is based on justness and equality. The enforced disappearances, abductions and extra judicial killings by the military and paramilitary of Pakistan are a

mockery of the human rights standards. The present uprising of Baluchistan's ethnic nationalism and its suppression by Pakistan needs to be brought to discussion on international platform. The serious issues of human rights violations and suppressed sovereignty of Baluchistan has been ignored by the international community.

Crimes against Humanity

Today, Baluchistan is the largest of the four provinces of Pakistan with 44% of total area of the country. Despite being rich in natural resources (including oil, gas, copper and gold) along with having a coastline, it remains as the least developed province of Pakistan. A vast population lives under deplorable housing conditions where they do not have electricity or access to clean drinking water. Baluch people are tortured by the Pakistani army rampantly and their human rights are violated day and night.

Pakistan has been denying all the accusations of human rights violations against the Baluch people. It has been officially denying the Baluch people access to international media. Amnesty International's Pakistan researcher Mustafa Qadri terms Baluchistan as one of Pakistan's "greatest moral crises". The province, he says, has fast become a "human rights-free zone" with security forces and armed groups acting with total impunity."

The acts of the Pakistani army against Baluchi people is in contravention with the principles of the Charter of the United Nations, Universal Declaration of Human Rights, Declaration on the Rights of the Indigenous People and other Human Rights instruments. Pakistan's acts and abridged the right of Baluchi people under Article 1 of the United Nation's Declaration on the Rights of Indigenous People, 2007, that states:

"Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law."

The Baluchi people are entitled to freedom since long and this claim is further strengthened by Article 7(1) of the United Nation's Declaration on the Rights of Indigenous People, 2007- "Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples...."

Baluchi people are denied to most of the basic human rights like right to life, right to pursuit of happiness and right to peaceful enjoyment of property. There have been ample evidences of military and paramilitary abuses against the women and children of the Baluchistan.

Article 8(1) of the same declaration also mentions:

"Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture."

In essence, Pakistani armed forces are violating almost all the provisions of the Declaration on the Rights of Indigenous People. Human rights violations in Baluchistan has, sometimes, been criticised by the international community, like the Human Rights Watch, but ultimately, international community has largely refrained from intervening in the issue.

The abovementioned reasons strongly support the case for independence of Baluchistan else its political, cultural and social identity would be further compromised.

Intervention of United Nations Security Council

The human rights issues are usually considered to be the internal matters of a State. And, under ordinary circumstances, no State shall intervene in the internal matters of any other State. Interfering in one State's domestic matter has always been criticised under international law. United Nations has principle of 'non-intervention' as one of its foundational principle. This principle in essence derives its force from the principle of 'sovereign equality'. All states are sovereign and irrespective of their geographical size, population size, economic status or political strength, are on the same platform and are equals. This would mean that no state shall interfere in the internal matters of the other state as it would disrespect the intervened State's sovereignty as well as equality under international law.

The 'non-intervention' principle is nowhere explicitly mentioned in the Charter, but can be inferred through some of its provisions. Article 2(4) and Article 2(7) of the Charter of the United Nations mainly establish the principle of 'non-interference.' Article 2(4) requires the States from refraining to use force or its threat against any other State. It stipulates general prohibition on the use of force. The Article states:

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

Further, Article 2(7) directs the various organs of the United Nations to refrain from intervening in the domestic affairs of their member States. It reads as under:

“Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”

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It differs from Article 2(4) in the sense that it directs the non-intervention of the organisation in a State's affairs while Article 2(4) requires the non-intervention of a State in domestic affairs of another State.

But the last line of the clause 7 of Article 2 mentions an exception under which the Security Council can use force under Chapter VII of the Charter for the maintenance of international peace and order. Article 39 gives the Security Council to decide to use force in case of breach of peace; it says:

“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”

So, any threat to the international peace may pave way for action to be taken by the Security Council under Chapter VII of the Charter, even if it is limited by the Article 2(7) of the Charter. Such an action is demanded under the notion of 'negative peace' as interpreted by Robert Kolb. According to him, the notion of negative peace as provided under the UN Charter tends to give the UN, as an organisation, the role of a 'fire fighter'. UN, through its Security Council, assumes such a role in situations of urgency, for instance, an outbreak of violence. The idea is that inter-state conflicts which have already been erupted must be stopped immediately. It also denotes major disturbances that are on the verge of breaching the international peace.

The current continuously deteriorating state of Baluchistan demands the use of tools as provided under the chapter VII of the Charter. The United Nations Security Council is the proper authority that can take action to establish peace in Baluchistan, this is so because:

1. If any other State intervenes in the matter, it will not be justified under Article 2(4) of the Charter of the United Nations. Moreover, it will also amount to breach the sovereignty of Pakistan by intervening State.
2. Any intervening State, for instance, China or United States, may give it an altogether different dimensions because of their hidden interest in the geo-strategic region;

United Nations Security Council has a responsibility to take action in such situation and it will be not justified if any other regional or local player tries to intervene in the matter given its complexity and sensitivity. Therefore, as an interim measure, to take control of situation, actions may be taken by the Security Council, so that Baluchi indigenous people may be saved from further atrocities.

Recommendations

1. The nationalist movement of Baluchistan has been very disorganised and decentralised and this is one of the reasons as to why the movement lacks thrust. If the movement is organised, it will give an impetus to the independence of Baluchistan.
2. Baluchistan's nationalist movement lacks a national face. Pakistan is accused of dividing local leaders and chieftains. The nationalist leaders are also often accused of corruption. Due to lack of leadership, it is easier for the Pakistani army to oppress the nationalist movement.
3. The youth of Baluchistan can be a significant role in this. United Nations peace Programs, like 'Seeds for Peace', can help in nurturing leadership amongst the Baluchi youth for effective peace restoring and nation-building process.
(The Seeds for Peace Program has contributed a lot to resolve the Palestinian crisis by motivating Palestinian youth towards restoring peace and peace-keeping through its leadership development programs and confidence and peace building measures.)
4. The complexities of the Baluchistan's issue can be dealt with a holistic approach. It is to be ensured that the state of Human rights in Baluchistan is not further worsened by any violent national struggle that is apprehended. For this, Nationalist leaders, Baluch tribal chieftains, Pakistani officials and United Nations entities can work out for a solution through negotiations, dialogues or any other peaceful modes.
5. Free, independent and a democratic Baluchistan is a way forward for establishing peace and order in the region, but this is not easy as it sounds. It calls for diplomatic intervention by the United Nations and other third party countries.

Conclusion

Baluchistan's political, social and cultural identity is being crumbled by the continued violence in the region. Pakistan has been accused of the crimes of aggression, genocide, ethnic cleansing and human rights violations against the Baluchi people. Their ethnicity stands endangered and if, even now, the international human rights organisations do not intervene in the matter and establish peace in the region, then possibly the Baluchi ethnicity will be erased from the map of the world.

The basic human rights of the Baluchi people are rampantly abused by the atrocities of the Pakistani army there, but these problems have long been ignored by the international community. Mass killings, rape of women, extra judicial killings of lawyers and teachers, dying children go unnoticed on the international platform. Pakistan calls it its internal matter,

in which no outside country shall interfere. Other players, like United States and China, purposely want the issue to remain unresolved. All human rights' advocates appear to be a sham in the face of the atrocities faced by the Baluchipeople.

The United Nations, with maintenance and promotion of international peace and order as its one of the main purposes (as per Article 1(1) of the Charter of the United Nations), has the ultimate responsibility to protect the weak, oppressed and defenceless indigenous people of Baluchistan. International Human Rights agencies' efficacy is questionable if any of them is not being able to redress the problem.

Decades are passing by and Baluchistan continues to bleed. International agencies shy away from interfering in the issue, probably due to the fear of any backlash. But when United Nations agencies can intervene in the matters of Bosnia, Lebanon, Syria, Sudan, then why is it not intervening in the issue of Baluchistan-this still remains a question to ponder.