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Swat
A Critical Analysis

Sultan-i-Rome

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Executive Summary & Recommendations

While the government continues to press for an unconditional surrender of arms and men as a precondition to a dialogue and settlement; the other side is also adamant on its demands including the withdrawal of the armed forces, implementation of Islamic laws as per their demand, compensation for their losses at the hands of the government forces, and an unconditional release of their arrested associates as a precondition to bring an end to their struggle. Moreover, they are aspiring to establish their own government and rule; and hence, Shah Dawran, in a speech on FM radio, spoke of reemploying those police personnel who will resign from the present government services, when their own government is established. Besides, they have also asked the people in areas which are their strongholds to pay the ushar to them; and have already collected it this year during the winter harvest (kharif) season. The ushar is a mark of authority on the collector's part; and of recognition of that authority on the payee's part.

Swat is at the crossroads. If both sides remain adamant and refuse to budge from their stated stances and preconditions; it is likely to spell ruin for Swat and its inhabitants. A lot has already been done in that direction; and it is believed that only in Phase III of the so-called army operation itself, at least a lakh of Swat's people will perish.

The Corps Commander, Peshawar, Lieutenant-General Muhammad Masud Aslam said, in November 2007, that the use of force was not the solution to the issue. And the Taliban commander, Akbar

Hussain, in October 2007 said that this was a local issue, and the efforts to arrive at a solution through negotiations, were underway. He added that the Taliban had effective influence over the local population; and if outside fighters came in, the situation would go out of their control. Moreover, according to him, if the issue was not resolved through negotiations, Swat's fate could be more tragic than Iraq's.

A number of the direct and indirect stakeholders — for example the Americans and Afghan government, some of the agencies involved, and certain Taliban factions however, will not be happy with and hence, are likely to be opposed to negotiations, as has been seen previously. To find a peaceful way out of an increasingly volatile situation and an honourable exit for themselves, all parties will have to spiritedly comply with and implement the terms of the agreements already concluded in April and May 2008, between the provincial government and TNSM, and the provincial government and Swat's local Taliban respectively; especially since these parties have an obligation under their religion, and ethical and moral code of conduct to abide by the promises made and understanding reached between them. Moreover, the spirit of peaceful coexistence or 'live and let others live', has become the need of the hour. A further complementary, and essential step, even though not in hands of the local parties and stakeholders, would be the withdrawal of foreign forces from Afghanistan, which would greatly assist in normalizing the situation and defusing the anti-west and anti-America sentiments and struggle in the long run..

Swat: A Short History

The historic Swat, often compared to Switzerland for its natural beauty and picturesque landscape is situated in a geo-strategically important region of the world, where the significant regions of Asia — South Asia, China and Central Asia, meet.¹ Swat, which at present is part of the Provincially Administered Tribal Areas (PATA) of the North-West Frontier Province of Pakistan, has throughout its known history, held prominence. It has been the cradle of a great civilization (Gandhara) and has also been periodically invaded by formidable armies; of which the present deployment of a huge number of the Pakistani armed forces (more than twenty thousand) is an example.

¹For the strategic location and significant position of Swat in the past, present and the future; and the narratives and location of the routes and passes to and from Swat see: H.C. Verma, *Medieval Routes to India: Baghdad to Delhi, A study of Trade and Military Routes* (Lahore: Book Traders, n.d.), pp. 52-56, 68-69, 267-68; Joseph Popowski, *The Rival Powers in Central Asia*, trans. Arthur Baring Brant, ed. with Introduction by Charles E.D. Black, 1st Pakistani edn. (Quetta: Gosha-e-Adab, 1977), pp. 173-81, especially pp. 174-76 for Swat alone; Moti Chandra, *Trade and Trade Routes in Ancient India* (New Delhi: Abhinav Publications, 1977), pp. 3, 8-11, 19-20, 72-73, 93-95, 182; [Shui-ching-chu], *Northern India According to the Shui-ching-chu*, trans. L. Petech, Oriental Series 2 (Rome: Istituto Italiano per il Medio ed Estremo Oriente, 1950), pp. 69, 72; Giuseppe Tucci, 'On Swat: The Dards and Connected Problems,' *East and West* (Rome), Vol. 27 (December 1977), pp. 70-85; George Macmunn, *Afghanistan: From Darius to Amanullah* (London: G. Bell & Sons Ltd., 1929), p. 16; Ahmad Nabi Khan, *Buddhist Art and Architecture in Pakistan* (Islamabad: Ministry of Information and Broadcasting, Directorate of Research, Reference and Publications, n.d.), p. 62; D.H. Muncherji, 'Swat: The Garden of Asoka,' *Pakistan Quarterly* (Karachi), Vol. 9 (1959), pp. 40-41; Henry George Raverty, *Notes on Afghanistan and Baluchistan*, Vol. 1, reprint (Quetta: Nisa Traders, 1982), pp. 194-313.

Famous for its scenic beauty, peaceful environs, fertile land and high agricultural yield, minerals and emeralds, rich cultural heritage, and archaeological sites, which have attracted tourists from all over the globe; Swat has received prominence and attracted international media and community attention since the 1990s on another count: the demand for the introduction of Islamic laws; and the armed struggle that ensued for this cause. The demand and the struggle resulted in making the land a base for militancy, which however, was not new in the history of Swat. The activities of the Tanzim Nifaz-e-Shariat-e-Muhammadi (TNSM) since the 1990s and the consequent uprising against the government and armed clashes with the Pakistani armed forces in 1994, 2007 and 2008 (which are still continuing), made Swat the focal point of global politics and the international media. While analysts and commentators have tried to explain the situation from their own view points; politicians have attempted to exploit and use these varied interpretations for their own self-serving ends. Swat presents a complex picture which cannot be untangled without understanding its historical context from different standpoints. The following is an attempt in this regard.

For most of its known history, Swat has remained independent or at least semi-independent. It was occupied by the Yusufzai Afghans in the sixteenth century, who emerged the dominant segment in society. They, however, did not establish a government or state and lived in the tribal welter, divided into two opposite blocks called *dalay* (singular *dala*). During 1879-1881, the neighbouring Khan of Dir occupied the right-bank Swat and in 1895, the British brought the left-bank lower Swat under their protectorate and loose control with the formation of the Agency of Dir

and Swat, to which Chitral was added in 1897.²

Incensed at the repressive policy of the Dir ruler and the high handedness of his tax collectors, the people of the Shamizi, Sebuji and Nikpi Khel cantons of the right-bank Swat at last struck common cause under the patronage of a religious figure Wali Ahmad alias Sandakai Baba, in the beginning of 1915. After various encounters, they defeated and expelled the Dir forces, formed a five-member council to manage the affairs of the liberated area and at last installed Sayyad Abdul Jabbar Shah, on 24 April 1915, as their king. Abdul Jabbar Shah, however, was asked to relinquish power and leave Swat in September 1917. It must be noted however, that Abdul Jabbar Shah's domain did not encompass the entire Swat.³

At the removal of Abdul Jabbar Shah, Miangul Abdul Wadud (the grandson of Akhund Abdul Ghafur alias Saidu Baba)⁴ was installed as the new king of Swat. Abdul Wadud alias Bacha Sahib⁵ was dynamic and energetic and expanded and consolidated the state during his reign.⁶ The drive, initiatives and policies of the new king made Swat a model of peace in the Pukhtun tribal areas; and an incredible sense of peace and

²For some detail see Sultan-i-Rome, *Swat State (1915-1969): From Genesis to Merger, An Analysis of Political, Administrative, Socio-Political, and Economic Developments* (Karachi: Oxford University Press, 2008), pp. 21-48.

³For detail see *ibid.*, Pp. 48-80.

⁴For Saidu Baba see Sultan-i-Rome, 'Abdul Ghaffur (*Akhund*): Saidu Baba of Swat: Life, Career and Role,' *Journal of the Pakistan Historical Society* (Karachi), Vol. 40 (No. III, July 1992), pp. 299-308.

⁵For some detail about Miangul Abdul Wadud alias Bacha Sahib see Sultan-i-Rome, 'Miangul Abdul Wadud' in *Celebrities of NWFP*, Vol. 1 & 2, edited by Parvez Khan Toru and Fazal-ur-Rahim Marwat (Peshawar: Pakistan Study Centre, University of Peshawar, 2005), pp. 69-93.

⁶For detail see Sultan-i-Rome, *Swat State (1915-1969): From Genesis to Merger*, pp. 87-125.

respect for the authority of the state prevailed in an overwhelmingly illiterate tribal society. Under the term of an illiterate, but enlightened person, Swat became 'a unique State'⁷; and a model of peace, tranquility and progress in the Pukhtun tribal society.

In December 1949, Abdul Wadud abdicated his throne in favour of his son and heir apparent, Miangul Abdul Haq Jahanzeb. Miangul Jahanzeb alias Wali Sahib's⁸ efforts gave an impetus to developmental work with priority to the education, communication and health sectors. Moreover, he endeavoured to westernize the state and society.⁹ While the Swat state survived despite the opposition from within and outside; several factors,¹⁰ finally culminated in the announcement made on 28 July 1969, regarding state merger by the then Chief Martial Law Administrator and President of Pakistan, General Yahya Khan¹¹; and the ruler was formally divested of his powers on 15 August 1969.¹²

After bringing an end to the state, the former State (which was ruled by the Wali on behalf of the government of Pakistan as administrator for the said area) and Kalam areas were made a district (headed by a deputy commissioner) and part of the Malakand division (headed by a commissioner).

⁷James W. Spain, *The Pathan Borderland*, reprint (Karachi: Indus Publication, 1985), p. 223.

⁸Wali (meaning ruler) was the title with which the British recognized the ruler of Swat State. However, in Swat only the last ruler Miangul Jahanzeb was called Wali Sahib.

⁹For detail see Sultan-i-Rome, *Swat State (1915-1969): From Genesis to Merger*, chap. 9.

¹⁰For detail see *ibid.*, chap. 10.

¹¹See Sirajuddin Swat, *Sarguzasht-e-Swat* (Urdu) (Lahore: Al-Hamra Academy, 1970), p. 94.

¹²See *The All Pakistan Legal Decisions* [henceforward PLD], Vol. 22 (1970), West Pakistan Statutes, Regulation I of 1969, Dir, Chitral and Swat (Administration) Regulation, 1969, pp. 1-2.

Swat: Influence of the Babas and Mullahs

Swat, which was the religious centre for Buddhists at one time, had 'some 1400' Buddhist *sangharamas* (monasteries), with 'some 18,000 priests in them.'¹³ And it was here that a third school of Buddhism called Vajrayana or the Tantric Buddhism developed and flourished; due to which it turned into a sacred place 'for the Tibetans, as a birthplace of Padmasambahava.'¹⁴ In the sixteenth and seventeenth centuries, after the occupation by the Yusufzais, religious figures like Akhund Darwiza, his son Mian Karimdad and grandson Mian Noor wielded great influence¹⁵. In the nineteenth century, Akhund Abdul Ghafur alias Saidu Baba, dominated the scene owing to his mystic stature. Sayyad Akbar Shah, a descendent of Sayyad Ali Tarmizi alias Pir Baba, was called from Sithana and made the king of Swat. He ruled from 1849/1850 until his death in 1857.¹⁶ The sons of Saidu Baba held immense influence and in the nineteenth century, the elder of them was also the coveted choice for ruling Swat.¹⁷

In the late nineteenth and early twentieth centuries, Sadullah Khan alias Sartor Faqir

gained a foothold and exerted his influence here, even if on the basis of his being anti-British and claiming to possess supernatural powers.¹⁸ In the first quarter of the twentieth century, the Sandakai Baba emerged a prominent figure and played a significant role in the politics of Swat.¹⁹ His disciples, called his Shaikhan, organized themselves into an armed force for his 'Purity Campaign' in Swat. One of his Shaikhs, Khan Bahadar²⁰ had a contingent of fifty and was of a powerful and authoritative demeanor. The following Pashto *tapab*²¹ illustrates the resentment that existed against his authoritative role and his powers:

اسمان ته لار د ختو نشته
د زمکے سر د خان بهادر ورسیده

Asman ta laar da khatu nishtay

Da zmakay sar da Khan Bahadar wa rasidah

¹³[Hiuen Tsiang], *Chinese Accounts of India: Translated from the Chinese of Hiuen Tsiang*, trans. and annotated by Samuel Beal, Vol. 2, new edn. (Calcutta: Susil Gupta (India) Limited, 1958), p. 167.

¹⁴Giuseppe Tucci, 'On Swat: The Dards and Connected Problems,' *East and West* (Rome), Vol. 27 (December 1977), p. 69.

¹⁵Also see Khushal Khan Khattak, *Swat Nama of Khushal Khan Khattak*, trans. and ed. Shakeel Ahmad, with Preface by Raj Wali Shah Khattak (Peshawar: Pashto Academy, n.d.); Khushal Khan Khattak, *Swat Nama da Khushal Khan Khattak* (Pashto) with '*Muqaddamah, Tahqiq au Samun*' by Hamish Khalil (Akora Khattak: Markazi Khushal Adabi wa Saqafati Jarga Regd., 1986).

¹⁶See Sultan-i-Rome, *Swat State (1915-1969): From Genesis to Merger*, pp. 38-39.

¹⁷See *ibid.*, pp. 39-42.

¹⁸For some detail about the Sartor Faqir and his role see Sultan-i-Rome, 'The Sartor Faqir: Life and Struggle against British Imperialism,' *Journal of the Pakistan Historical Society* (Karachi), Vol. 42 (No. 1, January 1994), pp. 93-105.

¹⁹See Sultan-i-Rome, *Swat State (1915-1969): From Genesis to Merger*, pp. 54-93; Khurshid, 'Sandakai Mullah: Career and Role in the Formation of Swat State, Pakistan' *Journal of the Pakistan Historical Society* (Karachi), Vol. 47 (Part 2, April-June 1999), pp. 77-81.

²⁰This Khan Bahadar may not be taken for Khan Bahadar Sahib, Sultanat Khan of Jura.

²¹*Tapah* is a genre of Pashto folk verse that no individual can claim as his creation and which, it is believed, are generally said by women.

Meaning: There is no way to escape to the sky; as/and the earth went into the lot of Khan Bahadar.

At the same time Abdul Jabbar Shah, another descendant of Pir Baba, was called from Sithana and installed as king in 1915,²² owing to his religious roots - he was a scion of Pir Baba. Similarly, Miangul Abdul Wadud, his brother Miangul Shirin Jan and their cousins also fought for political power and had a significant segment of Swatis as followers since they were the grandsons of Saidu Baba.²³ It was this religious/mystic background that assisted and helped Abdul Wadud in acceding to power in 1917.

The role played by the religious men - Mulla, Faqir, Haji Sahib, Baba and the likes, in the history of the Frontier, especially the tribal areas including Swat, especially against the alien powers cannot be underestimated. Their relations with India and Afghanistan, and even Turkey in the past; and their association with the prominent religious figures and officials of these states was not a new phenomenon.²⁴ Besides, the asylum and protection granted to religious men from outside (who were opposed to and had actively struggled against alien powers) was also not a new development.²⁵ The example of the asylum granted to the followers of Sayyad Ahmad Shaheed Brailwi or the Hindustani Mujahidin and the fight for their sake, especially in the Ambela war of 1863, in which the mighty British Army was strongly resisted and fought (by the people of Buner, Swat, Dir and Bajawat) for about two months²⁶, is evident proof.

²²See Sultan-i-Rome, *Swat State (1915-1969): From Genesis to Merger*, pp. 52-56.

²³See *ibid.*, 64-68.

²⁴The archival record of the colonial government in India, has ample examples and testimony to this effect.

²⁵The history of the Frontier is full of such cases and examples.

²⁶See W.W. Hunter, *The Indian Musalmans*, with Introduction by Bimal Prasad, reprint (New Delhi:

The influence of religious figures in the Frontier can also be judged from the answers given by the Afridis to the questions posed by Robert Warburton, in the course of the punitive campaign (after their rising against the British in 1897). In response to the question, 'What made you come down?', they said, 'The Mullahs brought us down.' Responding the query, 'Why did you obey the Mullahs, and why did you not turn them out of your country?', they said, 'They were too powerful for us.' And to the question, 'Then why did you attack the [British] posts?', their reply was, 'The Mullahs forced us.'²⁷

In this scenario, the role of Sufi Muhammad, Fazlullah, and other such religious figures or those who advocated armed struggle on religious grounds; gave and provided asylum and sanctuary to foreigners and non-locals; and associated and cooperated with likeminded people from India and Afghanistan or other countries, was neither unique nor a new development or phenomenon.

Besides, most of the local people, despite not following Islamic injunctions in their *muamalat* (dealings with others), had sympathy and love for Islam. Even if not all, a large proportion of the local people usually get emotionally influenced by slogans and appeals in the name of Islam; which is generally exploited by leaders to serve their own ends.

The Swatis were known to be instinctively restive and hence always at daggers drawn in the pre-Swat state era, often referred to as '*da Pukhtu zamanā*' (the Pukhtu era) and '*da*

Rupa & Co., 2002), pp. 22-30. Also see Qeyamuddin Ahmad, *The Wahabi Movement in India*, reprint (Islamabad: National Book Foundation, n.d.); Qeyamuddin Ahmad, *Hindustan mayn Wahabi Tahrik*, Urdu trans. by Muhammad Muslim Azimabadi, 3rd edn. (Karachi: Nafees Academy, 1980), pp. 215-48.

²⁷Robert Warburton, *Eighteen Years in the Khyber, 1879-1898*, reprint, 3rd Impression (Karachi: Oxford University Press, 1975), p. 298.

Pukhtu dawar (the Pukhtu period) - the time when people lived under Pukhtu (also called Pukhtunwali) or the Pukhtun code.²⁸

Referring to their restiveness, a jeering saying goes:

چہ دسوات وی، دک دفسات (فساد) وی

Chey da Swat wi, dak da pasat (pasad) wi

Meaning: Those from Swat are but full of sedition.

They even fought on the *Eid* festivals (religious, sacred days and ceremonies, usually celebrated with much fanfare and joy). Young men, organized into opposing groups from neighbouring villages, would fight each other, thereby resulting in casualties; turning an otherwise joyous festival into an occasion for mourning and grief.²⁹ This instinct was gradually moderated due to the policies of the rulers of Swat, which transformed the social organization and outlook of the people. However, the developments and factors detailed below, contributed to the reemergence of this restive temper among a certain segment of Swatis.

²⁸For 'Pukhtu' or 'the Pukhtun code of life' see Sultan-i-Rome, 'Pukhtu: The Pukhtun Code of Life,' *Pakistan Vision* (Lahore), Vol. 7 (No. 2, December 2006), pp. 1-30.

²⁹Also see Muhammad Asif Khan, *Tarikh Riyasat-e-Swat wa Sawanih Hayat Bani Riyasat-e-Swat Hazrat Miangul Gul Shahzada Abdul Wadud Khan Bacha Sahib* (Pashto), with 'Dibbacha, Hisa Awal, and Hisa Swam' by Muhammad Asif Khan (Printed by: Ferozsons Ltd., Peshawar, [1958]), p. 280; Muhammad Asif Khan, *The Story of Swat as Told by the Founder Miangul Abdul Wadud Badshah Sahib to Muhammad Asif Khan*, with Preface, Introduction and Appendices by Muhammad Asif Khan; and trans. Preface and trans. by Ashruf Altaf Husain (Printed by: Ferozsons Ltd., Peshawar, 1963), pp. 66-67.

Constitutional and Judicial Issues in Swat: An Assessment

The tribal social organization and setup of Swat was altered drastically by the rulers of the state and hence, Swat as a tribal society, receded into the background.³⁰ The area's constitutional status as a tribal area however, is significant, as it makes the area constitutionally different from the settled areas and also provides it a separate status. Since Swat is part of the Provincially Administered Tribal Areas (PATA), it is crucial to understand its constitutional status. This is important for explaining why the support for the demand for Islamic laws has increased and why the Taliban have been able to increase their presence even in Swat.

Before the partition of India and the emergence of Pakistan on 15 August 1947, the subcontinent was primarily divided into two entities: British India and princely/Indian states. There was a third category called the 'tribal area'. The Government of India Act, 1935, defined 'tribal area' as 'the areas along the Frontier of India or in Baluchistan which are not part of British India or of Burma or of any Indian State or of any Foreign States.'³¹ All the three had a different status and were governed by different laws. British India was directly ruled by the British, under the laws framed by them. The princely states were ruled by their rulers according to their own laws and systems, but almost all of them had entered into treaties with the British government, on certain terms. The tribal area was neither subservient to the laws in vogue in British India nor was it ruled under the same administrative apparatus; but was internally independent and had treaty

relations with the British; and was under loose British control.

Recognizing that under the Indian Independence Act, 1947³², the princely states (Swat being one of them) and the tribal area would become independent³³, especially once the treaties entered into with the British government would lapse on 15 August 1947; the governments of Pakistan and Swat determined their future relations in the form of the Instrument of Accession. Under the Instrument of Accession (signed by the Swati ruler on 3 November and Governor-General of Pakistan on 24 November 1947)³⁴, the ruler of Swat, while retaining his own sovereignty over the state, surrendered his authority in respect of matters concerning defence, external affairs and communications of the state, to the dominion of Pakistan. With this Agreement, Swat gained admission into the Federation of Pakistan and also a mention in clause (a) of sub-section 5 of the Government of India Act, 1935. It therefore, constituted a part of Pakistan and was known as a 'Federated State'.³⁵

³²See 'article 7' of the 'Indian Independence Act, 1947' in Safdar Mahmood, *Constitutional Foundations of Pakistan*, revised and updated edn. (Lahore: Jang Publishers, 1997), p. 34.

³³*Memorandum on Federated States of Pakistan*, by Abdul Hamid, Joint Secretary, Constituent Assembly of Pakistan (n.p., n.d.), p. 2.

³⁴See copy of the Instrument of Accession executed by the Ruler of Swat, on 3 November 1947, and accepted by M.A. Jinnah, Governor-General, Pakistan, on 24 November 1947, *Tribal Affairs Research Cell, Home and Tribal Affairs Department, Government of NWFP, Peshawar* [henceforward TARC], Serial No. (henceforward SN) 14/Swat, File No. 107-S.St. I.

³⁵*Memorandum on Federated States of Pakistan*, by Abdul Hamid, p. 2.

³⁰For some detail see Sultan-i-Rome, *Swat State (1915-1969): From Genesis to Merger*, chap. 9.

³¹PLD, Vol. 59 (2007), Peshawar, pp. 45-46.

Like the other Federated States, with the solitary exception of Dir, Swat executed the Supplementary Instrument of Accession under which the Wali surrendered further authority to the Federal Legislature of Pakistan, and empowered it to enact laws for his state in the same manner in which it could make laws for other parts of Pakistan, in the Federal and Concurrent fields (Lists I and III, VII schedule of the Government of India Act, 1935); and to exercise executive authority in the State in respect of matters in the said fields.³⁶

Through this agreement, the Pakistan Constituent Assembly acquired authority to allot such constitutional position to the Swat State in the constitutional setup of Pakistan, as the Assembly deemed fit. Therefore, the Constituent Assembly, on the recommendation of the Basic Principles Committee, assigned to the State a place in the Republic of Pakistan and included it in the Republic, as its part.³⁷

The North-West Frontier states (including Swat) along with the tribal areas were declared Special Areas, at the time of the formation of One Unit of the then West Pakistan provinces, and were guaranteed special relationship, provided by the Constituent Assembly.³⁸ Swat retained its status of a 'Special Area' under article 218 of the *Constitution of the Islamic Republic of Pakistan, 1956*.³⁹ Under article 104, it was clarified that '...no Act of Parliament or of the Provincial Legislature shall apply to a Special Area or to any part thereof unless the Governor with the previous approval of

the President so directs....' The article further provided details on how laws shall be made for the Special Areas or a part thereof, and also stated that the special status of a Special Area or part thereof could be revoked by the president at any time, but only after ascertaining the views of the people of the concerned area.⁴⁰ The *Constitution of the Republic of Pakistan, 1962*, declared the Frontier States, 'Tribal Areas', and Article 223, declared that no central or provincial law would apply to a Tribal Area or any part of it unless the president and the governor (with the approval of the president), so directed.⁴¹

After the abdication of power by Ayub Khan and the promulgation of martial law in Pakistan; on 25 March 1969, the special status of the Frontier States as Tribal Areas, given in the Constitution of 1962, was retained under the Provisional Constitution Order, Article 3, Clause (1).⁴² Though Swat's status as a state was brought to an end in 1969, the special status of the area remained intact.

Under Article 260 of *The Interim Constitution of the Islamic Republic of Pakistan, 1972*, the Provincially Administered Tribal Areas (PATA) were created; and the 'districts of Chitral, Dir and Swat (which includes Kalam), Malakand Protected Area, the Tribal Area adjoining Hazara district and the former State of Amb' of the Frontier Province were made part of it. Under Article 261, Sections (1) to (5), the procedures

³⁶Ibid., p. 2. Also see 'Supplementary Instrument of Accession, 1954,' in *TARC*, Book No. 15, pp. 1-3.

³⁷*Memorandum on Federated States of Pakistan*, by Abdul Hamid, p. 3.

³⁸See *PLD* (1955), Vol. 7, Acts, Ordinances, Orders, Regulations and Notifications, pp. 273-74. Also see Wayne Ayres Wilcox, *Pakistan: The Consolidation of a Nation* (New York: Columbia University Press, 1963), pp. 185, 188.

³⁹See *PLD*, Vol. 8 (1956), Central Acts and Notifications, pp. 120-21.

⁴⁰Ibid., pp. 88-89.

⁴¹See 'Constitution of the Republic of Pakistan (1962)' in *PLD*, Vol. 14 (1962), pp. 206, 215; Safdar Mahmood, *Constitutional Foundations of Pakistan*, pp. 608, 620. Also see copy of Memorandum No. 230/22-C from Additional Political Agent, Chitral, to Political Agent, Dir, Swat and Chitral, Malakand, 25 January 1964, *Files of the Tribal Research Cell (Agencies) in Provincial Archives, Peshawar*, Bundle No. (henceforward BN) 26, SN 687.

⁴²*PLD*, Vol. 21 (1969), Central Statutes, Provisional Constitution Order, [Gazette of Pakistan, Extraordinary, 14th April 1969], p. 41.

required to be adopted for the extension of the laws made and acts passed by the central and provincial legislatures, making regulations and status of the directions of the president to the governor related to the tribal areas were given. And section (6), of article 261, granted the president the same power as was previously given in section 4 of article 104 of the Constitution of 1956 and section (3) of article 223 of the Constitution of 1962, but with the difference that the president shall ascertain the views of the people of the area concerned, for doing away with its tribal status, 'as represented in jirga.'⁴³

The aforesaid, envisaged in Articles 260 and 261 of the *Interim Constitution of 1972*—were retained under Articles 246 and 247 of the *Constitution of the Islamic Republic of Pakistan, 1973*. Therefore, no law made or act passed by the central and provincial legislatures applies to the area, unless specially extended under the special and specific extra procedures. And the special status of the area as a tribal area can only be changed with the consent of the people, represented in a tribal *jirga*. The full text of Article 247 of the Constitution of 1973 is as under:²⁴⁷. Administration of Tribal Areas ---

(1) Subject to the Constitution, the executive authority of the Federation shall extend to the Federally Administered Tribal Areas, and the executive authority of a Province shall extend to the Provincially Administered Tribal Areas therein.

(2) The President may, from time to time, give such directions to the Governor of a Province relating to the whole or any part of the Tribal Area within the Province as he may deem necessary, and the Governor shall, in exercise of his functions under this Article, comply with such directions.

(3) No Act of [Majlis-e-Shoora⁴⁴ (Parliament)] shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs, and no Act of [Majlis-e-Shoora (Parliament)] or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situated, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction.

(4) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter within the legislative competence of [Majlis-e-Shoora (Parliament)], and the Governor of a Province, with the prior approval of the President, may, with respect to any matter within the legislative competence of the Provincial Assembly make regulations for the peace and good government of a Provincially Administered Tribal Area or any part thereof, situated in the province.

(5) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter, make regulations for peace and good government of a Federally Administered Tribal Area or any part thereof.

(6) The President may, at any time, by Order, direct that the whole or any part of a Tribal Area shall cease to be Tribal Area, and such Order may contain such incidental and consequential provisions as appear to the President to be necessary and proper:

⁴³See 'The Interim Constitution of the Islamic Republic of Pakistan, [1972]' in *PLD*, Vol. 24 (1972), Central Statutes, pp. 579-80.

⁴⁴'The words "Majlis-e-Shoora (Parliament)" were substituted by Revival of the Constitution of 1973 Order: P.O. [President Order] No. 14 of 1985.'

Provided that before making any Order under this clause, the President shall ascertain, in such a manner as he considers appropriate, the views of the people of the Tribal Area concerned, as represented in tribal Jirga.

(7) Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area, unless [Majlis-e-Shoora (Parliament)] by law otherwise provides:

Provided that nothing in this clause shall affect the jurisdiction which the Supreme Court or a High Court exercised in relation to a Tribal Area immediately before the commencing day.⁴⁵

Its constitutional status of a tribal area has also had a role to play in the turmoil and insurgencies of 1994, 2007 and 2008, as it provided a base and plea for and boosted the demand for the enforcement and implementation of Islamic laws (rather than making the judicial system effective).⁴⁶ One of the main arguments and pleas made in support of this demand was that when there was a different (from the rest of the country) set of laws and procedures (for deciding cases) for the area in the form of the PATA Regulations (Regulation I of 1975 and Regulation II of 1975), why could there not be an Islamic judicial system/apparatus with a set of Islamic laws, different from those governing the rest of the country.

⁴⁵Muhammad Munir, *Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan, 1973*, ed. Mian Bashir Ahmad, Vol. 2, [Art. 185 – Subject Index], pp. 1361-63; ‘Constitution of the Islamic Republic of Pakistan [1973]’ in Safdar Mahmood, *Constitutional Foundations of Pakistan*, pp. 970-71.

⁴⁶Also see Sayyad Ali Shah, *Da Shariat Karwan: Manzal ba Manzal* (Pashto) (Lahore: Mukhtar Ahmad Khan Swati (Idara Nashr al-Maarif), 1995), pp. 10-18.

Additionally, the area’s constitutional status has also created a sort of diarchy: the area is a Provincially Administered Tribal Area and hence, under the control of the provincial government, which is responsible for the maintenance of law and order. But the provincial government has no authority to make and promulgate laws for the area on its own. This is done with the consent of and by the governor of the province and president of the country; both of whom are neither part of the provincial government nor answerable to it. They are not answerable to the people either.

This has often created anomalous situations wherein the president/governor and the provincial government have had differences on the course of action and policy to be followed in the case of the Tribal Areas. The case of Mutahida Majlis-e-Amal’s (MMA) provincial government (2002 to 2007) and President Pervaiz Musharraf, and the Awami National Party (ANP)-led provincial coalition government and President Musharraf are evident examples. The ANP-led coalition government concluded a peace treaty with the Swati Taliban and promised its implementation in spirit and the enforcement of Islamic laws, for which promulgation of a new regulation was required. Practically however, the provincial government possessed no power to do so, as such authority rests with the governor who in turn, can only act with the approval of the president. Besides, even if the governor and president agree with the provincial government on the policies and/or set of laws to be promulgated and extended to the area, these get entangled in red-tapism and lengthy bureaucratic procedures at both the provincial and central levels and hence, take a long time to materialize.

The matter is further complicated when at the governor secretariat or federal levels or both, objections and/or reservations arise with regard to the finalized draft, submitted by the provincial government. As for the rectification of anomalies in the draft and

consensus within the hierarchy, new and more file work is involved which takes further time and causes delay and anxiety. The recent reservations/objections of the federal government over the draft of the proposed Shari Nizam-e-Adl Regulation 2008, finalized and approved by the provincial government, is a case in point. It was expected that the president would approve the draft sent to him on 24 November 2008, following which the governor would promulgate the regulation, thereby leading to the normalization of the situation by 1 December 2008.⁴⁷ Instead, the objections of the federal government over the draft has led to a stasis for an indefinite period, which to be resolved, will require further meetings at different levels between the federal and provincial authorities to draw up a draft agreeable to all parties.⁴⁸ Reaching a fresh consensus between the Taliban/TNSM, provincial and federal governments over a modified draft will certainly not be easy, will be time consuming, and possibly cause a further deterioration of the situation.

Judicial Issues

The commonly held belief that Swat's state judicial system was Islamic and hence, disputes were settled swiftly, as per Islamic laws, is unfounded. Islam clearly states the rules to be followed in an Islamic state - a tooth for a tooth, an eye for an eye, amputation for theft, and stoning for adultery. In Swat however, there were fines for these crimes and the law of 'soul for a soul' or *qisas*, was rarely observed. The local *jargas*⁴⁹ fixed the fines in their *dasturul amals*

⁴⁷See 'Islamabad mayn munaqida "Swat amn conference" mayn ki gayi Inam-ur-Rahim ki taqirir ka matan,' *Roznama Azadi Swat* (Urdu daily: Mingawara, Swat), 13 December 2008.

⁴⁸See 'Shari Nizam, Sarhad Hukumat ka Sadar aur Wazir-e-Azam say rabita ka faisala,' *Roznama Express Peshawar* (Urdu daily: Peshawar), 5 December 2008.

⁴⁹*Jarga/Jargah* (erroneously written as *jirga*) is the traditional consultative institution where matters of common interest and communal affairs are

(codes of conduct)⁵⁰ or the ruler sometimes did so himself. For example, the ruler in one of his printed decrees proclaims, that henceforth the following fines would be imposed: adultery - Rupees 500 (only men were liable to pay this fine); firing at someone - Rupees 200; burglary (breaking into someone's house for theft) - Rupees 200; sodomy - Rupees 200 (only the perpetrators of the crime were liable to be fined); and teasing a woman - Rupees 100.⁵¹ In another decree, the ruler declared that whosoever cut his wife's nose off would have to pay a fine of Rupees 2000 and would also have to divorce his wife.⁵² In deciding most of the murder cases, political considerations and repercussions of the decisions were considered instead of the *Shariat* (Islamic law).

To put it in a nutshell – the judicial system and laws of Swat were a synthesis of the traditional codes and those Islamic norms, compatible with these codes and the commands of the ruler. While the ruler was supreme and possessed final authority, the traditional codes held secondary status. Islamic laws were subservient to both of them. Final authority in all sorts of cases was vested in the hands of the ruler, who was neither bound by the codes of conduct

discussed and decided. In *jargas* all the stakeholders are represented; all the attendants express their viewpoints and present their arguments freely; and the decisions are made by consensus or unanimously, after the deliberations. Therefore the decisions, made in such a manner, are abided by all and the violators are liable to the fine and punishments etc.

⁵⁰See Sultan-i-Rome, 'Role of *Jirga* in the Formulation of Laws in Swat State' in *Proceedings of the International Workshop "Urban and Environmental Management: Local Dynamics in Intermediary Cities in the situation of Centralised Governments,"* eds. Alain Viaro and Arlette Ziegler (Geneva: IUED, June 2000), pp. 149-54.

⁵¹Decree of Hukamran Riyasat-e-Swat, No. 72, 17 August 1968, in *Personal Collection of the Author*; and *District Record Room at Gulkada, Swat*.

⁵²Decree of Hukamran Riyasat-e-Swat, No. 49, 25 November 1963, *ibid*.

made by the local *jargas* nor the *Shariat*.⁵³ The question that arises then is despite this, why do people view this period with such nostalgia? The reason is that the judicial system during this period was an effective one: the trials were quick and cheap; the judgments/verdicts were properly executed; and the cases were usually decided on the first or second hearing. Moreover, ‘some of the shortcomings of the Western judicial system — technicality, delay, and high costs’⁵⁴ did not exist. Thus, before the merger of the State, whether just or unjust, decisions were quick and cheaper. The litigants were spared the trouble of bearing with high expenses and prolonged procedures.

The situation however, changed with the merger. Regulation I of the Dir, Chitral and Swat (Administration) Regulation, 1969, divested the ruler of his powers, and delegated these to a person, officer or authority (subject to the general supervision and direction of the provincial government) to be appointed or empowered by the provincial government. All old laws, including regulations, orders, rules, notifications and customs, having the force of law, were kept enforced.⁵⁵ This status quo created much confusion and uncertainty as there were no codified laws, rules and regulations; and it was left to the new administrative-cum-judicial officers to define and pronounce the *riwaj* (customary law/practice). The situation soon became so confusing and difficult for the people that

⁵³For some detail see Sultan-i-Rome, ‘Judicial System, Judiciary and Justice in Swat: The Swat State era and the post State Scenario,’ *Journal of the Pakistan Historical Society* (Karachi), Vol. 49 (No. 4, October-December 2001), pp. 89-100; Sultan-i-Rome, *Swat State (1915-1969): From Genesis to Merger*, pp. 195-203, 307-11.

⁵⁴Wayne Ayres Wilcox, *Pakistan: The Consolidation of a Nation* (New York: Columbia University Press, 1963), p. 155.

⁵⁵See Regulation I of 1969, Dir, Chitral and Swat (Administration) Regulation, 1969, in *PLD*, Vol. 22 (1970), West Pakistan Statutes, p. 2.

an association named the ‘Justice League’ had to be formed.⁵⁶

The government gradually started to extend Pakistan’s laws and created a sessions court for the entire Malakand Division, including Swat. The government’s efforts however, failed to redress the grievances of the people because in the main domain, *riwaj*, which had not been codified, continued to be enforced.⁵⁷ Besides, there was no clear demarcation between civil and criminal matters which were sometimes manipulated for ulterior motives. This is why the people’s resentment and grievances increased; so much so that even the labourers started to demand the abolition of the ‘Riwaj/FCR’ (Frontier Crimes Regulation, 1901) and the enforcement of full-fledged Pakistani laws instead.⁵⁸

While the government continued to extend Pakistani laws sporadically to Swat; in 1975, it promulgated Regulation I of the Provincially Administered Tribal Areas Criminal Law (Special Provisions) Regulation, which was enforced immediately. Regulation II of the Provincially Administered Tribal Areas Civil Procedures (Special Provisions) Regulation, 26 July 1975, however, was only published and Section 3 of the Regulation stated that it would ‘come into force on such date as Government [Government of North-West

⁵⁶Personal interview of Miangul Shirin (Chief Officer, Municipal Committee Mingawara, at the time of the interview), 28 June 1998.

⁵⁷*Riwaj* means custom, fashion, practice, prevalence. In this context it hints to customs, traditions, usage and customary laws as well as to the decisions and orders made by the authorities of the Swat State. A customary law book entitled *Riwaj Nama-e-Swat* (customary law book of Swat) was later compiled; and published in 1973 by Ghulam Habib Khan (Superintendent, Deputy Commissioner Swat, office).

⁵⁸For the aforesaid demand of the labourers see ‘Special Situation Report—Swat District,’ 22 May 1972 in *Files of the Governor Secretariat, North-West Frontier Province, Provincial Archives, Peshawar*, [henceforward GSNWFP], BN 28, SN 231.

Frontier Province] may, by notification in the official Gazette, appoint in this behalf.⁵⁹ These two regulations are commonly known as PATA Regulations. On 19 March 1976, the date for the enforcement of Regulation II was set to 25 March 1976.⁶⁰ Amendments were made in Regulations I and II of 1975 vide Regulation IV of 1976, 29 December 1976⁶¹; and the power to decide cases, both criminal and civil were transferred from the judiciary to the executive.⁶² The executive referred the cases to *jargas*⁶³ (under and in accordance with the PATA Regulations), which unfortunately did not work properly as their decisions were usually manipulated. Moreover, the cases were not quickly decided, which generated resentment; as instead of redressing the grievances and facilitating the people the PATA Regulations led the situation from bad to worse.

In this scenario, some of the litigants challenged the PATA Regulations before the Peshawar High Court. The Division Bench of the High Court declared on 24

⁵⁹See *PLD*, Vol. 27 (1975), NWFP, Statutes, Regulation I of 1975 and Regulation II of 1975, pp. 144-53, 182-86.

⁶⁰See *ibid.*, Vol. 28 (1976), NWFP, Statutes, Gazette of NWFP, p. 37.

⁶¹See *ibid.*, Vol. 29 (1977), NWFP, Statutes, Regulation IV of 1976, pp. 36-39.

⁶²However, the chapter of the Pakistan Penal Code was exempted from this change; and hence the cases under this chapter were still to be tried by the judiciary. The same was the case on the civil side but only in the cases in which the government was directly a party or minor(s) or insane(s) were party or any arbitration clause was applicable there. Therefore, the judiciary still existed, side by side, for trial of such cases.

⁶³*Jargas* here does not mean and refer to the traditional *jargas*. Under the PATA Regulations, the deputy commissioner was authorized to refer a case to a group of men, nominated by him and headed by a government functionary—Tahsildar or Naib Tahsildar—so as to see and enquire into the matter and decide. They were called *jarga*. These *jargas* had no symptom of and hence could not be taken for the traditional one.

February 1990 that the PATA Regulations (Regulations I and II of 1975) were in opposition to Articles 8 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973⁶⁴; and hence, the PATA Regulations were declared null and void. The provincial government filed appeals against the verdict of the High Court in the Supreme Court of Pakistan, which the Supreme Court ‘dismissed with costs,’ on 12 February 1994.⁶⁵

In the meantime, the Tanzim Nifaz-e-Shariat-e-Muhammadi (TNSM) gave impetus to its activities and called for the enforcement of Islamic laws in the courts and bringing the judicial system (in the then Malakand Division and Kohistan District) in conformance with the Islamic justice system. In May 1994, TNSM organized a sit-in on the main road at Malakand and kept it blocked for almost a week. This brought the movement to the forefront in the media and gave it fame worldwide. On 16 May 1994, as a result of firing, at those who had blocked the Buner-Mardan road at the Babaji Kandau, eleven persons died and twenty one were injured, which greatly aggravated the situation. To pacify the protestors, end the agitation and open up the road, the provincial government agreed to TNSM’s demands for the enforcement of Islamic laws and make the judicial system an Islamic one.⁶⁶ The government had yet to implement these demands as it was still working out the modalities, when the uprising of November 1994 took place in Swat, in the course of which Swat’s government machinery was left paralyzed for three days; and resulted in casualties on both sides.⁶⁷

⁶⁴See *PLD*, Vol. 42 (1990), Peshawar, pp. 51-62.

⁶⁵See *ibid.*, Vol. 47 (1995), Supreme Court, pp. 281-306.

⁶⁶Also see Sayyad Ali Shah, *Da Shariat Karwan: Manzal ba Manzal*, pp. 34-37, 42-53, 129.

⁶⁷Also see *ibid.*, pp. 137-53.

To fulfill their promise and meet the demands of the TNSM, the Provincially Administered Tribal Areas (Nifaz-e-Nizam-e-Shariah) Regulation, 1994 (NWFP Regulation II of 1994) was promulgated. Under this regulation, twenty three Ordinances and Acts (given in Schedule I therein and already in vogue in the settled districts of the province) were extended to Malakand Division (which includes Swat).⁶⁸ The regulation however, was mainly procedural law, meaning that it only dealt with the procedures of the courts. This fell short of the expectations and demands of the TNSM and Sufi Muhammad and his supporters were quick to express their disapproval of the new judicial setup; and called yet again for the implementation of Islamic laws and a practical change in the judicial setup as per their demands. Resultantly, a new regulation called the ‘Shari-Nizam-e-Adl Regulation, 1999’ (NWFP Regulation I of 1999) was promulgated, which repealed the Provincially Administered Tribal Areas (Nifaz-e-Nizam-e-Shariah) Regulation, 1994 (NWFP Regulation II of 1994). The new regulation extended and enforced twenty nine Acts and Ordinances (given in Schedule I and already in force in the settled districts of the province) most of whom were already extended under the now defunct Regulation II of 1994.⁶⁹ This regulation was also procedural in nature, in that it dealt mainly with the procedures of the courts.

Practically, this too, neither brought change nor redressed the people’s grievances due to which TNSM’s activities and demands for a change in the judicial system and enforcement of Islamic laws continued.

⁶⁸See ‘Provincially Administered Tribal Areas (Nifaz-e-Nizam-e-Shariah) Regulation, 1994 (N.W.F.P. Regulation II of 1994)’ in Ishfaq Ali, *Laws Extended to the Tribal Areas with Jirga Laws*, second, revised and enlarged edn. (Peshawar: New Fine Printers, n.d.), pp. 23-27.

⁶⁹See ‘The Shari-Nizam-e-Adl Regulation, 1999 (N.W.F.P. Regulation No. I of 1999),’ *ibid.*, pp. 41-50.

The following example would be sufficient to illustrate the prevalent ground situation. In 1953, my (the author) father purchased one *paisa*⁷⁰ *dawtar*.⁷¹ In 1999, his paternal cousins, filed a suit against my father, who had sold the *dawtar*, demanding their now deceased mother’s share in their father’s (grandfather of the plaintiffs and respondents 1 and 2, from mothers and father sides respectively) inheritance. We (the heirs of our late father) were also made a party to the case on the basis of our father’s purchasing a portion of the land (made disputed now after 45 years) despite the fact that (the father of) the person from whom our father purchased the land was entitled to a share equal to that and hence respondents 1 and 2 being his heirs.

I, had to defend my position and that of my brothers and sisters, since we were heirs to the land that our late father purchased and had now become disputed. Not conversant with the courts procedures and intricacies etc., I thought the case would be decided shortly as there was no ambiguity and technicality involved. But after few months, I realized the misconception; and started keeping the courts slips/chits bearing the next dates fixed for the hearing. To cut the story short; it took six years and eight months in the court of Civil Judge/Alaqa Qazi to complete the process and procedure and give the verdict⁷²; and then fourteen months in court of Additional District Judge/Izafi Zila Qazi due to the appeal

⁷⁰*Paisa* here means/refer to a unit of land in the traditional Swati system.

⁷¹*Dawtar* also spelled as *daftar/dafter*: The land liable to re-allotment in the traditional *wesh*/land ownership/tenure system in Swat: instituted by the Yusufzais’ leader Shaikh Mali after occupation of the land in the sixteenth century. The owners of *dawtar* had proportionate shares in all categories of the land belonging to the village or locality where they had their shares in the *dawtar* and alongside other related privileges and obligations.

⁷²See Suit No. 127/1, date of institution 4 October 1999; and date of decision 6 June 2006 in the Court of Ms. Zainab Rahman, Civil Judge/Judge Family Court/Alaqa Qazi II, Swat.

against the decision of the lower court.⁷³ The slips/chits I kept as record numbers 124; meaning that I attended the courts 124 days (the days whose slips/chits are not kept are not included). In other words the case took more than four consecutive months of my life only in two courts; not to talk of the days and time I spent in the process in meeting the legal counselors and the mental strain and financial burden that I sustained. Besides, as I had to take casual leave from the college for attending the courts, when the college was open, my students also suffered a lot and their time also wasted. Interestingly, the case is yet undecided; being on appeal in the High Court and will certainly be taken to the Supreme Court, on appeal. All these are in a very simple case/suit/dispute and under 'The Shari-Nizam-e-Adl Regulation, 1999'.

To the dismay of the people, the introduction of the 'Provincially Administered Tribal Areas (Nifaz-e-Nizam-e-Shariah) Regulation, 1994,' and 'The Shari-Nizam-e-Adl Regulation, 1999,' brought no visible change - neither in the procedures of the courts nor the laws. The only changes that came about were that Urdu became the court language; and the Civil Judge, Senior Civil Judge, Additional District Judge and District and Session Judge started being referred to as Alaqa Qazi, Ala Alaqa Qazi, Izafi Zila Qazi and Zila Qazi, respectively. The Civil Judges/Alaqa Qazis also work as Judicial Magistrates. They dispense and decide both civil and criminal cases. There are however, also Magistrates/Alaqa Qazis who are only authorized to decide criminal cases and who cannot become Civil Judges.

⁷³See Civil Appeal No. 117/13, year 2006 (date of institution 12 July 2006; and dated of decision 13 September 2007) and Civil Appeal No. 120/13N, year 2006 (date of institution 19 July 2006; and date of decision 13 September 2007), in the Court of Muhammad Sabir, Additional District Judge/Izafi Zila Qazi III, Swat.

Ironically, during this time, women judges were also sent to Swat, who worked as Judges in Family Courts/Civil Judges/Alaqa Qazis. This caused further resentment as women are not considered eligible to be appointed as judges under Islamic law.

The current scenario is also characterized by prolonged procedures, undue delays, technicalities, high costs, and in some cases, bribery. Additionally, the appointment of women judges is not acceptable to certain segments of society. All this has generated fresh resentment; and promoted and contributed to strengthening the cause of the TNSM/Taliban, evidenced by the support for them among the masses, who lately, have begun to openly state that their demands are not unjust.

It might be pertinent to ask why the people of Swat rose up in struggle for a change in the judicial system, while those in the rest of the country, did not? A plausible reason seems to be that they had lived under a judicial system in the Swat state era which was quick, efficient, and cost-effective, and which they believed was in conformance with Islam.

Not only in the judicial, but also in all the other areas, the Swatis compare the post-state/present situation, which compares dismally to what existed during the time of the Swat State—especially in the areas of law and order, health, education, communication, peace and security, etc.

Police's Role

The police contributed significantly to the creation of the present situation. The indifferent and repressive behaviour of the police towards the people, bribery, torture, and their collaboration with and assistance to criminals, embittered and alienated most people. Instead of providing peace, security and assistance to the people, the police became a source of trouble for them. Blatant police corruption, which included collecting the *bhata* (sum received as bribery for allowing unlawful activities) even for

day-to-day affairs was an open secret and became the cause for much resentment.

Moreover, they insulted and tortured TNSM members, arrested during their agitation in 1994-95, which generated further bitterness towards the police, within the rank and file of the TNSM.

Intelligence Agencies

Foreign and Pakistani intelligence agencies have also played an important role. The Pakistani and American intelligence agencies have supported militant organizations in the area for their own ends. These agencies organized and trained jihadi organizations (forerunners of the Taliban) for armed jihad (*qital*)⁷⁴ to counter the Soviet Union in Afghanistan.⁷⁵ The Pakistani intelligence agencies did the same (in the name of jihad) in Kashmir. The Taliban — an offshoot and conglomeration of the jihadi organizations that fought the USSR (Union of Soviet Socialist Republics, also called the Soviet Union) in Afghanistan and India in Kashmir — are not only well equipped, but also well trained.

⁷⁴Jihad has wider meaning and different kinds. Fighting in the way of Allah by means of arms (Holy war fought for the cause of Islam against the non-Muslims) is one of its kinds and is mentioned as *qital* in the Holy Qur'an. With the overwhelming purposely use of the word *jihad* for its *qital* aspect only, its other aspects, kinds and dimensions remains hidden from the eyes of majority of the people around the globe.

⁷⁵Also see Muhammad Amir Rana and Rohan Gunaratna, *Al-Qaeda Fights Back Inside Pakistani Tribal Areas* (Lahore: Pak Institute for Peace Studies (PIPS), 2007), pp. 12, 24-27, 35, passim; Fazal-ur-Rahim Marwat and Parvez Khan Toru, *Talibanization of Pakistan: (A Case Study of TNSM)* (Peshawar: Pakistan Study Centre, University of Peshawar, 2005), p. 2; Emma Duncan, *Breaking the Curfew: A Political Journey though Pakistan*, reprint (London: Arrow Books Limited, 1990), p. 280; Christina Lamb, *Waiting for Allah: Pakistan's Struggle for Democracy* (New Delhi: Viking Penguin Books India (P) Ltd., 1991), pp. 196, 206-42; Khan Abdul Wali Khan, *Bacha Khan au Khudai Khidmatgari*, Vol. 3 (Pashto) (Charsada: Wali Bagh, 1998).

And when America and its allies invaded Afghanistan in 2001, ousted the then Taliban government and installed their own puppet regime; the *qital* or armed jihad was further strengthened, as the Taliban and their supporters were now faced with new, alien occupation forces from whose grip, Afghanistan, a Muslim country, had to be liberated. Pakistan's withdrawal of its support from the Afghan Taliban, under US pressure, at a critical juncture in 2001, the provision of logistics and other kinds of support to the invading allies, and being in the frontline in the anti-Taliban and anti al-Qaeda drive in the so-called war on terror; not only caused resentment within the Afghan Taliban and al-Qaeda, but also, anger amongst their Pakistani counterparts and sympathizers.

The presence of the allied occupation forces in Afghanistan; the US/NATO (North Atlantic Treaty Organization) cross-border attacks into Pakistan's tribal territories, targeting the Taliban and their supporters; the Pakistan government's support to the allied forces; and its actions and operations against the Taliban — including, terming them terrorists and laying down preconditions to any dialogue with the Taliban, added fuel to fire. These factors combined to make the Taliban more stubborn, zealous, and more than eager to stand firm for their cause and make sacrifices to achieve it.

Many believe that the Taliban was the creation of Pakistan's intelligence agencies and army. Not only have they benefited from its struggle in Kashmir and Afghanistan in the past, but also regard the Taliban as useful for the future⁷⁶.

⁷⁶Interestingly, in the backdrop of the Mumbai attacks of 26 December 2008 and the Indian threats to Pakistan, the Pakistan army spokesman has termed Baitullah Mahsud and Fazlullah their brothers (see Tanweer Qaisar Shahid, '*Musla*', *Roznama Express Peshawar* (Urdu daily: Peshawar), 20 December 2008). And in a special interview, Muhammad Alam alias Binaurai—an important figure and commander of the Tahrir Taliban Swat—has said that if the government is

Additionally, the manner and way in which the so-called operations (2007-2008) and army action were carried out, hint that something is amiss at the bottom.⁷⁷

Furthermore, General Pervaiz Musharraf's unconstitutional act of 3 November 2007 — of imposing emergency in the country after the insurrection of the Taliban in Swat and Waziristan, strengthens the view that the intelligence agencies had possibly played a role in the entire affair.⁷⁸

The Taliban, however, strongly repudiate the contention that they have any connections or a secret understanding with the Pakistan army or that the present fighting is a facade. This is proved by the speech of a Taliban leader, Shah Dawran, given to an FM radio station, in which he exhorted the Taliban to kill those who say that the present fighting in Swat (between government forces and the Taliban) is mere pretense; that army men are

Muslims; and that the Taliban have made a secret deal with the army.⁷⁹

The then federal government (2002-2007) and intelligence agencies, as well as the Pakistan Muslim League (Quaid-e-Azam) and Pakistan Peoples Party (Sherpao) — ruling partners at the federal level — covertly supported Fazlullah with a view to create problems for the then provincial government of Mutahida Majlis-e-Amal (MMA). The MMA government was more tolerant of the Taliban than others, for it recognized that like the Taliban, it was also engaged in a struggle for an Islamic system, and thus, could not be seen as obstructing those advocating and struggling for the same cause. With regard to remaining indifferent and opposing any move against Fazlullah and his supporters, Qari Abdul Bais (MMA's member, National Assembly, from Swat) contended: 'Many of the Taliban voted in favor of the MMA in the 2002 elections; we can't annoy them, as they are our vote bank.'⁸⁰ Such a policy boosted support for Fazlullah and made him and his cause famous in a relatively short span of time.

honest in restoring law and order it shall enforce Islamic law practically; all members of Tahrik Taliban will become well-wishers of the government and fully cooperate. He asked the government to immediately practically enforce Islamic law in Swat and use the power of all the Taliban against India and America (see *Roznama Azadi Swat* (Urdu daily: Mingawara, Swat), 18 December 2008).

⁷⁷For example of such contention also see Ijaz Mehr, 'Taqat kay bajayay muzakirat ka mutaliba,' 1 November 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/11/printable/071101_swat_political.shtml; Rifatullah Orakzai, 'Swat mayn hukumati karwayi mayn dair kyau?,' 15 November 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/11/printable/071115_swat_taliban_control...

⁷⁸For Ahsan Iqbal's—PML (N), Central Secretary Information—fear that the Swat operation might also meant for justifying enforcement of emergency in the country, which proved true after two days, see Ijaz Mehr, 'Taqat kay bajayay muzakirat ka mutaliba,' 1 November 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/11/printable/071101_swat_political.shtml

⁷⁹Shah Dawran, sermon/speech on FM radio channel, 3 December 2008; and also 7 December 2008.

⁸⁰Shaheen Buneri, 'War on terror, Taliban and Pukhtun nationalists,' retrieved, on 12 March 2008, from <http://khyberwatch.com/nandara/index2.php?=-content&task=view&id=522&po...>

Echoes of Afghan War

Modern imperialism has multifaceted interests in the region which include, a policy of containing Russia; securing access to and control of Central Asia; and countering China, to mention a few.

The impact of the Afghan war has been enormous. The mindset created during the period of the struggle against the USSR in the name of religion, which has continued into the present day, is now directed against the US and the West for their attack on, intervention into and continued presence in Afghanistan. The Afghan war, both against the USSR and the present war against the US and its allies, has made the people more militant and well-trained, and increased the inflow of modern arms into the area. Moreover, it organized at least a section of the population both, in Afghanistan and the Pukhtun areas, including Swat, into a close-knit group which works in collaboration and coordination with each other.⁸¹

The Role of American, Afghan and Indian Intelligence Agencies

The American, Afghan and Indian intelligence agencies are also involved in their own ways, to engage the Pakistani Taliban and other jihadi organizations inside Pakistan to divert their attention and efforts away from incursions into and fighting in Afghanistan and Kashmir; and thus, lessen the pressure over their forces in those areas. They do so to create internal troubles for Pakistan so as to prevent it from interfering in Afghanistan and Kashmir. This is believed to be a cardinal factor responsible for the present turmoil in Swat and the other tribal areas.

In October 2007, the then governor of the province, Ali Muhammad Jan Orakzai, claimed that he had proof of the

⁸¹Also see Rana and Rohan Gunaratna, *Al-Qaeda Fights Back Inside Pakistani Tribal Areas*, pp. 48-49.

involvement of foreign agencies in the upheaval in Swat and the tribal areas.⁸² Pakistan's present high-level officials, both at the central and provincial levels, have also repeatedly spoken of the involvement of foreign agencies. Some local people believe that the Indian agents and mercenaries are directly involved; and are fighting in the guise of and within the ranks of the Taliban. Even Haji Muslim Khan—spokesman of the local Taliban, headed by Fazlullah has alleged the involvement of some external and internal forces (who do not want peace to prevail in Swat) in the attacks on the police personnel and girls school in May 2008.⁸³

The Americans are also believed to have contributed to and maintained such situations to justify their presence in Afghanistan and the region, the real aim of which is realizing other ends in Central Asia and against Russia and China.⁸⁴

Against this backdrop an analyst has observed as follows: 'The blindfolded reaction of the government has provided innumerable opportunities to foreign secret intelligentsia to interfere and aggravate the deteriorating situation further.'⁸⁵

⁸²*Roznama Azadi Swat* (Urdu daily: Mingawara, Swat), 30 October 2007. Also see the pamphlets dropped through the helicopters by the army, and captioned '*Fauj kyau ayi hay?*' and '*Swat kay amanpasand awam kay nam paigham*'.

⁸³For Haji Muslim Khan's statement see '*Swat: Muahiday par Amriki tahafuzat*,' 22 May 2008, http://www.bbc.co.uk/urdu/pakistan/story/2008/05/printable/080522_us_reaction_swat_zs...

⁸⁴Also see Rifatullah Orakzai, '*Swat aur Shangla mayn jharpayn*,' 18 November 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/11/printable/071118_shangla_update_nj.sht...

⁸⁵'A call from the Pulpit,' retrieved, on 29 October 2007, from the website: <http://valleyswat.net>

Other Contributing Factors

The rich scenic beauty and historical past have also played a role in fuelling trouble in the area. It is believed that hoteliers and others in the tourist industry of Murree, supplied funds for creating trouble and turmoil in Swat, and presented the situation in exaggerated terms in the media, to divert the flow of tourists away from Swat to their own areas. In this way therefore, the area's scenic beauty became a source of troubles and misfortune for Swat. The following Pashto *tapah* springs to mind in this context:

خپله ځوانی راپورے اور شوه
لکه ستي په اور کنبے پته ناسته یمه

Khpala ځwani rapuray ur shwa

Laka sati pa ur kay patta nasta yama

Meaning: My youth (beauty) has turned against me like a fire.
Embedded I am like a *sati*⁸⁶ with flames all around me.

During the period when Swat was a state, non-Swatis were obligated to sign surety bonds to be able to reside in Swat. This was to prevent them from engaging in unlawful activities.⁸⁷ They were also not allowed to purchase land, except with the permission of the ruler or heir apparent,⁸⁸ which was granted only in special cases. Bonds were also required of them to run businesses and

⁸⁶*Sati*: the Hindu widow burnt alive, with her husband's corpse, in the pyre.

⁸⁷For such bonds see 'Kitab No. 1: Kitab Faisalajat Wali Sahib 16-12-50 Ta 18-9-65,' passim, and 'Kitab No. 3: Register Faisalajat Daftar-e-Hizur, Az 16-9-58 Ta 4-8-69,' passim, in *District Record Room, Gulkada, Swat*.

⁸⁸See *Riwaj Nama-e-Swat*, compiled by Ghulam Habib Khan, pp. 174-77.

industries.⁸⁹ The gradual dissipation of these sanctions and restrictions, especially after the merger, and the exemption from taxation, (since the area was constitutionally a tribal area), caused an influx of outsiders into Swat for business, trade, industry, tourism, labour, services, and other such activities. As different people, including criminals, came into Swat from other areas, especially tribal areas like Dir, Bajawar, Mohmand, Khyber and Afghanistan, and settled there; in the course of time, this changed the power structure and led to an increase in the population⁹⁰ – another factor that has contributed to the turmoil and upheaval.

The plan to convert the present Saidu Sharif airport (situated in Tahsil Kabal) into a military airbase is considered another reason for the upheaval. New boundary limits (for making extensions to the airport) were marked some three years back. But the people likely to be affected by this decision (belonging to the villages Dherai and Bandai), expressed resentment and opposed the plan. Besides, a military cantonment is also planned to be established here in Swat. Therefore, giving a free run to Fazlullah and the initial support given to him by the Pakistan Muslim League (Quaid-e-Azam) and Pakistan Peoples Party (Sherpao) — the then ruling allies at the centre; the alleged support provided by agencies like the ISI; and the consequent turmoil that led up to the present situation, are viewed as attempts to prepare ground for constructing the military airbase and cantonment. This reminds one of what the federal government and its agencies did in the 1980s in Sind for the Panu Aqil cantonment and in the previous years in Baluchistan, for the Sui and Dhera Bugti cantonments.

⁸⁹For examples of such bonds see 'Kitab No. 3: Register Faisalajat Daftar-e-Hizur, Az 16-9-58 Ta 4-8-69,' passim, and 'Kitab No. 5: Register Zamanat Daftar-e-Hizur, Az 19-2-58 Ta 8-11-65,' passim, in *District Record Room, Gulkada, Swat*.

⁹⁰Also see Sultan-i-Rome, *Swat State (1915-1969): From Genesis to Merger*, p. 304.

This presumption was authenticated by the recent confession of the provincial governor, Owais Ahmad Ghani, when on his way to Kohistan district, he stopped over at Mingawara to make a statement to the effect that ‘a decision in principle had been taken to establish an army cantonment in Swat for which initial planning had been started.’⁹¹ Interestingly, it was reported in February 2008 that the preparation for establishing a permanent cantonment in Swat was underway; that the decision regarding the cantonment had been made due to the law and order situation in Swat; that Swat would be put on the track of development through the establishment of the cantonment; that with the establishment of the cantonment, the law and order problem in Swat would be solved; and that besides the local population, tourists would also be provided complete security. The skewed argument went that Swat and its people, hitherto immersed in backwardness, would come to prosper through the initiation of such steps.⁹²

Interestingly, Ayesha Sidiqa, a scholar and analyst who has written extensively about Pakistan’s military affairs, had written an article on the subject in December 2007, titled ‘*fauji chauniyu ki siyasat*’ (politics for the establishment of army cantonments). In a rather sardonic tone, she writes that the ongoing preparations for the establishment of the military cantonment in Swat are the result of the army’s realization that for solidarity within the country and to thwart the threat posed by terrorists to Swat, the only solution was the establishment of a cantonment in Swat. Towards the end of the article, Sidiqa says that there will also be other benefits of establishing an army cantonment in Swat. The army for instance, will be able to control smuggling, manifestly carried out from Gilgit and Swat. Presently,

⁹¹ ‘Cantonment being established in Swat: governor,’ Bureau Report, *Dawn* (daily: Islamabad edition), 28 November 2008.

⁹² See *Roznama Shamal Swat* (Urdu daily: Mingawara, Swat), 8 February 2008.

quite a few goods come in from China via this route.⁹³

One viewpoint is that since there exists a high education ratio in Swat with a large number of its people educated and qualified in almost all fields and areas of specialization, Swatis occupy high posts in almost all fields. This elicited jealousy among the people in other parts of the province and the country — both civilian and the military and contributed to the destruction of Swat, its institutions (especially educational), and the people.

Mismanagement on the part of the government; an inefficient administrative system; and the failure of almost all the government departments in delivering services, have disappointed the masses, who no longer have any faith in the government, its departments or the system.

The presence of foreign forces in Afghanistan, the government’s operations in Waziristan and other parts of FATA (Federally Administered Tribal Areas), the Lal Masjid (Red Mosque) operation in Islamabad (especially the manner in which it was carried out), and the government’s failure to spiritedly enforce and implement Islamic laws in the courts — as demanded by the TNSM and promised by successive governments — are the other key reasons why the Pakistani Taliban’s influence has spread from Waziristan to Swat⁹⁴; and resulted in the current armed struggle and upheaval.

⁹³ See Ayesha Sidiqa, ‘*Fauji chauniyu ki siyasat*,’ 13 December 2007, http://www.bbc.co.uk/urdu/miscellaneous/story/2007/12/printable/071213_cantonment_aish...

⁹⁴ Also see Haroon Rashid, ‘*Swat shidat pasandu ka frontline kaysay bana?*,’ 26 October 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/10/printable/071026_swat_haroon_as.shtml

TNSM and After

In 1989, a movement was started in Dir District and an organization headed by Sufi Muhammad, called the *Tanzim Nifaz-e-Shariat-e-Muhammadi* (TNSM), meaning 'Movement for the Enforcement of Islamic Law', was formed.⁹⁵ The motto of the organization was to compel the Pakistani authorities to enforce Islamic laws in the judicial arena⁹⁶ and make the judiciary conform to the Islamic system in Malakand Division. The organization gradually extended the movement to Swat as well.⁹⁷ The prolonged legal procedures (after the merger of Swat State), undue delay, heightened expenditure, bribery, misuse of *rinaj* and further deterioration under the PATA Regulations had already aggrieved most people of Swat. The judgment of the Peshawar High Court and then Supreme Court of Pakistan (declaring PATA Regulations ultra virus to the constitution) aggrieved the executive circle in Malakand Division, for it meant a dilution of their unbounded power. The executive were of the opinion that it was not possible to enforce Islamic law in the Malakand Division alone, and thus, the government would have to introduce other regulations of the nature of the defunct PATA Regulations, under which they would once again wield immense power. Therefore, they allowed a free run to the TNSM and approved and supported its activities tacitly. All this resulted in an increased momentum for the TNSM movement in Swat (though at first, the Swatis were passive towards the movement and its organizers faced

⁹⁵For how the movement started and the organization came into being; and Sufi Muhammad was made its head, see Sayyad Ali Shah, *Da Shariat Karwan: Manzal ba Manzal*, pp. 10-19.

⁹⁶Also see *Roznama Azadi Swat* (Urdu daily: Mingawara, Swat), 25 October 2008.

⁹⁷See Sayyad Ali Shah, *Da Shariat Karwan: Manzal ba Manzal*, pp. 24-27.

difficulties⁹⁸), which consequently led to the uprising and armed struggle in Swat in 1994.

Sufi Muhammad, the head of TNSM, now talks of non-violence and peaceful struggle for the introduction of *sharia* laws and has called the clashes with the armed forces and administration, a result of ignorance of Islamic law. Further, he continues to emphasize that a practical implementation of Islamic law is possible only through peaceful means.⁹⁹ Even though initially, he had favoured the use of peaceful means and was opposed to armed struggle; later, he became an ardent advocate of armed struggle, especially in the 1990s, when he frequently asked the people (in his speeches in public meetings) to sell their jewelry to purchase arms and ammunition; and organized trainings for armed struggle and fighting to achieve their goal.¹⁰⁰ The logo of the organization (TNSM) even bears the words '*ya shariat ya shahadat*' (either Shariat or martyrdom).¹⁰¹ On receiving the news of the Buner incident on 16 May 1994, in which demonstrators were fired upon by government forces, Sufi Muhammad instructed armed supporters in Dir and Bajawar to shoot any government personnel they found.¹⁰²

It is worth noting that the demand for the enforcement of Islamic laws in Swat is not a

⁹⁸See *ibid.*, pp. 26-28.

⁹⁹See *Roznama Express Peshawar* (Urdu daily: Peshawar), 1 June 2008; *Roznama Shamal Swat* (Urdu daily: Mingawara, Swat), 1 June 2008. Also see *Roznama Azadi Swat* (Urdu daily: Mingawara, Swat), 16 October 2008; *Roznama Aaj Peshawar* (Urdu daily: Peshawar), 16 October 2008.

¹⁰⁰Also see Khurshid Khan, 'Swat a Paradise lost,' retrieved, on 31 October 2007, from <http://valleyswat.net>

¹⁰¹Also see Sayyad Ali Shah, *Da Shariat Karwan: Manzal ba Manzal*, pp. 36, 129.

¹⁰²*Ibid.*, pp. 36-37.

new development. In 1949, Sirajuddin Khan (son of Sherzada Khan of Mingawara, brother of Muzafarul Mulk alias Kaki Khan—sitting member, national assembly—and uncle of Wajid Ali Khan—sitting provincial minister for forests) in a memorandum, asked the ruler of Swat state to enforce Islamic laws in the state, arguing that this would solve the problems of the people and ameliorate their distress.¹⁰³ And in June 1971, after the merger of the state, Dani Gul (a resident of Mingawara), advocated the enforcement of Islamic laws in Swat; terming it the only solution to the problems of Swat and arguing that it was in consonance with the people's temperament/mood.¹⁰⁴

As the promulgation of the 'Provincially Administered Tribal Areas (Nifaz-e-Nizam-e-Sharia) Regulation, 1994,' and the purported changes it brought about did not satisfy the TNSM, the organization started 'Jeel Bharao Tahrik'¹⁰⁵ in June 1995. Consequent upon the resentment and the struggle, a new regulation titled 'Shari-Nizam-e-Adl Regulation, 1999,' was promulgated, but it also failed to bring about any practical change; and the issue continued to fester. And while Sufi Muhammad and his organization were busy in the struggle for the enforcement of Islamic laws and change in the judicial system, America invaded Afghanistan in 2001. He, along with tens of thousands of his supporters crossed into Afghanistan in November 2001, to fight on the Taliban's side, against the Americans and their allies, despite the Taliban having asked him not to

¹⁰³Personal interview of Sirajuddin Khan, Sanghota, Swat, 11 June 1998.

¹⁰⁴See memorandum of Dani Gul presented to Secretary Sahib [M.S. Anwar, Joint Secretary, Establishment Division, Government of Pakistan], in *GSNWFP*, BN 14, SN 124.

¹⁰⁵For detail see Maulana Safiullah, *Da Shariat Dastan (Malakand Division, 1995-96)* (Pashto) (Mingawara, Swat: College Booksellers, [1996]); Abu Himad Khurshid Ali, *Asiran-e-Shariat-e-Muhammadi* (Pashto) (Mingawara, Swat: Shoaibsons, Publishers Booksellers, 1995).

come. After having lost a large number of his supporters and being unable to counter US bombardment, he, along with his son-in-law Fazlullah, made their way back to Pakistan, where they were caught and subsequently incarcerated.

Sufi Muhammad remained in jail; but Fazlullah was released after seventeen months.¹⁰⁶ After his release, he started preaching a purity campaign on an FM radio channel. Since his father-in-law was in prison, he was supported by TNSM sympathisers and with the assistance of the radio channel he quickly became popular. Soon, he started the construction of a *madrassa* and *markaz* (centre) in his home village Mamdherai, which is now to be called Imamdherai. People donated generously at his order; and would personally assemble in thousands at short notice.¹⁰⁷ Thus, he rapidly became 'popular among [the] masses, but controversial in [the] media.'¹⁰⁸

His growing power and popularity emboldened him and his supporters to challenge the government writ on several occasions, due to which, the government also had to make a show of force. These situations, however, were brought under control every time by reaching certain agreements. The policy and course of action adopted by him however, became a source

¹⁰⁶See Rahimullah Yusufzai, 'Inside Fazlullah's headquarters,' retrieved, on 6 November 2007, from <http://valleyswat.net>; Abdul Hai Kakar, 'Maulana Fazlullah, muahiday kay bad,' 21 June 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/06/printable/070621_fazlullah_analysis_sq...

¹⁰⁷Also see Abdul Hai Kakar, 'Maulana Fazlullah, muahiday kay bad,' 21 June 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/06/printable/070621_fazlullah_analysis_sq...; Abdul Hai Kakar, 'Swat mayn tashadud ka na thamnay wala silsila,' 25 October 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/10/printable/071025_swat_analysis_fz.shtml

¹⁰⁸Khurshid Khan, 'Exclusive: An interview with Maulana Fazlullah, Swat,' 21 April 2007, <http://valleyswat.net>

of dissension within the rank and file of the TNSM. Though the TNSM disavowed his policy and officially severed connections with him, his power and popularity continued to increase. And in 2007, the breakaway faction, led by Fazlullah, became part of the newly-established Tahrik Taliban Pakistan, headed by Baitullah Masud, which is an alliance or umbrella organization of different groups. The Fazlullah-led group is more influential than the TNSM-led group, headed by Sufi Muhammad, for the former are militarily well trained and possess greater zeal and commitment.

Interestingly, while outwardly there are differences between the two groups (one headed by Sufi Muhammad and the other by his son-in-law Fazlullah), especially with regard to strategy and course of action, both however, have the same motto and objective. Sufi Muhammad is reported to have told the media that if *sharia* laws are implemented as per his demands, he would go to Swat and disarm the other group (headed by Fazlullah)¹⁰⁹; and Haji Muslim Khan, the spokesman of the other group, has asked that Islamic laws be enforced in toto, as per the draft submitted by Sufi Muhammad.¹¹⁰

The Present Scenario

The above mentioned factors made the situation extremely volatile in Swat in 2007; as both the government and Fazlullah refused to budge from their respective stands. The government had to deploy armed forces in the area, which resulted in armed clashes. Simultaneously, the government was talking of a peaceful solution to the situation, with the provincial governor declaring that any army operation

¹⁰⁹See *Roznama Azadi Swat* (Urdu daily: Mingawara, Swat), 22 October 2008; *Roznama Aaj Peshawar* (Urdu daily: Peshawar), 22 October 2008, and 18 October 2008. Also see *Roznama Azadi Swat* (Urdu daily: Mingawara, Swat), 20 October 2008.

¹¹⁰See *Roznama Azadi Swat* (Urdu daily: Mingawara, Swat), 26 October 2008.

would be the 'last option'¹¹¹. President Musharraf however, asked the other side, the same day, to lay down its arms.¹¹² The other side also stated its opposition to war and expressed its preference for a peaceful solution of the issue, through negotiations.¹¹³ Despite this however, they also demanded the withdrawal of the armed forces, an enforcement of Islamic laws, and the release of Sufi Muhammad.¹¹⁴

The clashes continued, but after some resistance, Fazlullah and his *shura* (consultative body or aides)¹¹⁵, after asking their fighters to evacuate the roadside bases to avoid any further losses to the people, went underground.¹¹⁶ They termed this not as their 'flight from the fight', but a change of the war strategy.¹¹⁷ While the situation

¹¹¹Ibid., 30 October 2007.

¹¹²Ibid.

¹¹³See Abdul Hai Kakar, 'Ghair mulki nahi hay, magar aa saktay hay,' 31 October 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/10/printable/071031_swat_commander_as.s...

¹¹⁴See *ibid.*

¹¹⁵For Fazlullah's aides see Rahimullah Yusufzai, 'Men on mission,' retrieved, on 6 November 2007, from <http://valleyswat.net>

¹¹⁶Announcement made on their FM radio channel. Also see Rifatullah Orakzai, 'Swat: char muqamat par murchay khali,' 27 November 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/11/printable/071127_swat_areasfree_rzt.sht...;

Rifatullah Orakzai, 'Swat: Taliban kay murchay khali,' 27 November 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/11/printable/071127_swat_operation_updat...; Abdul Hai Kakar, 'Swat: mazed pachas halakatu ka dawa,' 28 November 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/11/printable/071128_swat_deads_sen.shtml

¹¹⁷See Rifatullah Orakzai, 'Taliban hikmat amlī tabdeel, Matta fauj kay pass,' 5 December 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/12/printable/071205_swat_update_zs.shtml; Rifatullah Orakzai, 'Swat: lugu mayn adam tahafuz barqarar,' 8 December 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/12/printable/071208_swat_matta_capture_n...; Abdul Hai Kakar, 'Kharija policy mayn tabdili chahiyayn,' 30 November 2007,

seemed to have calmed down by January 2008, heavy and indiscriminate shelling and bombardment caused heavy loss of lives and property of innocent civilians as well as the displacement of a large number of people. Monetary losses worth billions of rupees in different forms were also incurred.

In February 2008, general elections were held in Pakistan and the Awami National Party (ANP)-led coalition government was formed in the province. Since the election had been contested on the slogan of 'restoring peace and order and bringing normalcy to the province'; the provincial government held negotiations both, with Sufi Muhammad and Fazlullah's organizations. Agreements were concluded and Sufi Muhammad was released. Besides other things, the government promised the enforcement of Islamic laws as per the demands of the other side, who in turn, besides other commitments on their part, agreed to support the government in its righteous endeavours and in the restoration and maintenance of law and order.¹¹⁸

Differences, however, soon emerged on certain points. Each side blamed the other for not honouring the agreements, which, once more, strained their relations and resulted in fresh armed clashes. The government embarked on the second phase of its so-called operation; and the other side sorted out its own strategies. All these, however, again brought untold misery and great losses - of both, life and resources to the people. Additionally, the unprecedented curfew (which lasted 22 consecutive days during the month of Ramazan),¹¹⁹ and the severance of electricity and telephone lines,

http://www.bbc.co.uk/urdu/pakistan/story/2007/11/printable/071130_taliban_uniform_sen.s...

¹¹⁸For texts of the agreements see *Myashtinai Pukhtu (Monthly Pukhtu: Peshawar) (Pashto)*, Vol. 3 (No. 5, May 2008), pp. 51-52, and (No. 6, June 2008), pp. 6-7.

¹¹⁹Ironically, the curfew in Swat broke the old global records as it continued for eleven months: sometimes with breaks and sometime without any break.

caused immense problems for the local population. While one side resorted to 'decapitation', 'slaughter' (unprecedented in Swat; but not altogether new in its history), targeted killing and the destruction of government installations (especially educational institutions, bridges, police posts, and police stations); the other resorted 'to carpet bombing and massive shelling as invading armies do.'¹²⁰ The targeted blowing up and destruction of residential houses and bungalows, and shops and commercial markets etc. by both sides have now become routine.

If the course adopted by one side generate resentment and brought misery and worry for a majority of the people; the actions of the other, compelled the people to look upon it 'as an occupying force rather than a protector.'¹²¹

Asfandyar Wali Khan says that the Taliban 'had even bombed and targeted mosques, Hujras (Jirga) and even funeral prayers' and that 'we have to tell the truth.'¹²² It is equally true that not only does the army do the same, but in fact, does a lot more damage through carpet bombing, massive shelling, curfews, blockades, massive displacements and so forth. The course of action adopted by the government and armed forces has managed to generate sympathy for the Taliban and resentment against the government and the army; because 'it is the people of the area who are suffering as innocent civilians are being killed in the army action.'¹²³ Delawar Jan observes: 'The

¹²⁰Khurshid Alam, 'The Second big game & Pashtoons,' 15 November 2008, retrieved, on 16 November 2008, from http://khyberwatch.com/nandara/index2.php?=_content&task=view&id=663&...

¹²¹Ibid.

¹²²'Insurgency is a grave threat: Asfandyar Wali', 14 November 2008, retrieved, on 16 November 2008, from http://khyberwatch.com/nandara/index2.php?=_content&task=view&id=662&...

¹²³'Expats from Pakistan's Swat worry over relatives,' retrieved, on 12 March 2008, from

military operation was welcome[d] with a hope that the militants would soon be eliminated. They were garlanded and hugged when Taliban were routed in the major towns in their initial action.’ But,

Today....the army’s intention to crush militants is being doubted and instead of winning hearts and minds, the military is alienating people of the valley due to continuing civilian casualties and problems triggered by the military operation. The alienation is caused by the fact that the military could not protect the life and property but instead added to their problems.¹²⁴

http://khyberwatch.com/nandara/index2.php?option=com_content&task=view&id=475&po...

¹²⁴Delawar Jan, ‘Time to act with a difference in Swat’. 15 November 2008. *The News International* (Daily: Islamabad/ Rawalpindi edition)

The Way Out

The tragedy of the present situation is that 'there are many players involved' (both at the state and global levels); each one with 'his own agenda.'¹²⁵ But those who continue to be victimized are Swat and its innocent civilians.

While the government continues to press for an unconditional surrender of arms and men as a precondition to a dialogue and settlement; the other side is also adamant on its demands including the withdrawal of the armed forces, implementation of Islamic laws as per their demand, compensation for their losses at the hands of the government forces, and an unconditional release of their arrested associates as a precondition to bring an end to their struggle. Moreover, they are aspiring to establish their own government and rule; and hence, Shah Dawran, in a speech on FM radio, spoke of reemploying those police personnel who will resign from the present government services, when their own government is established. Besides, they have also asked the people in areas which are their strongholds to pay the *usbar* to them; and have already collected it this year during the winter harvest (*keharij*) season. The *usher* is a mark of authority on the collector's part; and of recognition of that authority on the payee's part.

Swat is at the crossroads. If both sides remain adamant and refuse to budge from their stated stances and preconditions; it is likely to spell ruin for Swat and its inhabitants. A lot has already been done in that direction; and it is believed that only in Phase III of the so-called army operation

itself, at least a lakh of Swat's people will perish.

The Corps Commander, Peshawar, Lieutenant-General Muhammad Masud Aslam said, in November 2007, that the use of force was not the solution to the issue.¹²⁶ And the Taliban commander, Akbar Hussain, in October 2007 said that this was a local issue, and the efforts to arrive at a solution through negotiations, were underway. He added that the Taliban had effective influence over the local population; and if outside fighters came in, the situation would go out of their control. Moreover, according to him, if the issue was not resolved through negotiations, Swat's fate could be more tragic than Iraq's.¹²⁷

A number of the direct and indirect stakeholders — for example the Americans and Afghan government, some of the agencies involved, and certain Taliban factions¹²⁸ however, will not be happy with and hence, are likely to be opposed to negotiations, as has been seen previously. To find a peaceful way out of an increasingly volatile situation and an honourable exit for themselves, all parties will have to spiritedly comply with and implement the terms of the agreements already concluded in April and May 2008, between the provincial government and

¹²⁵Khurshid Alam, 'The Second big game & Pashtoons'. 15 November 2008. Accessed on 16 November 2008, at http://khyberwatch.com/nandara/index2.php?=-com_content&task=view&id=663&...

¹²⁶Rifatullah Orakzai and Intikhab Amir, 'Malakand Division: kuch alaqu mayn curfew'. 13 November 2007.

http://www.bbc.co.uk/urdu/pakistan/story/2007/11/printable/071113_swat_curfew_sq.shtml

¹²⁷See Abdul Hai Kakar, 'Ghair mulki nahi hay, magar aa saktay hay'. 31 October 2007.

http://www.bbc.co.uk/urdu/pakistan/story/2007/10/printable/071031_swat_commander_as.s...

¹²⁸For having been different groups of the local Taliban see Rifatullah Orakzai, 'Jangju gruhu ka mazbut network,' 11 November 2007, http://www.bbc.co.uk/urdu/pakistan/story/2007/11/printable/071111_swat_militant_group_...

TNSM, and the provincial government and Swat's local Taliban respectively; especially since these parties have an obligation under their religion,¹²⁹ and ethical and moral code of conduct to abide by the promises made and understanding reached between them. Moreover, the spirit of peaceful coexistence or 'live and let others live', has become the need of the hour. A further complementary, and essential step, even though not in hands of the local parties and stakeholders, would be the withdrawal of foreign forces from Afghanistan, which would greatly assist in normalizing the situation and defusing the anti-west and anti-America sentiments and struggle in the long run.

¹²⁹The Holy Qur'an enjoin: O ye who believe! fulfil (all your) obligations/undertakings (Surah 5, verse 1).

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