

TRANSFORMATION FROM WALI'S TO STATE'S JUDICIAL SYSTEM: THE RESULTANT GAP AND POSITIONING OF THE CHESSBOARD PIECES

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Abstract: Swat – a valley once famous for its beauty, tourism, peace, and prosperity – has been in the news for the phenomenon of militancy and Talibanization for the last two decades. How this rift from tranquility to truculence occurred is a story expanded over a long history of Swat. However, all else equal and apart from the strategic location of Swat, the sprouting roots of the non-state actors phenomenon (i.e., the rise of Sufi-Muhammad's TNSM and Fazlullah's Talibanization) are found in the gap between state and societal justice systems – created after the merger of Swat with Pakistan in 1969. How this gap was created? By whom, how, and when it was exploited? Is there any chance of its further exploitation? Is there any way out from the gap? All these and many others are the central themes of this report. In the contemporary scholarship, however traces of the said gap can be found in many research articles, but there is no single study available exclusively and explicitly dealing the said gap. Moreover, as the study deals with 'lived experiences' of the people and what 'essence' these experiences have got for them, therefore, Interpretative Phenomenological Analysis (IPA) along with semi-structured interviews as a tool of data collection has been used in this paper.

Keywords: Swat, judicial system, wali's system of justice, Taliban, Fazlullah, Sufi Muhammad

Introduction

Swat, [t]he Switzerland of the East,¹ has been a centre for different civilizations, spindle of invaders and a rivet for different non-state actors. Since two B.C., it has been a game court for different actors to promote their own interests and consolidate their position in the land. Game court in a sense, that different players played freestanding games of their own interests using the same land. Gandhara in two B.C., Islam in eight B.C., Mahmud of Ghazni in eleventh century, Yousafzai in sixteenth century, and Babas (Holy Saints) in nineteenth century each player played his role well to consolidate his position till 1917 when a local *Jirga* laid the foundation of a princely state with Miangul Gulshahzada Sir Abdul Wadud Badshah Sab as its first ruler, and *Shairah-Puktoon Wali* as its code of conduct.

As it is seen that in the earlier days, the land per se was a game court. However, since 1969 after the transformation from Wali's to state's (by state here means Pakistan) system, there has been a shift in the game court from the land itself to the 'gap between state versus societal justice system'. As being a part of Pakistan, the land per se is no more a game court. However, in the post merger era, it is the gap between state and societal justice system that has acted as a game court. Different non-state actors at different times have exploited this new game court for promoting their own games of interest. Sufi Muhammad's *Tahrik Nifaz Shariat-e-Muhammadi Movement* and Maulana Fazlullah's *Swat Taliban Movement* are two distinct beneficiaries of this new game court.

The creation, exploitation and past, present and future implications of this new game court are central themes of this paper.

Geographical Location

Swat "is in no way a remote part of the tribal hinterland"² located in the north of Khyber Pakhtunkhwa with 35° North latitude and 72° and 30° East longitude.³ It is about 150 kilometers away from Islamabad and 100 kilometers from Peshawar. Locally, in the north of Swat lies Chitral and Gilgit, Dir in the west, Mardan in the south and in the east Indus separates it from Hazara. Physically, Swat is a home to mountains and hills covering every nook and corner of the region. However, a significant belt of plan area is also found starting at the belly of Malakand mountains till Gabral (Gul Abad) and Buner dale with the former having a length of 91 kilometers.

Strategically, Swat is an integral part of the region where the interests of great powers are indented, coincided or overlapped. Linked with the economic giant, China, through Silk route, having a direct land access to Gwadar port and proximity with Afghanistan through Peshawar and Bajaur Agency and Gorno-Badakhshan Province of Tajikistan through Chitral, Swat consummates a not-to-ignore position for herself in the international environment.

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Historical Background

As of its geographical and strategic location, Swat has been a region of enthrallment and immersion for various adventurers, conquerors and invaders. However, in spite of periodical invasions by various formidable armies, "Swat has [mostly] remained independent or at least semi-independent."⁴

For the sake of convenience, the history of Swat can be divided into four phases. A tacit line of demarcation cannot be drawn between any two phases. However; there are certain themes which distinguishes one phase from another.

- ✓ I. Alexander to Yousafzais
- ✓ II. *Babas* (Holy Saints) and Clergy
- ✓ III. Swat under *Wali*
- ✓ IV. Swat after Merger with Pakistan

Alexander to Yousafzais phase is marked by the invasions of various armies starting with Alexander till the invasion and settlement of present-day Yousafzais in Swat. In second phase, sway of all the affairs of Swat seems in the hands of *Babas* who were religious scholars. Abeyance and anarchy also characterizes this phase. Swat under *Wali* is a phase of relative peace, prosperity, development and order. The last phase starts with Swat merger in Pakistan in 1969 and is continued till today.

Alexander to Yousafzai Phase

Swat has been a 'cradle'⁵ of Gandhara civilization which is a blend of Greek and Buddhist Civilizations. A large number of monasteries and different archeological sites and history of Swat confirms the greatness and presence of this civilization in Swat. Sultan-i-Rome says that it was here in Swat that third school of Buddhism called Vajrayana or the Tantric Buddhism developed and flourished.⁶

Abdul Qayum Balala in his book "The Charming Swat" says that the history of Swat begins with the advent of Alexander The Great in Swat in 326 B.C. through Kunar. After defeating the Buddhist ruler, his army captured Swat valley. However, in 346 B.C. the great general of Alexander, Salukis, gave Swat back to Chandragupta, the Buddhist ruler.⁷

In eleventh century, Mahmud of Ghazni captured Swat defeating Raja Gira, the last Buddhist ruler. Hence, after conquering Swat, Mahmud went back while two Afghan tribes i.e. *Swati* and *Dalzak* were settled here permanently. However, this settlement was shattered into pieces with the advent of Yousafzai tribe in sixteenth century into Swat. The aboriginal *Swati* and *Dalzak* tribes were pushed back into Hazara region.

Although, Yousafzai tribe was settled in Swat, but the tribe lived in abeyance without establishing any government or state. They were divided into two opposite blocks called *Dalay*.⁸

Babas (Holy Saints) and Clergy

Since ancient times, religious roots are embedded in every aspect of life in Swat, may it be economical, political or social. Whether Buddhism or Islam, Swat has been a fort to religion without any discrimination on the bases of nature of the religion. However, after the advent of Yousafzai tribe in Swat, Islamic color seems domineering with the influence of Islamic scholars in all walks of life.

In sixteenth and seventeenth centuries, Akund Darwiza, his son Main Karimdad, and his grandson Main Noor were the most influential religious figures who had a political sway in the area. In nineteenth century, Akund Abdul Gaffur alias Saidu Baba, being known for his mysticism, had a great influence in the affairs of Swat. Similarly, Sayyed Akbar Shah who ruled Swat from 1848/50 till 1857 was a descendent of religious figure Sayyed Ali Tarmizi alias Pir Baba.

Similarly, in the late nineteenth and earlier twentieth century, Saadullah Khan alias Sartoor Faqir has remained prominent for his anti-Britain stance. Also, Sandakai Baba was a prominent figure during this era. His disciples were called *Sheikhan* who had stated a "purity campaign" in Swat to protect Swat from any foreign aggression. Importantly, it was the religious factor that influenced the five members' council in deciding the ruler for Swat in 1915. Sayyed Abdul Jabbar Shah, the nominated ruler, was a descendent of Pir Baba. Similarly, all else equal, Miangul Gulshahzada Abdul Wadud also owe his position of ruler ship of Swat as of his lineage with Saidu Baba. In a nutshell, religion has been remained a deciding factor in the public and private lives of people during this era.

Swat under Wali

In April 1915, a five members local council, *Jirga*, of Swat made Sayyed Abdul Jabbar Shah the ruler of Swat, and formally laid the foundation of Swat State. However, in September 1917, on accusation as being *Qadyani*, Sayyed Abdul Jabbar Shah was asked to give the powers back and leave Swat. In September 1917, Maingul Gulshahzada Abdul Wadud

Badshah Sahib, a descendent of Saidu Baba, was made the ruler of Swat. Badshah Sahib disarmed the tribal people, established law and order and laid the foundation of a proper state machinery.

In December 1949, Badshah Sahib abdicated throne in the favor of his son Miangul Abdulhaq Auragzeb. He consolidated the state and ran machinery of the state on modern lines. He wanted Swat to be "modern and full of needs."⁹ He was much focused on education, basic facilities and infrastructure of the state. His period is considered to be "the golden time"¹⁰ in the history of Swat. However, in July 1969, due to some internal and external circumstance, the merger of Swat with Pakistan was announced, and *Wali* divested his powers on August 15, 1969.

Swat after Merger with Pakistan

Justine Fleischner in her report written for Center for Strategic and International Studies Washington D.C. writes: "When Swat merged with Pakistan in 1969, it was by far the most developed state in the frontier, which made decline in governance under Pakistani administration that much more unbearable."¹¹

In August 1969, although Swat was merged with Pakistan and the state was regarded as a part of the Provincial Administrative Tribal Areas (PATA), but there was not any proper mechanism for extension of Pakistani or any other special law to the former principality. This created a confusion among the people of Swat.

However, in 1975 PATA Regulations were introduced which transferred the decision making powers of both criminal and civil cases from judiciary to executive. Also, a four members council, *jirga*, was formed for resolving the disputes, but decisions of the council were subservient to the executive in Swat. Therefore, under PATA Regulations, the executive and bureaucracy became more powerful in Swat, and justice became delayed and expensive. This created a vacuum between the earlier system under *Wali* and the contemporary system.

Howbeit, these regulations were regarded as null and void by the Division Bench of High Court Peshawar and Supreme Court of Pakistan in 1990 and 1994 respectively, but the vacuum created had already paved a way for the rise non-state actors such as Sufi-Muhammad and Fazlullah followed by various army operations.

Significance of the Study

A lot has been written about Swat, some scientific other not, by both local and international scholars. Ancient history of Swat, its archeological sites, its unique customs and way of living, its serenity and good governance style during the days of princely statehood has been attracted a lot of scholars to add to the scholarship regarding Swat. However, in the recent times, it is the phenomenon of non-state actors that has been the point of attraction for policy makers, researchers, scholars, and writers. Most of these writers and researchers attribute the rise of non-state actors in Swat to its past history, being religiousness of its people and bad governance style since the merger of state with Pakistan in 1969.

Here, some important questions rise. Had the merger mechanism handled properly and professionally, had all this episode of non-state actors happened? Had the vacuum between the two systems i.e. system before merger and system after merger not created, had there been a ground provided to non-state actors? Had the grievances of the local people addressed properly, had there a chance of the support for non-state actors? All these questions make this study significant.

The study is also important on four levels i.e. personal level, scholarly level, policy making level and at the level of an average citizen.

On personal level, as being a resident of the area and being exposed to various episodes of the non-state actors makes my first hand experience and insight imperative to the study. Moreover, our parents as being a generation who have been a part of the both systems i.e. *Wali* system and system after merger, puts us at an advantageous position of having an unconscious analysis and comparison of both the systems since childhood.

On scholarly level, the research is exigent and consequential in making a vibrant case and base for a study that a gap in services delivery can be the source of exploitation and revolutions. Nature of the gap and exploitation may be different in different societies and circumstances.

For policy makers, the study is of critical importance. The study will explicitly explain the weak point which is periodically exploited by non-state actors. The study will also provide the policy makers with recommendations for addressing and coping with this weak point. It will be also shown that whether the grievances of people are addressed properly or not. If not, then, is there any chance of exploitation of the same gap or weak point again in the near future?

For an average citizen, the research provides an explanation and comparison of the two systems. It also provides the real objectives, insights and causes behind the rise of different non-state actors in Swat. The research also provides a lens that how a common citizen of Swat views the ongoing situation in Swat, rise of non-state actors and the pattern of behavior of the government in dressing the demands of the local people. In a nutshell, the research is of vital importance at all four levels i.e. personal, scholarly, policy-making and at the level of average citizen.

Research Objectives

- ✓ To analyze whether a gap or vacuum exists between the judicial system under *Wali* and the contemporary system
- ✓ If the gap exists, then, to identify the factors creating this gap.
- ✓ To access whether it was the vacuum or something that was exploited by the non-state actors.
- ✓ To trace, if it was the gap, then how it was exploited.
- ✓ To comprehend that on how many occasions the gap was exploited.
- ✓ To detect whether the gap is filled or not now .
- ✓ To apprehend, if not, then are there any chances of exploiting the gap in the future.

Methodology

Strategy of Inquiry: As the study moves around the 'lived experiences' of Swati people and what is the essence of these experiences (i.e., of personal and social world); therefore, qualitative Interpretative Phenomenological Analysis (IPA) has been used as a strategy of inquiry in this study. The strategy involves double hermeneutics i.e., connecting an empathic hermeneutics with a questioning hermeneutics. In other words, the interpretation process is two tiered: the participants are trying to make a sense of their world while the researcher is trying to make a sense of the participants' world. Importantly, the involvement of researcher into the 'insider's perspective' of participant makes the study subjective rather than objective which corresponds to the claim of knowledge being used.

Sampling: As the strategy of inquiry used is IPA, which involves in-depth and repetitive study of the transcripts and look for the essence of lived experiences, therefore, the sample taken is purposive and small in size consisting of nine participants. However, as of nature of the research problem, certain things were taken into consideration while selecting the sample. These are: that the participant may have witnessed both the systems (i.e., *Wali* System and the contemporary system in Swat) or at least has been aware of *Wali* System through personal studies or experiences of the elders through hearing accounts. Although all the people of Swat are related to the research problem in one way or another, but an effort is made to involve those people who have been directly involved with our research problem. That is why our sample consists of participants ranging from Senior Councils to a common man, from men who have witnessed *Wali's* system or have a part of the system themselves to those who know about *Wali's* System through hearing accounts. Similarly, an effort was also made to involve a non-state actor and army men. But due to time and security constraint it was not possible.

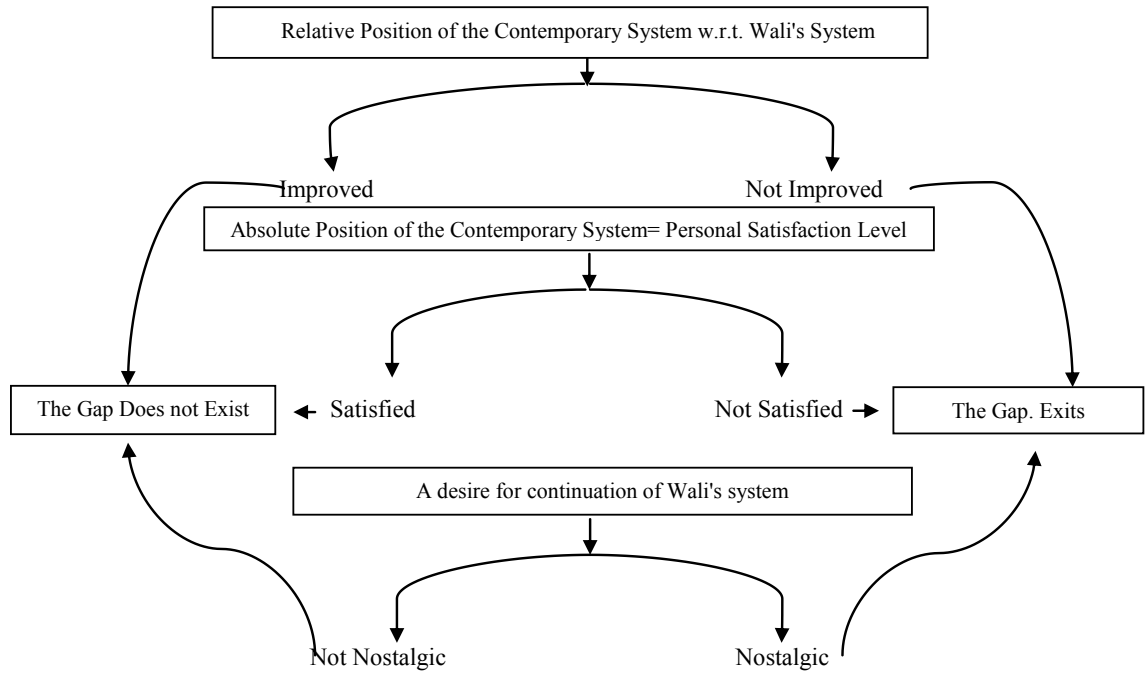
Semi-structured Interviews: As the aim was to engage with respondent's world, therefore, some guided-not-directed questions were needed to be asked to gather the required data. Hence, semi-structured interviews were conducted. Although the questions were pre-planned, but due to the type of interviews a diversion from some of the pre-planned questions was observed many times. The diversion was at advantage of allowing the flexibility and knowing the novel areas. At an average, each interview lasted for twenty minutes. Also, efforts were made to conduct the interview at a comfortable place with the interviewee alone. However, as of availability the participants, the interviews were mostly conducted at work places with plenty of time available for interviews. To maintain continuity and established rapport, all of the interviews were tape recorded with the consent of respondents. Moreover, to keep the essence of participants' world intact, Pashto (mother tongue of the participants) was taken as medium of interviews. Also, to ensure the originality of themes and meaning, a copy of the transcribed interviews were provided to each the participant and discussed. (See a copy of consent form in the appendix).

Analysis: A three-tier interpretative analysis method was adopted for analysis.

Discussion and Analysis

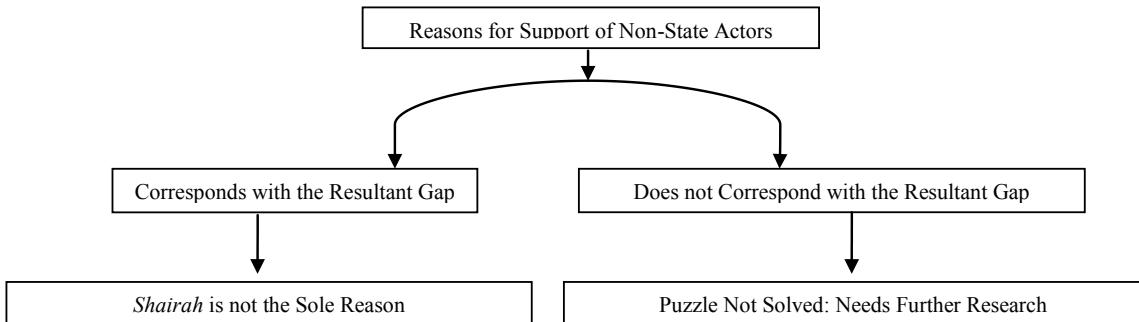
Main Theme	Sub-theme
Characteristics of <i>Wali's</i> System	Monarchial in Nature ; Decisions mostly based on Justice
	Shariah Law: Not the Sole Law
	<i>Riwaj</i> : Main Source of Law
	Accountably and Responsibility
	Quick and Speedy Decisions-Making
	Less Expensive Justice
	Door-step Litigation
	Guaranteed Implementation
Characteristics of Contemporary System	Delay Tactics
	No Proper Implementation
	Expensive
	Decision-making: Rarely influenced by the Social Status

The Resultant Gap: Exists or Not?



Theme(s)	Sub-theme(s)
The System is Comparatively not Improved	No Stability after Merger
	Improved in many Ways; Lost its Essence
Dichotomy in Level of Satisfaction	Common Man – Not Satisfied
	Active Citizens: Satisfied with the System but not the Practices
Nostalgia Level for Wali's System	Golden Phase
	Happy Days etc.
<i>Concluded that: The Resultant Gap Exits</i>	

Theme(s)	Sub-theme(s)
Causes of the Gap	Merger was not Handled Properly
	PATA Regulations- A Black Law
	Post-1990 Acedia
	Musical Chair of Bringing Laws and Regulations
	No Proper Analysis of the Demand of <i>Shariah</i>
Positioning of the Chessboard Pieces	Involvement of Local Administration
	Involvement of PPP Government
	Involvement of Army and Intelligence Agencies



Theme	Sub-theme
Reasons for Support	Only 0.01 % Supported
	Supported in Earlier Days
	In Search of Justice
	Exploited in the Name of Islam and Shariah

In a nutshell:
 The reasons for Support correspond with the resultant gap.

References

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⁵ *Ibid.*, 2.

⁶ *Ibid.*, 4.

⁷ Abdul Qayum Balala, *The Charming Swat* (Lahore: Maqsood Publishers, 1999), 45–64.

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¹⁰ *Ibid.*, 60.

¹¹ Fleischner, *Militancy in Swat*, 3.