

RISE AND REBIRTH OF NON-STATE ACTORS IN SWAT: A PHENOMENOLOGICAL STUDY OF SHARIAH AS A POPULAR DEMAND

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Abstract: Swat – a valley in the north west of Pakistan – has always been famous for its natural beauty and hospitality until it was tagged with the notion of popular demand for imposition of Shariah and allegedly resultant rise of non-state actors in the region in last two decades. Subsequent tallyhos by global war on terror aficionados and thunders of military operation by Pak Army left an important question unheeded: whether Shariah was the actual popular demand and reason for the support and rise of non-state actors like Sufi-Muhammad and Mullah Fazlullah? If yes, then what explains a periodical rise of non-state actors in 1999 and 2006 while PATA Regulation (Nifaz-e-Nizam-e-Shariah) had already been promulgated in 1994? It suggests that either Shariah was not the actual demand or the actual demand – whatever it was – was being misapprehended, or intentionally mislabeled, as Shariah. This study attempts to analyze ‘lived experiences’ of the people and the ‘essence’ these experiences have for them in order to answer the questions like what was the actual demand, if not Shariah; has it been fulfilled or not; and what are the actual causes, if not Shariah, for the rise and support of non-state actors in Swat? Therefore, Interpretative Phenomenological Analysis (IPA) of semi-structured interviews conducted in Swat has been used in this paper.

Keywords: Pakistan, Swat, non-state actors, Shariah, Taliban, Sufi Muhammad, Mullah Fazlullah, terrorism, PATA, IPA, Phenomenology.

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Introduction

Swat – a valley in the north west of Pakistan – is considered at par with Switzerland in its natural beauty; its serene and inviting lakes, undulating lush green hills, and snowcapped alpine peaks present a picturesque heaven to its visitors. On her visit to Swat in 1961, Queen Elizabeth II has rightly said that Swat is Switzerland of the East.¹ Similarly, in 2002 when a Swiss tourist was asked about the beauty of Swat, she replied, “In beauty Swat is more beautiful than Switzerland, but there is no Gul Khan in my homeland.”² Gul Khan was the security personnel assigned with the duty to escort her, and she was tired of the gun he used to carry all the time. Throughout its long history, though packed with rise and fall of various formidable armies, Swat had not lost its fame for hospitality, peace, and tranquility till the rise of non-state actors in the region in last two decades.

Question arises that how did this shift from peace to belligerency occur? Most of the existing scholarship says that this shift occurred because of the phenomenon of non-state actors in Swat, which derived its support from the people of Swat by advocating the popular demand of implementation of *Shariah* in Swat. Implementation of *Shariah* in Swat was first demanded by Sufi-Muhamamd (head of Malakand based non-state organization called *Tahrik Nifaz Shariat-e-Muhammadi Movement*), and the then government had implemented it through the promulgation of PATA *Nifaz-e-Nizam-e-Shariah* Regulation 1994. But unfortunately, in 1999 and 2006, we saw the comeback of non-state actors in Swat, which suggests that the demand for *Shariah* is either not the actual one or is not the sole reason for the rise of non-state actors in Swat. Another possibility is that the actual demand of the people of Swat was being misapprehended as *Shariah*. There can be other unknown or unexplored reason(s) as well. What are these unknown or

¹ Vintage collection, “Queen Elizabeth II in Swat (1961),” *The Friday Times*, April 4, 2014.

² Zubair Turwali, “Swat valley, a Paradise that was,” *Dawn*, August 23, 2012.

explored reason(s)? Whether the demand for Shariah is or not the actual or the sole reason for the rise of non-state actors in Swat?

This paper attempts to answer these puzzling questions. These questions can only be answered by the people of Swat themselves, and therefore, this study aims at analyzing lived experiences of the people of Swat about the demand they were making or was being made in their name. By collecting data individually from the people of Swat who have experienced this phenomenon, this phenomenological study attempts at developing a composite description of the essence of this experience for all of them – what they experienced and how they experienced it. Interpretative Phenomenological Analysis adds researcher’s interpretations to ‘mediate among different meanings’³ by different respondents in order to come up with a coherent explanation of the phenomenon.

Historical Background

Whether Shariah is or not the actual or sole reason for the rise of non-state actors in Swat cannot be analyzed without taking historical background of Swat in context; hence necessitates a brief background of the region. This paper divides the history of Swat into four phases for the sake of convenience. “The past is seamless web, and there is something artificial about the process of dividing it into separate pieces. It is difficult sometimes to fix a date where one era ends and other begins. But we ought not, on this account, to be deterred from attempting generalization.”⁴ It is not easy to divide history of Swat into periods clearly marked out from one another; however, there are certain themes which distinguish one phase from another. The four phases, specifically designed for this research, are as follows:

³ M. van Manen, *Researching Lived Experience: Human Science for an Action Sensitive Pedagogy* (London: The University of Western Ontario, 1990), 26.

⁴ Muhammad Usman Amin Siddiqi and Dr. Khalid Manzoor Butt, “The Past is Prologue: A Thematic Discourse on the History of US Foreign Policy (1776–1940s),” *The Journal of Political Science* XXIX (2011): 8.

- I. Alexander to Yousafzais
- II. *Babas* (Holy Saints) and Clergy
- III. Swat under *Wali*
- IV. Swat after Merger with Pakistan⁵

Alexander to Yousafzais phase is marked by the invasions of various armies starting from 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 characterize this phase. Swat under *Wali* (title of the ruler) is a phase of relative peace, prosperity, development, and order. The last phase starts with merger of Swat in Pakistan in 1969 and is continued till today.

Alexander to Yousafzais Phase: Swat has been a ‘cradle’⁶ 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. Dr. Sultan-i-Rome says that it was here in Swat that the third school of Buddhism called Vajrayana or the Tantric Buddhism developed and flourished.⁷

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 BC when he entered through Kunar. After defeating the Buddhist ruler, his army captured Swat valley. However, in 306 BC the great general of Alexander, Salukis, gave Swat back to Chandragupta, the Buddhist ruler.⁸

In eleventh century, Mahmud of Ghazni captured Swat by defeating Raja Gira, the last Buddhist ruler. After conquering Swat,

⁵ Hanif Ullah Sajid, “State versus Societal Justice System in Swat: A Local Perspective” (BA thesis, GC University Lahore, 2014), 3–7.

⁶ Sultan-i-Rome, “Swat: A Critical Analysis,” in *IPCS Research Papers* (New Delhi: Institute of Peace and Conflict Studies, 2009): 2.

⁷ *Ibid.*, 4.

⁸ Abdul Qayum Balala, *The Charming Swat* (Lahore: Maqsood Publishers, 1999), 45–64.

Mahmud went back, while two Afghan tribes (i.e., *Swati* and *Dalzak*) got permanently settled in Swat. However, this settlement was shattered into pieces with the advent of Yousafzai tribe in Swat in sixteenth century. The aboriginal *Swati* and *Dalzak* tribes were pushed back into Hazara region. Although Yousafzai tribe was settled in Swat, it lived in abeyance for years without establishing any proper government or state. Yousafzais were divided into two opposite blocks called *Dalay*.⁹

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 of religion without any discrimination for the type of 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 political 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 remained prominent for his anti-British stance. Sandakai Baba was also 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 a ruler for Swat in 1915. Sayyed Abdul Jabbar Shah, the nominated ruler, was a descendent of Pir Baba. In a nutshell, religion has remained a deciding factor in the public and private lives of people during this era.

⁹ 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), 21–48.

Swat under Wali: In April 1915, a 5-member 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 of being *Qadyani*, Sayyed Abdul Jabbar Shah was asked to give the powers back and leave Swat; and 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 proper state machinery.

In December 1949, Badshah Sahib abdicated throne in favor of his son Miangul Abdulhaq Aurangzeb. He consolidated the state and ran machinery of the state on modern lines. He wanted Swat to be modern.¹⁰ He focused on education, basic facilities, and infrastructure of the state. His period is considered to be “the golden time”¹¹ 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: In August 1969, “Swat was peacefully merged with Pakistan as a Provincially Administrated Tribal Areas (PATA), along with the neighboring districts of Dir and Chitral, under Article 246(b) of the Pakistani Constitution.”¹² Justine Fleischner 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.”¹³

¹⁰ Sajjad Ali et al., “History of Swat till the Rise of Taliban and the Role of FM Radio,” *International Journal of Academic Research in Business and Social Sciences* 3, no. 8 (August 2013): 61.

¹¹ *Ibid.*, 60.

¹² Justine Fleischner, “Governance and Militancy in Pakistan’s Swat Valley,” in *Program on Crisis, Conflict, and Cooperation* (Washington D.C.: Center for Strategic and International Studies, October 2011), 5.

¹³ *Ibid.*, 3.

After merger, no proper mechanism for extension of Pakistani or any other special law to the former principality was devised. This created 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. The new law outlawed *Qazi* courts that hitherto had been serving as judiciary and installed a 4-member *jirga* that were to hear cases at the *Tehsil* (district) level. Appellate jurisdiction against the decisions of this *jirga* was vested in deputy commissioner without any accountability measures. The new *jirga* used to meet very infrequently, and cases were unnecessarily dragged on, making it difficult for the people of the area to adjust with the new law. Therefore, under PATA Regulations, the executive (i.e., bureaucracy) became more powerful in Swat, and justice got delayed and expensive. Local people not only lacked in financial resources to meet the requirements of new expensive judicial system but also lacked professional lawyers and knowhow of formal legal system, which ultimately led to misuse of law and bribery.

This created a gap between the earlier system under Wali and the contemporary system. Despite, 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; the vacuum created had already paved a way for the rise of non-state actors such as Sufi-Muhammad and Fazlullah followed by various army operations.

Methodology

Strategy of Inquiry: A study revolving around the “lived experiences” of Swati people, and what is the “essence” of these experiences (i.e., of personal and social world) for them, merits a phenomenological qualitative methodology. Qualitative Interpretative Phenomenological Analysis (IPA) has been used as a strategy of data analysis 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 of two tiers (i.e., the participants are individually trying to make

sense of their world while the researcher is trying to make sense of the all participants' world).

Sampling: As IPA involves in-depth and repetitive study of the transcripts to look for the essence of lived experiences, therefore; the sample taken is purposive and small in size consisting of nine participants. According to nature of the research problem, certain things were taken into consideration while selecting the sample: a) The participant should 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. b) Although all the people of Swat are related to the research problem in one way or the other, but an effort was 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.

Semi-structured Interviews: As the aim was to explore 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 allowed flexibility and knowing the novel areas – hallmark of qualitative research.

At an average, each interview lasted for thirty minutes. Also, efforts were made to conduct the interview at a comfortable place with the interviewee alone. However, considering availability of the participants, the interviews were mostly conducted at work places with plenty of time available for interviews.

To maintain continuity and establish rapport, all of the interviews were tape recorded with the consent of respondents. However, all the respondents were interviewed in confidentiality, their names and identities are withheld by mutual agreement. Moreover, to keep the essence of participants' world intact, Pashto (mother tongue of the participants) was taken as medium of

interviews. Furthermore, to ensure the originality of themes and meaning, a copy of the transcribed interviews were provided to each the participant and discussed.

Data Analysis and Interpretation:

Superordinate Themes	Themes
Causes of the rise of non-state actors in Swat	Exploitation of the resultant gap in judicial system in the name of Shariah
	Indirect exploitation of the resultant gap in judicial system by local administration
	Non-state actors phenomenon in Swat: A part of the bigger plot
Orbit of people’s support for non-state actors in Swat	People supported TNSM and Fazlullah in the beginning
	Reverted their support when these movements became violent and challenged writ of the state
Reasons of people’s support for non-state actors in Swat	People had no confidence in their state institutions
	People followed Fazlullah and Sufi-Muhammad for bringing a system where there will be free, quick and door-step justice – a system being symbolized as Shariah by non-state actors
	People were deceived in the name of Islam
Chances of rise of non-state actors in the future	Yes – If the actual demand (i.e., narrowing down or filling the resultant gap) is not considered in policy making
	Yes – If anti-army sentiments not addressed properly
Suggestions for filling the resultant gap/improvement in judicial system of Swat	Overall prosperity and providence of basic facilities
	Quick and speedy decision-making
	True practice and implementation of the contemporary system
	Decrement of misperception of un-Islamicness of the contemporary system
	Government should address the grievances properly
	All the actors should play a positive role

Discussion

Causes of the Rise of Non-state Actors in Swat

Exploitation of the Gap in Judicial Systems in the Name of Shariah: Before 1969, though the people of Swat had been living under a monarchical system, but the process of litigation was free, door-step, and speedy. Based on these characteristics, the people of Swat perceive Wali's system as a Shariah system; though the main source of law was *Riwaj* (the local values and customs). As one of the respondents said, "Wali's system was not based entirely on Shariah, there were the local norms and customs which were dominating."¹⁴

What made these people think of Wali's system as Shariah, and not of the contemporary system? So again the absence or presence of the abovementioned characteristics of Wali's system plays an important role in making this perception. A senior council from Shangla said, "Although it [Wali's system] was not a well-defined and an entirely Shariah based system, but litigation at that time was door-step, quick, and free. [T]here were Qazis at village level, *tehsil* level, and central level who would adjudicate the disputes."¹⁵ It is important to mention that although Wali would try to make just decisions, but there are a lot of cases where justice was not served. Therefore, speedy decision-making should not be confused with just decision-making. Hence, it reveals that during Wali's time, whether the decisions were just or not, the litigation process was certainly speedy.

On the other hand, the contemporary system which may be better than Wali's system in many aspects, but almost all the aforementioned characteristics seem missing in it. An ex-president of Shangla Bar Council said, "In the contemporary times, the current system is far better than the Wali's system, provided it avoids the

¹⁴ Interview with Osama (Author of numerous books on the history and tourism in Swat, and writes articles in various newspapers), June 19, 2014.

¹⁵ Interview with Saddam (Senior Advocate and Former President of District Bar Shangla), June 20, 2014.

delaying tactics.”¹⁶ Similarly, a senior council from Shangla said, “The contemporary system can work better off than Wail’s system, but on the condition if it is implemented in a true spirit.”¹⁷ Regarding the delaying tactics, a retired bureaucrat from Swat said, “In contemporary system, cases run from generation to generation in inheritance.”¹⁸ Similarly, regarding the expensiveness of the contemporary system, a historian from Swat said, “One has to hire a council who demands a lot of money as fee. Also, when a case is prolonged, a lot of time is wasted, and there are travel charges as well.”¹⁹

To sum up, the absence of the characteristics like free of charges, door-step provision, and quick decision-making in the contemporary system along with subsequent perception of non-*Shariahness* has created a gap in the judicial system of Swat. This gap was prone to exploitation by any actor at any time. It was this judicial gap which was symbolized (or mislabeled) as *Shariah* by the non-state actors in Swat to derive their support from the people. As a senior journalist and writer from Swat said, “Apparently, it seems that when the state got merged in Pakistan, a legal vacuum was created. This vacuum was exploited by Mulana Sufi Muhmmad who talked about implementing *Nizam-e-Shariah*.”²⁰ Similarly, it was the same resultant gap which was at times exploited by the local administration as well.

Indirect Exploitation of the Resultant Judicial Gap by Local Administration: Soon after the merger of Swat with Pakistan in 1969, a number of regulations regarding the judicial and administrative system in Swat were introduced and repealed on

¹⁶ Ibid.

¹⁷ Interview with Waleed (Senior Advocate and Former President of District Bar Shangla), June 20, 2014.

¹⁸ Interview with Yasir (retired *Tehsilar* and a resident of Swat), June 20, 2014.

¹⁹ Interview with Prof. Dr. Shakeel (Professor, currently teaching at Government Post Graduate Jahanzeb College Saidu Sharif; has written numerous articles on Swat), June 19, 2014.

²⁰ Interview with Osama.

multiple occasions. PATA Regulations were one of those regulations which had a long lasting effect on the historical landscape of Swat. Under PATA Regulations, local administration had not only administrative powers but judicial powers as well. In February 1990, when PATA Regulations were abolished by Peshawar High Court, it was obvious that the power concentration of civil administration would be weakened. Therefore, in order to maintain its powerful position, civil bureaucracy decided to use TNSM as a tool for protecting its vested interests. A veteran writer from Swat said, "Administration thought that if Islam (Shariah) cannot be introduced in whole Pakistan, then how it is possible to introduce it in Malakand only. Therefore, again a type of PATA Regulations would be introduced which will retain the powers of civil bureaucracy. This fact shows that administration had a direct link with Sufi-Muhammad."²¹ The same writer further added, "At the time when Habib Ullah, who is the current federal secretary, was Deputy Commissioner of Dir, TNSM would get its funds from Union Council Funds. TNSM workers were having arms in the public, and the administration was silent."²² In short, people were of the view that the local administration exploited TNSM for promoting its own interests, while TNSM, in turn, exploited the resultant gap, making it synonymous with Shariah, for deriving its support from the people.

Non-state Actors Phenomenon in Swat: A Part of the Bigger Plot: However, shy of discussing it in the public due to security concerns, the people of Swat hold an opinion of involvement of Pakistani army and state agencies in the recent episode of non-state actors phenomenon in Swat (i.e., the rise of Mullah Fazlullah and his Tehrik). As a senior columnist from Swat said, "It is said that there were intelligence agencies and army who had their own specific objectives to pursue. So these forces patted him [Fazlullah] on the back and ensured him their support."²³ Similarly another journalist and editor of a local newspaper said, "It is neither Talibanization nor Shariah; it is something else. In a place

²¹ Interview with Dr. Shakeel.

²² Ibid.

²³ Interview with Osama.

where a government servant is caught and slaughtered; then one cannot think of involvement of a civilian in this whole episode. I will say that our own state agencies in the name of survival of the state were involved.”²⁴ Similarly, the same journalist asked multiple questions trying to make the position of Pakistani army and state agencies doubtful:

It was a walk in the park for the army to close FM Radio of Mullah. We had also written it in the newspapers that why you do not jam such a small radio channel. If it was not jammed, then what was the reason behind it? Also, all the inlets and outlets of Swat were under the vigilant eye of local administration, army, and agencies, then how and why they say, from time to time, that xyz number of suicide bombers and Taliban have entered into Swat? They do not come from the skies. Therefore, it was totally a planned programme. The whole episode of Taliban is worth seeing that how the slogan of Shariah was turned into Talibanization. Then where did these Taliban go? Who gave them safe way out? When they went from here, and when they will be used again? All these are linchpin points.²⁵

When asked about the presumed objectives of armed forces and state agencies in Swat, the respondents had no explicit answer; however, some consider that Swat’s strategic location has played an important role in encouraging the non-state actors phenomenon in Swat. As a respondent said, “Actually one cannot give a final judgment about it. However, some of the officers used to tell us, off the record, that it is a war of survival for Pakistan.”²⁶ In other words, they are of the view the whole episode of Mullah Fazlullh was a

²⁴ Interview with Nazeer (Editor of a local website and newspaper), June 19, 2014.

²⁵ Ibid.

²⁶ Interview with Osama.

self-created game by the army and state agencies of Pakistan in the wake of the strategic location Swat occupies.

Orbit of People's Support for Non-state Actors in Swat

However, both Fazlullah and Sufi-Muhammad derived their support from the common people of Swat, but it is totally a wrong perception that all the people in Swat had supported them. As a senior council form Shangla said, "Majority of Swati people did not support this Tehrik. However, a minor number from the unemployed and downtrodden class had supported it."²⁷ Similarly an ex-bureaucrat said, "Those people who had supported Fazlullah were *looteray* (robbers), thieves, and who wanted to get revenge from their rivals."²⁸ A journalist from Mingora seconds the statement by saying, "Most of his supporters were criminals, thieves, etc. If you look at newspaper reports of that time, you will find that a lot of his supporters were those who were involved in looting the shops. All these people were then doing these acts under the umbrella of Shariah and Talibanization."²⁹

It is also true that in the initial days, when Fazlullah's Tehrik was peaceful and using only the slogan of Shariah, people, especially women, were more inclined towards his Friday sermons and FM radio speeches; but when the Tehrik got violent and challenged writ of the state, almost all of the people withdrew their support from him. As a journalist from Mingora said:

The people of Swat are Islam loving. All these people perceived that Fazlullah was talking of good things, so they started listening to his radio. But as he asked for burning Televisions and propagated that internet is *haram* (forbidden in Islam), a twist in the public opinion regarding his support initiated. Therefore, 20 to 30 percent people left him on the issues of Television, CDs etc. When they or whoever started to

²⁷ Interview with Waleed.

²⁸ Interview with Yasir.

²⁹ Interview with Nazeer.

target government servants and buildings, especially to decapitate humans and put their heads in between their legs and chests, then almost 99 percent people withdrew their support.³⁰

To sum up, it can rightly said that only a small number of people had supported Fazlullah in Swat, majority of whom were considering Mullah Fazlullah as protector of the popular demand (i.e., implementation of Shariah System).

Reasons of People's Support for Non-state actors in Swat

Before merger with Pakistan, the people of Swat had lived under a system where Shariah was duly respected. Moreover, for majority of the Swati people, Shariah is synonymous with quick, free, and door-step litigation process, which is almost missing in the contemporary system. Therefore, the people of Swat supported Sufi-Muhammad and Mullah Fazlullah in the name of Islam and for bringing Shariah system. As a senior council from Shangla said, "Actually they [the people] had no confidence in their institutions. What the people aimed was speedy justice; people followed Sufi-Muhammad and Fazlullah in the search of justice."³¹ Similarly, a senior journalist from Swat said, "The people of Swat had supported the Tehrik on purely religious basis. But alas, these people were deceived in the name of religion."³²

Chances of Rise of Non-state Actors in the Future

Although the government of Pakistan at different times has promulgated different regulations for addressing grievances of the people regarding judicial system, but these regulations do not seem workable as all of them are dealing with only a symbolized (or mislabeled) indicator (i.e. Shariah, which is in the minds of people synonymous with quick, free, and door step litigation) instead of dealing with the resultant gap itself. Moreover, these regulations are

³⁰ Ibid.

³¹ Interview with Saddam.

³² Interview with Osama.

not practiced and implemented in a true sense. That is why a periodic pattern of uprisings and Shariah movements is found in different periods in Swat. A historian from Swat said, “When they [Regulations of 1994 and 1999] were not practiced and implemented in true sense, there was uprising again in 2007.”³³ Similarly he says that the gap can be exploited again if the demands prevailed. In his words, “If the demand prevails, if not now, five or ten years later, it can be exploited again.”³⁴

Importantly, in the wake of military offensive in Swat, anti-army sentiments prevail in the common public which can be proved fatal in the near future. The same historian said, “The behavior of army after operation had produced anti-army sentiments such as that were found in the wake of 1994 incidences, but that were anti-police sentiments, this time these are anti-army.”³⁵

In a nutshell, the government needs to focus on the gap which is the real cause of support for non-state actors. Moreover, the cotemporary system needs to be practiced and implemented in true spirit. Furthermore, pattern of anti-army sentiments in the common public should also be reviewed. Otherwise on the basis of anti-army sentiments, the same pattern of militancy can be repeated after a decade or more, if not now.

Suggestions for Narrowing down the Resultant Judicial Gap / Improvement in Judicial System of Swat

Overall Prosperity and Provision of Basic Facilities: Although Swat got merged with Pakistan after two decades of its independence, but its prosperity is not independent from rest of the state. Similarly, improvement in the judicial system is not independent of other structures and institutions of the state. A Former President of Shangla Bar Council is of the view that an improvement in judicial system is subjected to establishment of

³³ Interview with Dr. Shakeel.

³⁴ Ibid.

³⁵ Ibid.

peace, bringing up economic prosperity, and overall improvement in all the institutions of the state.³⁶

Improvement in judicial system is also dependent upon provision of basic facilities, employment, and poverty reduction. A senior council from Shangla said, “If employment and other facilities are provided, then no one is such an insane to take a gun and wander into the mountains. If poverty level is decreased, education is universalized, and due rights are given to the people, then there can be no logic for the rise of non-state actors.”³⁷

In short, overall prosperity of the state and provision of basic facilities will attenuate the logic and reason for supporting the non-state actors which would ultimately reduce the resultant gap.

Quick and Speedy Decision-Making: The most important reason for resonating the resultant gap is the lack of quick and speedy decision making. A writer from Swat said, “[In order to reduce the gap and improve the judicial system]... such a system is required in which a case is resolved in three to four hearings.”³⁸

Practice and Implementation of the Contemporary System: Lack of complete practice of the contemporary system is main reason for widening the resultant gap and the consequent rise of non-state actors. Almost all schools of thought in Swat are agreed upon the notion that if the contemporary system is practiced and implemented in its true spirit, then, there can be no logic for support of non-state actors. A resident of Swat is of the view, “If Pakistani law is fifty percent practiced in true sense, it will itself fulfill the demands of Sufi Muhammad.”³⁹ A senior council from Shangla is also of the same view saying, “If the existing law is implemented in a true spirit, all our problems would be solved easily.”⁴⁰ Similarly, a

³⁶ Interview with Saddam.

³⁷ Interview with Waleed.

³⁸ Interview with Dr. Shakeel.

³⁹ Interview with Qadeer (Resident of Nawa Kalay, Mingora), June 19, 2014.

⁴⁰ Interview with Waleed.

historian from Swat said, “There is nothing wrong with existing system; what we need is to make it effective.”⁴¹

Mitigating the Misperception of Un-Islamicness about the Contemporary System: As the people of Swat perceive Wali’s System as Islamic and Shariah-based, they consider contemporary system as un-Islamic. Un-Islamic, for the people of Swat, means lack of speedy and quick justice. Moreover, it is not implemented in true sense. In order to reduce this misperception, an Islamic color should be given to any law implemented in Swat.

Government Should Address the Grievances Properly: So far the government of Pakistan has failed in properly addressing the genuine grievances of the people. Bringing different regulations in different times was merely a change of the names. In the words of a writer and historian from Swat:

In 1994, in documents, government has given approval of Shariah, but it was just a change of names. They termed Judges as *Qazi*, *Zilla Qazi*, etc. Procedures were the same as earlier. In 1999, another system was brought; however, this time there was a minor change in the procedure. In 2009, there was another one. There was no major change in procedures. In Swat, here they call it *Dar-ul-Quza* and Abbotabad they call it Bench. So name change doesn’t matter; practical change is required.⁴²

He further adds,

The government has deceived the people three times. Either the government had to deny the demands at all or if it had to approve, then it must approve them in true sense. In short, judicial system needs to be effective, and genuine grievances of the people are needed to be addressed properly. Otherwise, next

⁴¹ Interview with Dr. Shakeel.

⁴² Ibid.

time the reaction will be stronger than the present one.⁴³

All the Actors should Play a Positive Role: In order to improve the existing judicial system and reduce the resultant gap, all the actors should play a positive role. An ex-president of Shangla Bar Council said, “Judges should regard themselves as responsible servants.”⁴⁴ Similarly, a public prosecutor from Shangla emphasizes on imparting the knowledge of basic rights and duties at grassroots level. He also said, “We need experienced, trained, and knowledgeable people in the system.”⁴⁵ Similarly, a retired bureaucrat from Swat said, “The system itself is good, what we need are honest people.”⁴⁶ Hence, our respondents are optimistic that the gap can be reduced if all the actors play a positive role.

Conclusion

Since its known history, the soil of Swat has been a cause of various aggressions whether internal or external. However, in the last few decades there seems a shift in the cause of aggression from the soil itself to the resultant gap in the judicial system that was created after the merger of Swat with Pakistan. This gap is defined by the characteristic that were present in Wali’s time and not in the contemporary system. These qualities include: speedy litigation, free litigation, door-step justice, proper implementation of decisions and law, perception of *Sharaih*, fulfillment of demands, and sense of accountability and responsibility. It is this resultant gap which has been a source of exploitation and aggression for various non-state actors, notably TNSM and Fazlullah.

However, in the contemporary scholarship the phenomenon of Talibanization and rise of TNSM is linked with the historical religiousness of the people, the demand for Shariah, Cold War scenario, strategic location of Swat, poverty level of the people,

⁴³ Ibid.

⁴⁴ Interview with Waleed.

⁴⁵ Interview with Najeeb (Resident of Lilownai, Shangla), June 22, 2014.

⁴⁶ Interview with Yasir.

deteriorating role of police, mis-governance and nostalgia for Wali's System, but in-depth study of the phenomena shows that all these parameters are offshoots of a single common factor – the resultant gap in judicial system.

Moreover, most of the local people and scholars link the phenomenon of rise of non-state actors in Swat with the vested interests of other actors such as army, local administration, Z. A. Bhutto's government, and clash of interests between central government of PML (Q) and MMA in KPK (the then NWFP). In other words, the non-state actors were being used by the aforementioned actors for promulgating their own specific objectives. Whatsoever, all of these phenomena end up and find their roots in a single common thing – exploitation of the gap between contemporary judicial system and that of Wali.

It is worth mentioning that during the times of consistent demand for Shariah and the consequent rise of non-state actors, the policy makers have not given heed to the resultant gap. Every time with the rise of non-state actors, the demand of Shariah has been an epicenter of policy making. That is why, in spite of various Shariah regulations, a periodical rise of the non-state actors is found in the past two decades.

What the policy makers need to focus on is the whole not parts. They should give due focus to the sprouting source of various slogans of Shariah (i.e., the resultant gap). Instead of bringing up new Shariah regulations, efforts should be made to fill up the resultant gap or at least to narrow it. Once the gap is narrowed down, there will not be any local support for non-state actors anywhere and in any form in Swat and Malakand division. Mechanisms should be adopted to revive the quick, speedy, door-step, and less expensive justice prevailed during Wali's time.

Importantly, it is worth noting that Wali's System was not a complete *Sharai*h system. A system based purely on *Shariah* is merely a misperception of the people. This fallacy prevails because of the lack of quick and speedy decision making – not to confuse decision making with justice. Moreover, Wali's system ensured implementation of decisions as well. The nostalgia about Wali's system finds its roots in the true implementation and practice of

decisions and laws in that system, which are missing in the contemporary system.

Similarly, it is worth mentioning that on every occasion the government of Pakistan has tried to lower down the voice for Shariah on temporary basis. That is why promulgation of three different Shariah regulations, with each repealing the previous one, can be seen in a short period of fifteen years. Instead of bringing up new laws and regulations the government of Pakistan should go to the root of the issue (i.e. the resultant gap). There is no need for procedural changing of litigation. What is needed is to speed up the litigation process itself. Speed up the litigation process, and you will find Swat and Malakand divisions free of non-state actors.

Most importantly, with army offensive and presence, the government of Pakistan seems satisfied with no fear of incitement of non-state actors in Swat. Unfortunately, it is total ignorance on the part of government of Pakistan. What the government ignores is that there is no proper redressing the grievances of Swati people. Mere changing the procedures of litigation and name-change of the courts with no intention to fill or at least narrow down the resultant gap were not the demands of the people of Swat. Their demand was implementation of Shariah system which is perceived as a system with quick and free litigation with a spirit of true practice and implementation. In short, if not now, the demand for Shariah can be revived in the coming one or two decades.

Apart from policymaking on filling or narrowing down the resultant gap, the government of Pakistan and especially the army should make themselves aware of the burning anti-army sentiments – people abominate men-in-uniforms' behavior with the common people especially during the *Operation Rah-i-Rast*. People have circumstantial understanding that the rise of Fazlullah and the subsequent military offensive was based on their mutual understanding. Therefore, efforts should be done to remove or reduce this misperception.

In nutshell, temporary disappearance of the demand for Shariah should not be confused with a complete disappearance of the demand. The scholars and policymakers should revive the issue, and deal it with a fresh start with the resultant gap in judicial system

as an epicenter of the issue. It is needed to be addressed before it gets too late once again. Only then the grievances of the people of Swat and Malakand can be addressed properly, and the platform for the rise of non-state actors would lose its existence.