

## Delay in Justice is an Indicator in the Promotion of Terrorism: A Case Study of Swat

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**Abstract:** *The pre-merger judicial system of Swat was famous for speedy justice. Even death cases were solved in days. The people of Swat expected the same judicial system from Pakistan. Civil as well as criminal cases take long time for decision with no guarantee of fairness. Maulana Sufi Muhammad raised voice for Islamic Sharia in 1990. For the sake of Islam and speedy justice the common illiterate people of Swat supported the movement of Sufi Muhammad called TNSM. It was banned after accepting some of their demands. In 2004 another movement named TTP (Swat faction) appeared and got control of most of the areas of Swat in a short span of time. The TTP clerics preached their own version of Islam on FM channels and loudspeakers. Imposition of Islamic laws and speedy justice were the main points of their agenda which inspired the common people of Swat and Malakand region.*

**Key Words:** Justice, Merger, TNSM, TTP, Terrorism, Taliban.

### Introduction

Terrorism is a big challenge of 21<sup>st</sup> century, faced by the world in one or another shape. The causes and shapes of terrorism are different in different parts of the world. Usually cultural, economic, political, religious social, and many other causes of terrorism have been pointed out by the researchers. The motivations and rationalities of people to join a terrorist group depend upon the nature and interest of a terrorist group. Tore Bjorgo in his book “Root Causes of Terrorism” briefly explains the main causes of terrorism. In any terrorist movement many kinds of people are involved for different reasons. Political entrepreneurs and ideology provide coherent motivation to people to become terrorists. The true believers are motivated by ideology and mercenaries to join terrorism for their own benefits. Ideology is the main factor that attracts common people in the developing countries. In all kinds of terrorists, the terrorists motivated by ideology prove to be more dangerous (Bjorgo, 2005).

Permissive factors provide opportunities for insurgency by facilitating a specific strategy to attract people. Some political and social conditions that contribute to occur terrorism are discrimination, disaffection grievances, and lack of opportunity for political participation. Industrialization, modernization and urbanization that introduce fundamental changes in a society are more likely the prerequisites of insurgency and terrorism (Torp, 2000). The popular explanation of the causes of terrorism was explained by British Prime Minister Tony Blair. He said that extremism, fanaticism and poverty in one part of the world would not stay but its consequences would be felt in other parts of the world. Al Gore, Bill Clinton, King Abdullah, Elie Wiesel and many experts like Jessica Stern also agreed that poverty and lack of education were the main causes of terrorism. George Bush was not ready to agree with the above view but after September 11 he agreed and said that they fought with poverty because hope was an answer to that. Poverty was declared as the major cause of terrorism but ideological differences can also be the major cause of terrorism (Krueger, 2007).

After the destructive event of 9/11, two kinds of concepts developed about the root causes of terrorism. One group is of the view that struggle for the elimination of poverty should be the main focus. They think that poverty is the root cause of terrorism in the world. Poor people can easily be converted to militant movements. Social and economic development can eradicate terrorism and insurgency. The other group strongly rejects this view. They argue that many well educated and rich people can be found in a great number in terrorist organizations. This group is of the view that Islamic extremism is the root

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cause of terrorism. As long as extremism exists in Muslims there will be terrorism in the world [Taspinar, 2009].

Poverty, unemployment, lack of basic facilities of life, illiteracy and absence of justice are said to be the reasons of insurgency in Pakistan. Health and education are the sectors which are neglected in Pakistan. Pakistan spends hardly 1.8% (now 2%) on education while Cuba spends 18% of GDP on education. More than 40% population of Pakistan lives below the poverty line [Irshad, 2011]. Pakistan's decision to side with America in war against terrorism, absence of law enforcement, economic deprivation and foreign involvement are considered as the major causes of terrorism in Pakistan. The decision of Pakistan to join US led alliance in global war against terrorism proved very fatal for Pakistan. The religious and extremist minded people stood against that decision. The supporters of Taliban established TTP (Tehrik Taliban Pakistan) to resist the decision of the government of Pakistan [Sajid Haider, 2015].

In Pakistan, terrorism appears neither suddenly nor unexpectedly but terrorism appears to be highly predictable as the result of political struggle and deep understanding of the history. Violent politics often leads to violent resistance and adopts the shape of terrorism. The unwarranted and irrational violence by religious extremists leads to the deployment of anti-terrorism polices and security politics which in turn intensifies violent resistance and more acts of terrorism [Murphy E., 2013].

The people of Swat still like the pre-merger Swat state for three reasons i.e. *Wali* (ruler) as the head of the state, provision of speedy justice and exemplary law and order. Due to the difficulties of PATA (provincially administered tribal areas) regulations, misuse of *Rewaj* (customary law) and lengthy judicial process of Pakistan to get justice, the demand for the implementation of Islamic laws spread [Khurshaid, 2016]. Maulana Sufi Muhammad took advantage of the situation and started movement for the implementation of Islamic laws (TNSM).

### Theoretical Framework

The aim of the paper is to explore the importance of justice in Pakistan. The slow and costly justice system can create law and order situation. The judicial system implemented in Swat after the merger was very slow and costly. It was very strange for the people who had spent their lives in a system where justice was available to them at their doorsteps at very cheap rates. The lack of justice encouraged TNSM and TTP to implement their so-called Islamic laws in Swat. Resultantly, insurgency was started by TTP in which thousands of people were killed. Structural functionalism is used as theoretical framework. It is also known as theory of functionalism. Macionis defines Structural functionalism as "it is a framework for building theory that sees a society as a complex system whose parts work together to promote stability and solidarity" [Macionis, 2011].

Swat was merged with Pakistan peacefully in 1969. Before the merger, there was an exemplary peace and stability in the area. The main reason of the peace and stability was the efficient administration and speedy judicial system of Swat state. The people of Swat expected the same judicial system from Pakistan but change in government changed the whole system. The judicial system of Pakistan was extended to Swat. The misuse of *Rewaj* (a customary law) and ambiguity in PATA regulations created a judicial gap. Firstly, Maulana Sufi Muhammad exploited the circumstances in 1992 and established TNSM for the imposition of Islamic laws in Malakand division. The members of TNSM took arms and the government was compelled to conduct a small-scale operation against them [Avis, 2016].

### Merger of Swat

In 1849, Hazrat Akhun Abdul Ghafoor (Saidu Baba) convened a Jirga of different tribes of Malakand division and Bajaur agency at Saidu Sharif. The selection of ruler was a very difficult task because it is the tradition of Pashtuns that they never accepted other Pashtuns as their leader. The main objective of the meeting was to select an *Amir*. After a brief meeting the Jirga invited *Saidu Baba* to become the ruler but he refused because he was not interested in wealth and power. He was a religious person and the worldly affairs were not important for him. Instead he suggested the name of Syed Akbar Shah which was accepted by the *Jirga* and Syed Akbar Shah became the first ruler of Swat [Islam, 2014]. Syed Akbar ruled from 1849 to 1857 and then the state was in abeyance till 1916 [Sajid M. U., 2014].

In 1915 another Jirga was convened and Sayed Abdul Jabbar Shah was made the king of Swat but due to some allegations against him he was removed from the throne and in 1917, Miangul Abdul Wadood (Bacha saib) came into power. The expansion and consolidation phase of the Swat State started. Developmental works were undertaken. For the first time possession of arms was controlled.

Social sins were controlled by the efforts of *Bacha saib*. Hospitals and schools were established. It was a great success to establish peace in an illiterate society and tribal set up. Very soon Swat became a model of peace and progress. A model of government was developed consisting of Islamic laws, developments, traditional values and modern norms. The justice system of Swat was tremendous. All kinds of cases were decided in short period of time [\[Room, 2011\]](#).

In 1917, a Jirga was convened at Kabal Swat to agree on the ruler. In 1915 Miangul Abdul Wadood had rejected the offer but he was invited again to become the ruler of Swat who accepted the offer. In fact, the foundation of organized state was laid down. Although Sayed Akbar Shah (1849-1857) and Sayed Abdul Jababr Shah (1915-1917) had established governments but the government of Bacha Saib was well organized [\[Khan Z. a., 2011\]](#).

In 1949, Bacha saib handed over the charge to his son Miangul Abdul HaqJehanzeb (Walisajib). During the reign of Miangul Abdul HaqJehanzeb, Swat State saw 20 years of amazing development. He was an efficient and honest ruler. He launched the state on the path of growth and prosperity.

### Judicial System of Swat

The judicial system of Swat State was unique. It was very simple and cheap. Majority of people in the state were satisfied with the system. The concept of organized state was not introduced in 1917 in South Asia, but the judicial system of Swat State enabled Walisajib to rule the scattered tribes of Swat. *Bacha Saib* got the throne with the consent of people and he did everything in consultation with A group of elders. *DasturulAmal* (a code of conduct) was introduced by him to ask the local *Jirgas* for making laws for themselves. The state was responsible for enforcing the rules and regulations made by *DasturulAmal*. For every area there was a *Dasturul-Amal* which acted as a constitution [\[Hassan, 2019\]](#).

*Qazi* courts used to hear cases at village, Tehsil and *Hakimi* levels of administration. There were two options for the disputants to hear their cases i.e. *Dastur-Amal* or Sharia law. The disputants had also the option to take directly their cases to a *Wazir* or the *Wali* [\[Fleischner, 2011\]](#). The merger changed the whole scenario. The expectations of the people were high while the progress of the government to extend Pakistani laws to Swat was very slow. The new system was very complicated and lengthy. The judicial system of Pakistan was not fully implemented in Swat but was partially implemented. The judicial system implemented in Swat needed special procedures which were totally different from rest of the province. Before the merger the local people were assured of speedy justice like that of Swat but the new judicial system badly failed to redress the grievances of people. The judicial system was Swat was not only simple but also very speedy. As compared to the judicial system of Pakistan it was very cheap [\[Sultan-i-Rome, 2011\]](#). One of the servants of Wali said that Wali ruled through advisors, *Wazirs*, Tehsildars and had ten thousand strong army. The people of Swat still pray for *Wali* with great respect because speedy and cheap justice was available to them at doorsteps (Elahi, 2015). Similarly, the administrative system of Swat State was outstanding. It was very speedy system. The people of Swat could easily solve their problems without any inconvenience. The administrative system has direct effect on the judicial system and as a result the people of Swat were satisfied and happy.

*Qazi* Ghufuran-ud-din, a former who was the last *Qaziul-Qazza* (Chief Justice) explains the judicial system of Swat State in these words "there were total 24 departments of judiciary in different areas of Swat. *Darul-Qaza* had the apex position and was situated in said Sharif. Appeals against the decisions of Tehsil courts were heard at *Darul-Qaza*. The defendants had also the option to review the decisions of *Darul-Qaza*. Such appeals had to be sent to *Darul-Uloom* for review and final decision. Cases were decided according to Rewaj and Sharia during the rule of *Bacha Saib* while during the rule of *Wali Saib* cases were decided purely according to Islamic laws without any kind of pressure [\[Khaliq, July 27, 2015\]](#).

### Impact of Merger on Judiciary

Pakistan and India inherited judicial system from the British government. This system is still the judicial system of Pakistan and India with minor changes. The main feature of this system is its prolongation of cases. Here an important question arises, why the people of Swat stood against it? The answer can be understood if the judicial history of Swat is studied in detail [\[Ahmad, 2017\]](#). The judicial system of Swat State was liked by people for two reasons i.e. it was very speedy, and the disputes of people were solved in a very short time as compared to the judicial system of Pakistan. Cases were decided even in one or two hearings. Another important feature of the judicial system of Swat was that the decisions of courts

were implemented very quickly without any hesitation. The disputants had the choice that either their cases be decided by Sharia or customary law [\[Barth, 1985\]](#). In 1969, when Swat State was merged with Pakistan, the Pakistan Criminal Procedure Code was implemented. The provincial government of KPK (NWFP) passed a new set of rules called PATA regulations in 1975. It consisted of two sets of code including civil and criminal codes [\[Nichols, 2013\]](#). Under PATA, cases were referred to the Jirgas under Tehsildars. The magistrate had the duty to implement the decisions of Jirga. Appeals against the decisions of Jirga were referred to the home secretary of NWFP and Deputy Commissioner. It means the legal power was controlled by deputy commissioner, revenue officer and landed elites [\[Hussain, 2007\]](#).

The local people of Swat had no practice of such a complicated system. They expected a better system, but the government and institutions failed to deliver. Instead of providing speedy justice the new judiciary created problems for the common people. In the beginning people expected that with the passage of time the system would become good. The grievances of people increased with each passing day. They were waiting for someone to provide them justice. Those clerics who talked about justice were given special attention by the local people. The complicated judicial system of Pakistan increased the miseries of people who were in habit of getting justice in days. In the early 1990, Maulana Sufi Muhammad had started his unlawful activities in Swat and the surrounding areas. In the beginning he was not given attention by the people of Swat but when he highlighted Islamic Laws, he succeeded in attracting huge gatherings. He used to the big mosques in villages. He was given equal opportunities by Deobandi as well as Bareilvi clerics. The leaders of mosques took keen interest in the meetings of TNSM and used to attend most of the meetings. The leaders of mosques asked the common people to participate in the meetings and strikes of TNSM. The study of the history of Swat shows that the people of Swat and the surrounding areas blindly obey the orders and advice of leaders of mosques. They give special attention to them. The supreme court of Pakistan created an incentive for Maulana Sufi Muhammad to get the support of common people of Swat. The unpopular PATA regulation was declared ultra vires by Supreme Court in 1994. A judicial vacuum was created, and Maulana Sufi Muhammad fully exploited the situation in his favor. TNSM got the support and sympathies of aggrieved as well as religious minded people. It paved the way for militant struggle [\[Hussain, 2007\]](#). During the Afghan war CIA and ISI established a big number of Madrassas of *Deobandi* school of thought to recruit people for Afghan war. The leaders of mosques were given financial help for that purpose. The verses about Jihad were included in the curriculum of levels in schools and colleges. The Wahhabi version of Islam was encouraged. Similarly, Isaahut Tauheed was strengthened and given financial help to its clerics. The main objective of the establishment of those religious schools was to provide Mujahidin for Afghan Jihad. It was a very successful move and thousands of Mujahedeens were recruited for war in Afghanistan. They fought with great religious enthusiasm and inflicted a crushing defeat to the Soviet forces. The Soviet forces had no option but to leave Afghanistan. That defeat weekend USSR to the extent that it was disintegrated which was the main objective of the capitalist world. After the disintegration of USSR those warlords along with huge quantity of ammunition came to Malakand division. Most of the active members of TNSM had the experience of fighting in Afghanistan [\[Toru, 2005\]](#). TNSM extended activities to Bajaur agency and Kohistan district of Hazara division also. TNSM had three-point strategies i.e. unite the people; boycott the institutions and start holy war [\[Khan, 2010\]](#). In 1994 TNSM started demonstrations for the promulgation of Sharia. They captured important buildings and the government was compelled to promulgate *Nifaz e Nizam e Shariah Regulation* in Malakand division. TNSM was not satisfied and they continued their campaign. The government promulgated another act named *Sharii Nezam e Adal Regulation 1999* and the matter became silent for the time being [\[Room, 2011\]](#). After 9/11 Maulana Sufi Muhammad appealed for holy war Against the US in Afghanistan. He carried more than 10,000 Pashtuns to Afghanistan [\[Rashid, 2008\]](#).

Maulana Sufi Muhammad was jailed when he returned from Afghanistan. He carried about ten thousand common people to Afghanistan for Jihad against the US and NATO forces. Most of those people died, injured or captured in Afghanistan. Very few lucky people succeeded in coming back from the war. In the absence of Maulana Sufi Muhammad, his son in law Mullah Fazlullah was nominated as the head of TNSM. As compared to Mullah Sufi Muhammad, Mullah Fazlullah was an energetic person. He knew the art of attracting people. He started preaching on FM channel and became famous with the name of Mullah Radio. In a very short time he became very famous. In the beginning he succeeded in attracting people by the literal meaning of Quran but with the passage of time other topics like rights, responsibilities, holy war etc. were explained in detail according to his own version of Islam. He gave importance to the imposition of Islamic law and women's right in inheritance. The explanation of women's rights in inheritance proved a turning point in attracting the women of Swat. Thousands of men

belong to Swat work in foreign countries including Saudi Arabia, UAE, Malaysia, European countries and USA. They send money and women spend it. The women used to give huge money to TTP. When Like a psychologist he explained what was liked by the common people in general and women in particular. He criticized the laws of Pakistan. As the people of Swat were already not happy they started supporting him. The event of *Lal Mosque* and *Jamia Hafsa* created a very good opportunity for TNSM and Mullah Fazlullah exploited the situation very well. He attacked the security forces of Pakistan as a reaction to *Lal Mosque* and *Jamia Hafsa* operation. Very soon he converted his movement to TTP Swat. He was appointed by TTP as the leader of TTP Swat faction [Siddique, 2010]. Taliban captured 90% of areas of Swat and implemented their own version of Islam. They also extended their influence to other areas of KPK. Their strategy was very interesting. In the beginning they attracted people by explaining the verses of Quran but with each passing day the system of Pakistan was their main target. As they knew that the local people of Swat did not like the judicial system of Pakistan, they fully exploited the minds of the people by explaining Islamic laws. Then they gradually turned their movement to armed one. Attacks on schools, bridges and other public places became their normal routine. The government of Pakistan passed Swat Peace Deal, but Taliban were not stopped from their barbarism. The government of Pakistan was compelled to conduct military action in Swat. The then PM of Pakistan explained that the sincerity of government should not be mistaken as weakness of the government and full-scale military operation was ordered in Swat. That operation brought peace, but thousands of people were killed or injured. Property billions of rupees was destroyed. More than four hundred of schools were fully and same number of schools were partially damaged. The local Taliban along TTP fought against the security forces and gave very tough resistance to the armed forces of Pakistan. Most of the local Taliban fighters were killed and captured. Delay in justice was the major cause of converting the local people to militancy [Shams, 2011].

## Conclusion

There is no consensus among States about the definition of terrorism, but the causes of terrorism have been found almost the same. Poverty, unemployment, extremism, illiteracy, exploitation, deprivation etc. are the main causes of terrorism. In Swat insurgency, there were many causes, but the main indicator was the judicial gap created due to the merger of Swat with Pakistan. In Swat State, the common people were very happy from the judiciary. It was the mixture of Islamic and local laws. There was exemplary peace in the entire state. Rule of law was respected by all the citizens. There was a best judicial system which had enabled the rulers to rule with peace in a state where majority of people were illiterate. Speedy and cheap justice was available to all. In just one or two hearings cases had to be decided. Even death cases were decided in days. After merger a very complicated judicial system was implemented in Swat. Bribery, prolongation, complication, unfairness was common in the new system. The new system completely failed to redress the grievances of people. The order of court to declare PATA regulation null and void paved the way for TNSM and later TTP Swat faction. Maulana Sufi Muhammad and Mullah Fazlullah fully exploited the situation. They became popular by their slogan of "Islamic Sharia". The common people were brainwashed and were easily converted to terrorism. The judicial gap created due to the merger of Swat with Pakistan played the role of indicator, but the government of Pakistan did not respond and as a result TNSM and TTP Swat got popularity. The circumstances became so worst that the government of Pakistan was compelled to conduct a full-scale military operation.

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