

The Peace deal with Swat Taliban, the Nizam-i-Adl Regulation and the Military Operation: The Discourse and the Narratives

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I- Introduction

As has been perceived by the Awami National Party leadership, the ANP led provincial government of the North West Frontier Province (Pakhtunkhwa) of Pakistan has finally won the ground by forcing the US and Pakistani establishment to come to terms with the issue of terrorism and militancy in the Pashtun belt after the deal between the provincial government of the North West Frontier Province (Pakhtunkhwa) and the banned Tahreek-e-Nifaz-e-Mohammadi (TNSM) collapsed in April 2009. The assumption of the ANP leadership that they would be able to isolate the banned Tahreek-e-Taliban Pakistan Swat chapter from its network in Waziristan and Southern Punjab proved wrong while the ANP's assumption that they would be able to grab whatever public support the Taliban insurgents have in Punjab and Pakhtunkhwa proved right with the clarification that the controversial deal with the TNSM on behalf of Taliban allowed the Taliban to recruit, re-arm, and expand their organizational structure. Moreover, the two deals by the provincial government of Pakhtunkhwa (April 2008 and Fe 2009) with the Taliban facilitated the insurgents to get political legitimacy in the province and beyond in the same in the same way as the three previous phases of military operation (From July 2007 to December 2007, from January 2008 to April 2008 and from June 2008 to Feb 2009) saw the expansion of the writ of Taliban, whose writ was previously restricted to the upper part of Swat valley, to the whole valley and to the adjacent districts of Dir, Shangla and Buner in Pakhtunkhwa.

While the Pakistani establishment was hitherto reluctant to launch a full scale military operation against her "strategist assets" as is perceived by many in Pakistan, it seems that they are under extreme internal and external pressure fight out the Taliban insurgency in different parts of Pakistan. The military operation seems to have started in haste, panic and without appropriate planning, but with the initial successes of the military against the Taliban insurgency in Malakand Division (Swat, Dir and Buner), the mainstream Punjab and Pakhtunkhwa continues to support the military action against the Taliban insurgents. The perpetuation of the support base in Punjab and Pakhtunkhwa will be contingent on whether the military is able to cut off the militants' supply lines, to break their triangular network in FATA, Malakand Division and to destroy the militants' command and control structure. The mode of the operation, the time it takes and its effectiveness will also play a crucial role in holding the support base for the military action in Malakand Division.

At the same time, there is strategic discourse going on in Pakistani intelligentsia regarding the hard core issues of state security paradigm, regional cooperation and federalism. This article will try to analyze the aftermath of Nizam-e-Adal Regulation in

Malakand Division (Swat, Dir, Buner, Shangla, Chitral, and Malakand Agency) and the consequent developments which led to the military operation in Malaknd Region. The article will also see how Obama's new Afghan Policy is going to materialize during these developments besides the role of Pakistani establishment.

II- ANP Turned the Tide

The secular Awami National Party (ANP) turned the turbulent tide of the tumultuous river of militancy by signing the peace deal with the militants. On February 15, 2009, the ANP led provincial government signed another peace deal with Maulana Sufi Muhammad of the banned TNSM after 18 months long military operation. The deal envisioned the promulgation of Nizam-e-Adal Regulation in the Provincially Administered Tribal Areas (PATA) including five districts of NWFP, Malakand Agency and some parts of Kohistan. Two months after the deal on April 13, 2009, the president of Pakistan signed the Nizam-e-Adal Regulation after the National Assembly of Pakistan unanimously passed it. MQM abstained and only one MNA Ayaz Amir spoke against it despite the serious threats by Taliban's spokesman, Muslim Khan, carried by all the morning papers.¹

According to the constitution of Pakistan, the Provincially Administered Tribal Areas (PATA) of NWFP consist of the districts of Chitral, Dir and Swat (which includes Kalam), the Tribal Areas in Kohistan district, Malakand Protected Area, the Tribal Areas adjoining Mansehra district and the former State of Amb. Under the constitution, the "executive authority of a Province shall extend to the Provincially Administered Tribal Area" and the president of Pakistan may give directions to the governors related any matter and the governor may thus comply with the directions. Similarly no Act of the Parliament or Provincial Assembly may apply to the administration of the tribal areas unless the governor with the approval of the president so directs. The president and the governor may make regulations with respect to any matter within the legislative competence of the parliament and provincial assembly respectively for the "peace and good government" of the tribal areas. The president has the discretion and may direct that the "whole or any part of a Tribal Area shall cease to be Tribal Area provided the views of the people through a tribal jirga are taken into account. The Supreme Court or high court has no jurisdiction whatsoever unless the parliament by law thus provides".²

The Niza-e-Adal is basically a constitutional arrangement which seeks to apply all laws mentioned in the column 2 of Schedule I to the provincially Administered Tribal Areas except the Tribal Area adjoining Mansehra district and the former State of Amb. The Schedule I contain 150 laws which are the regular laws in Pakistan. The Schedule II has renamed the designation of Judges and Judicial Officers such as a District and Sessions Judge is renamed as Zilla Qazi, Additional District and Sessions Judge as Izafi Zilla'a Qazi and Civil Judge/Judicial Magistrate as Illaqa Qazi. The rest are such arrangements

¹ 'Progressive' MPs prefer to play it safe, By Rauf Klasra, Tuesday, April 14, 2009,
http://www.thenews.com.pk/top_story_detail.asp?Id=21505

² PART XII (contd) Miscellaneous Chapter 3. Tribal Areas,
<http://www.pakistani.org/pakistan/constitution/part12.ch3.html>

which are either related to the proceedings or the power and appointment of judicial bureaucracy or lower staff. What is important is that Nizam-e-Adal Regulation Sharia is simple both in accordance with the constitution and the local traditions. So far, so good. The NWFP government has devised the best out of the Pakistani laws as far as the implementation of Sharia is concerned. Everything is legal, constitutional and democratic³.

The demand for “speedy justice” is not something new in the Pashtun belt as well as the rest of Pakistan. Two centuries of Great Games, The Anglo Afghan Wars, The Cold War and the recent War against Terror have left the Pashtuns wandering in the labyrinth of lawyers of administrative structures, and so “speedy justice” has been the popular demand. The Afghan Empire founded by Ahmad Shah Durani after he was elected king by an Assembly of Pashtuns in 1747 saw many internal and external upheavals. The first major blow it received during the Second Anglo Afghan War when the Treaty of Gandamak in 1879⁴ passed greater parts of Afghanistan into British hands. Subsequently, Afghanistan lost control of all the areas of eastern side of the Durand Line in 1893.

Afghanistan never became a stable polity due to its strategic significance for the “great players” and consequently Pashtuns as a nation bore the brunt of all the “adventures” by the regional and international players. Even during the partition of India, the British Imperialist left Pashtuns with no option but to join Pakistan. Inside Pakistan, their as well as the rest of smaller nations’ miserable situation continues till this day. Pashtuns are divided into three geographical units, Central Pakhtunkhwa (the so-called tribal areas), Northern Pakhtunkhwa (NWFP, a colonial name based on geography) and Southern Pakhtunkhwa (Pashtuns areas of Baluchistan). In tribal areas, the people are still deprived of making political parties, and state laws are not extended there. They are governed by a century old Frontier Crimes Regulations which allows the central government of Pakistan to execute the most inhuman collective punishment against a tribe in case an individual violates the laws of the state. The provincially administered tribal areas of Malakand and Swat which earlier enjoyed the fruits of speedy justice, when incorporated in to Pakistan, were deprived of their previous judicial facility and a vacuum was left which basically provided the ground for TNSM (Tahreek-i-Nifaz e-i-Shariat –i-Muhammadi) to flourish⁵.

At the same time, the Pashtuns on both sides of the Durand Line have evolved a collective consciousness that has absorbed the reality of both Pakistan and Afghanistan—an ethnic sympathy with the state of Afghanistan but with a loyalty to institutional and state structures of Pakistan. The nationalist movements in Pakhtunkhwa have all along remained secular in nature and integrationist and demanded rights which imply that the mainstream Pashtun has all along taken the ownership of Pakistani state. This creates the best possible opportunity for both Pakistan and Afghanistan to carry out meaningful dialogue on issues of mutual interest and work closely to achieve common political and economic objectives.

³ Draft Of The Proposed Nizam-e-Adal Regulation, <http://www.airra.org/news/DraftThePropNizam.htm>

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⁵ Hussain, Khadim. Truth about Pata regulation. Dawn April 03 2008

<http://www.dawn.com/2008/04/03/ed.htm#4> . For understanding how the Taliban insurgency took root, also see The writ of religious radicals in the Pashtun belt. Available on <http://www.airra.org/presentations.htm>

The ANP led provincial government helped in the release of the banned TNSM' leader Maulana Sufi Muhammad and provided him every support to bring the situation to normalcy in Swat. Sufi Muhammad is the father-in-Law of Maulana Fazlullah, the leader of TTP Swat chapter. Maulana Fazlullah has also a student of Sufi Muhammad and has worked with him for the promulgation of Nifaz-e-Sharia in Swat. During the imprisonment of Sufi Muhammad, Fazlullah got full control of the organization and finally merged his own organization with the TTP led by Baitullah Mahsood. ANP released Sufi Muhammad in order to appease the Taliban on the one hand and to start a comprehensive judicial package for Malakand Agency in consultation with Maulana Sufi Muhamamd to finally disarm the militants, on the other hand. Despite severe national and international pressure, the ANP signed the peace deal and a semblance of peace was temporarily restored in Swat.



On April 06, 2009 Pakistani newspapers reported that some **100** militants from Swat valley entered Buner. The Taliban consider Buner as part of the Malakand Division and apparently the move was to bring Buner under the fold of Nizam-e-Adal Regulations. The Taliban easily got control of the important areas of the district and the government remained a silent spectator. Buner is some **60 kms** away from the Capital City Islamabad and is adjacent to the district Haripur which borders Islamabad through the Margalla Hills. This was the time when alarms bells started ringing inside Punjab and the capital city Islamabad. The US which was already annoyed with the peace deal in Swat started forewarning of Taliban capturing Islamabd and seizing the Nuclear Weapons.

During the Buner crisis, Sufi Muhammad publicly denounced the democratic institutions of Pakistan, the superior judiciary, the Saudi and Iran government by terming them un Islamic and justified resistance against the "infidel America". Hence the intentions of TNSM got exposed as there was little difference between the tone of TTP Swat spokesman Muslim Khan and TNSM spokesman Amir Izat Khan. Their views stirred antagonism against them among different sections of society inside Pakistan. Many

political groups who were hitherto supporting the Taliban raised suspicious gestures. It was after the international pressure and the threat of Talibanization in Punjab that the army had to take the move by first starting an operation in Dir and later in Buner in the second week of April 2009.

The developments in Malakand Division gave rise to three predictable scenarios: First, the assumption of the provincial government that the deal with Sufi Mohammad would isolate Swat Taliban from the larger network of TTP in Fata and the extremist organizations in Southern Punjab proved wrong. Second, the TTP chapter of Swat with the help of their comrades in FATA and Southern Punjab were able to expand their writ swiftly in large swathes of Pakhtunkhwa. The ideological persuasion of the Taliban insurgent organizations, their social contagion and their social control entered the phase of expansion within no time. Large scale recruitment, consolidation of organizational structure, networking and war preparation were carried out by the Taliban with agility, shrewdness and mature political moves besides considerable gains in media war. Third, the regional and international stakeholders had to take notice of the expansion of the Taliban in Swat.

IV- The Two Weeks Notice

On April 29, President Barack Obama of the United States of America marked his 100th day in office by terming Pakistan's civilian government as 'fragile' and hence convincing the American people for supporting it.⁶ Just after Obama's speech, newspapers reported that General David Petraeus, the commander of US Central Command had told American officials that the next two weeks were critical to determine whether the Pakistani government would survive.⁷ The bottom line of this threat was to send a clear message to the Pakistani establishment that the US meant business this time. Pakistan had already sensed these threats and an operation *Tor Tandar* was started on April 26 in the hometown of Sufi Muhammad in Lower Dir, the next-neighboring district to Swat.⁸ On April 29, the ISPR confirmed the starting of Buner Operation.⁹

V- The Current Operation and the Problem of IDPs

There are some 6 million people inhabiting the Malakand Division of the North West Frontier Province of Pakistan. During the earlier military operations in Swat, hundreds of

⁶ Obama, on 100th Day, Says He Is 'Remaking America' , April 29, 2009

<http://www.bloomberg.com/apps/news?pid=20601087&sid=aEOXy3xJPVoU&refer=worldwide>

⁷ General David Petraeus: we have two weeks to save Pakistan from Taliban, 01 May 2009, <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/5256489/General-David-Petraeus-we-have-two-weeks-to-save-Pakistan-from-Taliban.html>

⁸ Pakistan touts success of Dir operation, April 27, 2009,

http://www.longwarjournal.org/archives/2009/04/pakistan_touts_succe.php

⁹ Press Release, No 111/2009-ISPR, http://www.ispr.gov.pk/front/main.asp?o=t-press_release&id=617&search=1, Dir operation completed, launched in Buner – ISPR, <http://www.thefinancialdaily.com/NewsSearchResult/NewsSearchDetail.aspx?NewsID=83223>

thousands of people have migrated to the nearby districts and the big cities of NWFP and other parts of Pakistan. Now that a full scale military operation is underway, a mass exodus of the people is seen which should have been predicted by the civilian government. The Swat Peace deal is virtually annulled though both the government and TNSM are cautious to give any final word. While military operation in Swat is going with full zeal by the military with the support of the Punjab, Pakhtunkhwa and Sindh mainstream besides media and intelligentsia, some 2.2 million people have so far been displaced. The state response to this predictable human catastrophe is as usual bureaucratic, lethargic and un-coordinated. The civil society and the mainstream Pakistan have started beginning to come up to the situation. While the civil governments in the centre and the province are trying hard to cope with the situation, the first week of the military action in Swat has started restoring confidence in the capacity and will of the military to curb insurgency and help create a favourable situation for the people of the conflict zones to return their homes.

After the three weeks of the military operation, there seems to be mixed reaction by the people in the conflict zones to the proclaimed successes of the military in its battle with the Swat Taliban. In the meanwhile, the discourse on the state security paradigm, state structural vacuums, federalism, regional and international pulls and pushes, civilian intuition strengthening with respect to the role of the military, governance and vertical and horizontal marginalization seems to have engaged all media outlets and intellectual circles. It seems either the military and civil establishments of Pakistan have to be prepared to revisit all the above mentioned paradigms of state or else both the establishments might lose both internal and external legitimacy and thus rendering themselves isolated which might lead to ‘stateletization’ of Pakistan creating problems initially for India, China, Iran and Afghanistan and later for the larger international community.

The reaction of the governments of Punjab and Sindh and the strike against the entry of IDPs by the Jieye Sindh Qaumi Mahaz (JSQM) supported by the Muttahida Qaumi Movement (MQM) have started creating a sense of isolation amongst the people of the conflict zones. It seems all types of polarization due to manipulation of the establishment has precipitated and is seen quite visible.

VI- The Role of Pakistani Establishment

Pakistan army evolved out of the British colonial legacy when the indigenous population started struggling for freedom in a highly strategic zone of the world, i.e., South Asia and Central Asia. The capitalist world saw the creation of Pakistan vis-à-vis the growing influence of communism and Soviet Russia. The capitalist world was compelled to support the idea of a garrison state model in Pakistan mainly because the very state they perceived was a hotchpotch of different nations and the idea of a nation state was not applicable there. Even during the partition of India, they had given meager resources to make the new country a “client state” which would depend for its sustenance on their aid. The capitalists continuously supported the military regimes against democracies and the

military in turn supported religion to suppress the federal democratic aspirations of the people. Thus a lethal combination of religion and the security apparatus of the state developed out of these treacherous designs.

The culminating point of this nexus was during the Afghan War, when the former military dictator, Genral Zia started Islamizaiton of the state. The constitution was amended, curriculum changed and media controlled while banning all sort of independent thinking especially the one directed against religion. Thus not only the people in general were Islamized but specifically the army institution was strictly fed on the religious discourse. The current military of Pakistan is actually the continuation of the Zia's era.

A change in the religious/ rightist security paradigm is unperceivable unless the overall mindset of the people changes. The army including the officers belongs to the very population who hold a strong religious view. There exists a strong pressure within and outside the military against any change in the mindset of armed personnel.

Another side of the picture is that Pakistan Army has its own security interests. This makes it a "state larger than state itself" and in essence aloof from general polity of Pakistan. While analyzing Pakistan's role in the War against Terror, one should not be duped into thinking or fall in to the fallacy that because democratic changes are underway the whole state will revise her policy. Such metonymy or synecdoches will only result into fallacious thinking. However, the contradiction in the two views is obvious. While the former links army with the masses and political forces the later tends to detach them. Which one is true? Or, perhaps both. How could we decide? The current operation in Swat would unravel this "mystery." If the military is able to break the supply lines, eliminate the triangle of terrorism in FATA, Malakand and Southern Punjab, and destroy the militant network, many will be compelled to believe that space for people centric discourse has been created in state structures. This will also create hope in the already polarized and dejected intelligentsia of the country about the prospect of a plural, democratic and welfare state of Pakistan. The battle for the very sole of Pakistan is being fought in the mountains, plains and IDPs camps in Pakhtunkhwa and Southern Punjab.

VII- Conclusion

Pakistan has reached a critical stage of its existence. The military and civil establishments of Pakistan have to decide to go for pluralism, constitutional democracy, federalism, equitable distribution of resources, empowerment of the vertically and horizontally marginalized and integration with the states of the region and the international community or to head towards disaster by perpetuating anti-people socio-economic and political paradigms that will certainly isolate the state in the region and in the international community. The states of India, China, Iran and Afghanistan and the Obama administration in the US have to come to terms with the changing dynamics in the region and inside Pakistan. The media, intelligentsia, civil society organizations, political parties

of Pakistan and the military establishment have to see things in the perspective of an ever changing local, national, regional and international dynamics. One would like to offer the following recommendations to the relevant stakeholders in the region:

1- For Pakistan

The military and civil establishments besides the political leadership of Pakistan need to devise comprehensive policies for counter insurgency, counter terrorism and counter Talibanization in the country. The policy must include economic, governance, regional and international aspects into consideration. While it is important to break the triangle of terrorism and insurgency in Malakand Division, FATA and Southern Punjab by cutting off their supply lines, resource base and command and control structures, it is of utmost importance that the civilian leadership, the intelligentsia and the civil society organizations of Pakistan push for structural reforms. The political parties of Pakistan have to undergo reforms so as to become genuine representatives of the people of Pakistan. The executive, judiciary and legislature have to develop terms of reference where rule of law reigns supreme. Elitism in state structures have to be abolished and bureaucracy has to be reconstituted if Pakistan is to construct a counter Taliban narrative. The civilian security apparatus has to be equipped, trained, manned and resourced to keep the writ of state intact.

The political governments, the military and the intelligentsia of Pakistan have to reformulate their vision of ‘strategic assets’. A viable framework for genuine federal state with an attitude of peaceful coexistence with Pakistan’s neighbors has to be explored which will ultimately deny space to radical Wahabi Jihadi paradigm in the socio-political institutions of Pakistan. While the military of Pakistan is engaged in a fierce battle with the Taliban insurgents in the mountains of Malakand Division, one would expect severe backlash in the shape of suicide bombing in the plains of Pakhtunkhwa and Punjab by the insurgents which might also be the result of the weakening of the Taliban supply lines and networking. The Taliban insurgents might strategically strike at the heartland of Pakistan to shift away the mainstream support for the military action against the Taliban insurgents. This is where the role of Pakistani media, intelligentsia and political parties comes to help construct a counter Talibanization discourse.

The fall out of the war against the insurgents and the terrorists in the north and south of Pakistan in the shape of mass exodus and displacement is to be handled with utmost care and responsibility. In this case, major chunk of responsibility lies with political parties and the elected government of Pakistan. A coordinated, effective and quick response needs to be given to the plight of the IDPs for which restructuring in civil bureaucracy on fast track basis is badly required. Besides amendments in standard procedures, personnel of the civil service of Pakistan have to be trained to be genuine public servants and not tools of exploitation as they were in the era of British colonialism.

The success of the present military operation in Malakand Division may be contingent on the mainstream public support for the military action against the Taliban. Three factors

might be crucial in sustaining this support base, though one understands the nature of war which is tough gorilla war the Pakistan military might be fighting the first time.

First, the military has to show sooner than later that the top leadership of the Taliban in Swat is either hit or captured. The people living in the conflict zones have been perceiving collusion between the military and the Taliban insurgents for a long time now. Though the perception people in this regard is changing fast in favour of the military but if the Taliban leadership escapes capture or hit, the people in the conflict zones might perceive a strategic alliance between the military and the Taliban leadership.

Second, time frame and avoidance of large scale destruction of civilian infrastructure will play a crucial role in the success of the operation. Moreover, those foot soldiers of the Taliban and their families who surrender to the security forces should be given a fair trial in the court of law. This will ensure answerability in the military action.

Third, response to the issue of the Internally Displaced who are now mostly deprived of their sense of dignity and sense of belonging will decide whether Talibanization in Pakistan is reversed or perpetuated.

2- For India and Afghanistan

The governments of India and Afghanistan have to support the political governments of Pakistan in confronting all the above threats. The Wahabi Jihadist terrorist threat may engulf the states of the region if Pakistan falls to the threat. The government of Afghanistan has to give concession to Pakistan in reaching for trade to Central Asia as a response to Pakistan's concessions on the transit trade through the Arabian Sea. India has to give concessions to Pakistan on the issue of water for a meaningful engagement with Pakistan. Exchange of cultural entourages, people to people contact, engagement in intellectual discourse and concessions to one another in trade and commerce might usher in an era of peace and prosperity in Afghanistan, India and Pakistan simultaneously. The three important countries of the region have to find shared interests of their respective peoples and build their relations on the commonalities instead of emphasizing differences.

The Pashtun population in the North West and FATA might become a tool to bridge the gulf in relations between Pakistan and Afghanistan. For this to happen, the federal government of Pakistan has to empower the Pashtun people and their elected government to combat the menace of terrorism. The Pashtun secular parties and intellectual circles need a space to work in. The federal government of Pakistan has to provide that space sooner than later.

3- For the United States of America

The Obama administration has to have a long term engagement with the civilian government and the military of Pakistan with an emphasis to support the civilian

institutions and elected governments of Pakistan. The US policy makers have to keep in mind the sensitivities of Pakistan into consideration while dealing with the countries in the region. The Pakistani establishment has started feeling isolated after the US started close engagement with India. The rightist voices are still strong in the Pakistani establishment and hence anti-American sentiments will keep on rising in the mainstream Pakistan if the US policy makers keep on ignoring to facilitate the civilian government and the military establishment of Pakistan. The US policy makers have to look into the issues of federalism, regional irritants and engagement with Iran and China if the US is really serious to uproot the centers of terrorism in the region. Any kind of arm twisting on the part of the Obama administration might backfire and might put all efforts against terrorism in jeopardy. Technical support for strengthening the security forces working under the civilian governments and help in modernizing the governance structures of Pakistan might be of great help in this regard. Moreover, the Obama administration has to desist from becoming a part in snatching from the people of Pakistan their right to govern themselves. Ultimately, it is the people of Pakistan to who will turn the tide of events in their country with respect to extremism and terrorism.

(Muhammad Arif and Khadim Hussain contributed to this report)