

## Malakand Nizam-I-Adal Regulation 2009

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### Abstract

*The administration of Pakistan isn't directly by Central Government, so that fail in administrative capacity. Malakand Division consists of Swat, Chitral, Dir, Malakand Agency. Before 1969 each states have had their own rule and regulations. After implementation of the PATA Regulation (Provincially Administrative Tribal Area) 1975, legal cases were decided by Tehsildar. Under PATA Regulation any person was arrested without any reason. So this Regulation was deteriorated Malakand situation. In 1994 imposition of Tehreek-i-Nifaz-i-Shariat-i-Muhammadi (TNSM), so it was called enforcement of Islamic law in Malakand Division<sup>1</sup>. This Regulation was later on repeal in 1999. The emergence of Tehreek-e-Taliban Pakistan (TTP) 2007 and was swallow up whole of FATA. The TTP has adopted modern techniques to subdue terrorism. Bomb blast and suicide attacks killed thousand of people in whole country. TTP attacked inside in Pakistan was revenge of US involvement in Afghanistan. So in this violence and conflict situation another Regulation was enforced in Malakand Nizam-e-Adal Regulation 2009. In this regulation disputes are settle by informal institutions. It is ensuring of natural justice system, equality, peace and protection.*

**Keywords:** Regulation, PATA, TNSM, Implementation, Violence, Terrorism, Technique, Justice, Administration.

### Introduction

The movement of the Tehreek e Nifaz Shariat is step to implement shariah law in Malakand division. Sufi Muhammad was formed this movement. In start this movement was implemented on district Dir and later on its implemented in Malakand division<sup>1</sup>. Past two decades 1980s and 1990s Tribal area or Malakand Division was violent situation. In 1989 to 2008 the nature of conflict in Swat was institutional, ideological and geo strategic. Peace cannot achieve through violence. Demonstration rally and different movement was lunched for purpose of achieves peace. Different Regulation has been enforced for the purpose of maintaining peace. Swat was also famous for speedy trial<sup>2</sup>. At the Era of Wali Swat murder cases was disposed off with in a week<sup>3</sup>. Under 1973 Constitution of Pakistan that act of Parliament and Provincial Assembly would not apply this area. But the Government is authority to make regulations for this area. Two Regulations were promulgated in 1975 and 1976. It related with Civil and Criminal Regulations. These regulations were handling civil and criminal cases, but these regulations did not provided fruitful result in Malakand Division. Jirga System was established in this regulation. The courts of Qazi were dissolved and Tehsildar became powerful<sup>4</sup>.

After this PATA Regulation, Sufi Muhammad was formed in 1992 Tehrik-i-Nifaz Shariat-i-Muhammadi (TNSM) Regulation<sup>5</sup>. Madrassas (seminaries) were established. Civil war of Afghanistan and huge arms brought in Malakand Division. These ammunitions were used by TNSM against Government<sup>6</sup>. One side people wanted to get ride discriminatory and other side achieve peace. In 1994 the first Adal Regulation was sign by Banazir Bhutto. This Regulation was provided speedy justice to the people and no will oppose right of women. This Adl regulation was ending the insecurity in Swat. In 1999 other Regulation was made.

<sup>1</sup> Sultan-i-Rome, Swat State, p. 308.

<sup>2</sup> Interview of the author with Aimal Khan, Political Commentator and Analyst, Islamabad, 15 July 2009.

<sup>3</sup> The Friday Times (Lahore), 10-16 November, 1994, p.3.

<sup>4</sup> Sultan-i-Rome, Swat State 1915-1969

<sup>5</sup> K, new Wasington DC 2006

<sup>6</sup> Fazal-ur-Rehim Marwat and Parvez Khan Toru, Talibanization of Pakistan: A Case Study of TNSM (Peshawar: Pakistan Study Centre, University of Peshawar, 2005), p.2.

Aftermath of 9/11 TNSM was started war against US in Afghanistan from Malakand Division<sup>7</sup>. Large number of the jihadis were arrested and killed. Sufi Muhammad back to Pakistan, which was banned by President Pervez Musharraf in 2002.

In 2007 the region was once again violent conflict. After attack on Lal Masjid Pakistani troops entered Swat valley and control that area. So Mullana Fazlullah once again established Tehreek Nifaz-i-Shariat Muhammadi (TNSM) in Swat region. In this violence Awami National party led negotiations with founder of TNSM. And Sufi Muhammad agree and start work political solution. In 2009, Nizam-e-Adal Regulation has signed by Asif Ali Zardari. This regulations were not different state affairs. There are still informal institutions to solve dispute. And there is also formal justice system to resolve dispute in Swat.

### **Background**

#### **Acquisition of Swat**

In KP district Swat is situated northern side, and of popular vacation spot and people refer it is like Switzerland. In 1969 it was place of autonomous state under ruling of British.

It was place where broad-minded peoples ruled. They gave much attention towards educations. Wali Swat was opened School, Colleges 1952<sup>8</sup>. The Swat peoples were modern and educated then Dir, Chitral. Swat was well known for quickly deciding cases. Justice was giving to peoples. After acquiring Swat, Dir, Chitral Government of Pakistan make rule according of Government of India Act 1935. These areas were declared Tribal area and special status was given under Constituent Assembly<sup>9</sup>.

There was no rule and law to run this Tribal Area. But different Regulation was enforced time to time. In 1970 Tribal Area Regulation was introduced, Criminal Court, Police Act etc. In 1973, under Article 247 of Pakistan Constitution the Jurisdiction of Supreme court and High Court was enlarged in Malakand Division. The constitutional status of this area was disturbed. They demanded implementation of Islamic Laws<sup>10</sup>. Because the militant groups were evolved. Tehreek shariat influenced 1990 and same time Taliban were established in Afghanistan. Later on this tehreek come under umbrella of Taliban. Then Pak Government arrested Sufi Muhammad. Fazlullah came and drawing much of his support and come to known as Mullah Radio. Ultimately the action was taken against the militant by the government of Pakistan. The government decided to install shariah courts in Swat for keeping peace. At that time president Zardari was delaying to sign this Adl Regulation but political pressure increased to come on point to settle the issue.

#### **Provincially Administer Tribal Area (PATA) Regulations 1976**

In 1969, the merger of Swat with Pakistan as Provincially Administered Tribal Area (PATA), under Article 246(b) of the constitution of Pakistan. The Wali of Swat ensured to transfer power peacefully to state<sup>11</sup>. Then political situation has undergone transformed in Swat. The significant changed was PATA regulations. In 1976 PATA regulations were enforced. Under This regulation Qazi Courts were established and Tehsildar and Jirga decided cases. Right to appeal were given to people against decisions of Jirga. These Regulations were deteriorated satiation of Malakand. In 1990 Peshawar High Court null and void declared these regulations.

#### **The Rise of Tehrik-e-Nifaz-e-Shariat-e-Muhammadi (TNSM) 1989**

Mulana Sufi was the founder of Tehreek-e-Nifaz-e-Shariat-e-muhammadi on June 28<sup>th</sup> 1989 (Mir, 2009). Mulana was started Islamic preaching. He was against Western style of democracy. His demand was clear, and enforced Islamic Shariah in the Malakand Division (Gul, 2009). He was also opened Madrassa (seminaries) in Tribal Area. In 1991 he was with his supporter at Timergara and demanding the enforcement of Shariat in Malakand. In 1994 Supreme Court decision was in favour of TNSM. So this Sufi gained confidence and support of people<sup>12</sup>. In November 1994 Sufi Muhammad started operation against Government. In this response PPP Government promulgate Nifaz-e-Adal

<sup>7</sup> Ahmed Rashid, *Descent into Chaos*, (London: Penguin Lane, 2008), p. 90.

<sup>8</sup> Published in Dwan, August 31, 2014.

<sup>9</sup> The constitution of Pakistan, <http://www.pakistan.org.pk/part12.ch3.html>

<sup>10</sup> Sultan-i-Rome, *Swat: A Critical Analysis*, p.10

<sup>11</sup> Justine Fleischer telephonic interview with Akbar Ahmad, November 2010.

<sup>12</sup> Zaman Khan, Interview with Sher Muhammad Khan, "Speaking for Swat", *The News International* (Rawalpindi), 24 May, 2009.

Regulation 1994 (Mir, 2009). Two year later Nawaz Sharif Government promulgated Nifaz-e-Sharia Regulation 1997<sup>13</sup>.

Sufi Muhammad developed closed relation with Taliban; later on he was arrested by the Pakistan authorities and sentenced for seven years.

#### **Pakistani Madrassas and Taliban 9/11**

When US started war against Afghanistan, Sufi Muhammad founder of TNSM was stand in this regard from Malakand Division<sup>14</sup>. He was also started procession and Jihad against America in 2001. Most of these jihadis were killed. He was addressing to relay that US was biggest terrorist country. Sufi Muhammad along with his companion's backs to Pakistan and then President Pervez Musharraf sentenced him for three year in 2002. Instead Al Qaeda's was present in Waziristan.

Sufi Muhammad TNSM totally against democracy system. He said in Islam there was no place for democracy. He further said that parliament is un-Islamic and there is no education for female but he could stop female from education because there was no Shariah law in country<sup>15</sup>.

Another reason militant all over the country because Lal Masjid Operation in 2007. Attack on Lal Masjid and Jamia Hafsa, which is situated in Islamabad, shook entire world. After this operation militants / Taliban were targeting Lahore, Islamabad. While Peshawar was all time hit list by these Tribal militants. Taliban were now wanted to systematic arrangement of their work under powerful command. Baitullah Mahsud, became commandant of Taliban, Thereek-e-Taliban Pakistan (TTP)<sup>16</sup>.

#### **Tehreek-e-Taliban Pakistan (TTP) 2007**

Taliban are present all the tribal area, but they were busy in their activities in North and South Waziristan, Momand Agency, Bajur. Hussain Mashsud was strong supporter of Baitullah Mahsud and was member of Sepah-e-Sahaba (SSP). He was entered in FATA after ban and then announced establishment of Tehreek-e-Taliban 2007. They started more deadly battle in that region which lost number of lives of peoples. Taliban commander carries two position one is deputies and other was Amir. TTP has adopted some different techniques to subdue terrorism and achieved their objectives. In those techniques include suicide bombing, explosive devices. So it was caused killing of million of people in the country<sup>17</sup>.

#### **Maulana Fazlullah in Swat**

In the absence of Sufi Muhammad Mullana Fazalullah took the leadership of TNSM and shifted his head quarter to Swat. He started work in Malakand Division to enforce Shariah Law, and also aim took revenge from those people who have killed innocent students in operation of Lal Masjid. He broke down government system and control large area of Swat. Instead of this he was started Islamic teaching on radio and war the people un-Islamic activities. And he was also banned female education

#### **Nizam-E-Adal Regulation 2009**

President Asif Ali Zardari passed Nizam-e-Adal Regulation 2009. This regulation introduced in Malakand Division Shariah Law. This law was applicable in Malakand Division, Malakand Agency, Swat, Buner etc. The people of Swat were in favour of this Regulation because it brings peace in region and take action against violence. Under this Adal Regulation all previous laws were extinguish and new laws applicable. In this Civil cases are decided with in four month and criminal with in six month.

This Regulation controlled Taliban activities and killing of innocent peoples and over world violating fundamental rights. Pakistan is place where law are made according to Quran and Sunnah. Executive magistrate seeks guidance through four sources of Islam. Two appellate courts are formed under this regulation. Speedy trial should be conducted. Civil and Criminal cases referred to mediator if there is no fruit full result then evidence is recoded before court. In this regulation Hudood cases are not handle by mediators. In 1979 Hudood Ordinance General Zia added constitution through military dictators. Whenever any group made change in legal matter then he can be condone.

Such a brutal and violent situation created by Mulana Fazlullah, the politician and civil society wanted military operation against TTP militants in Swat. This military operation caused a

<sup>13</sup> Sultan-i-Rome, Swat: A Critical Analysis, pp.13-14.

<sup>14</sup> Ahmed Rashid, Descent into Chaos, (London: Penguin Lane, 2008), p. 90.

<sup>15</sup> Litigation related to women under Nizam-E- Adl Malkand Division

<sup>16</sup> Ayaz Gul (6 August 2009). "Pakistan Foreign Minister: Taliban Chief Baitullah Mehsud is Dead". *Voice of America*. Islamabad. Archived from the original on 7 August 2009. Retrieved 7 August 2009.

<sup>17</sup> Dr Antonio Gistozzi (August 2021),The resurgence of the Tehrik Taliban Pakistan

large number of peoples became internally displaced (IDPs). This operation against militant was big success of army. This operation resulted destroyed bases of Taliban. Through security forces TTP leader was evaded from Swat.

**Cases**

**1. Ata-Ur- Rehman and others. V Saifullah and other<sup>18</sup>**

In This case there were dispute among five brothers on landed property. Father to the party gifted the property, while plaintiffs purchased one portion of such property. Initially a suit was filed in court, which was later on decided by jarga through compromise between parties.

**2. MST Iqbal Jehan V Pir Madar Khan**

This was family disputed, and parties seek to assistance through court. The wife was aggrieved of husband ill treatment. The suit was decree in favour of wife and later on she claim for maintenance and dowry article. Defendant brought appeal decision of lower court, which was dismissed. Later on matter was sought out by compromise between parties.

**3. Hameed Ur Rahaman V Syed Anwer Ali Shah**

In this case sale transaction was conducted between parties. Sale transaction was piece of landed property. Later on this transaction was cancelled and plaintiff paid partially. For recovery of plaintiff money mediator was appointed but there was no result in favour of plaintiff. Then matter was referred to Jirga again it could bear any fruit. At last plaintiff seek help through court, within one month there was patch-up between parties.

**4. Syed Muhammad Yaqub V Syed Muhammad Tahir**

This case differences was arises between two brothers, on the partition of inherited property. Both Parties were blaming each other that they take more portion than their share. Jirga failed to settle this dispute friendly. Later one case brought to court but still it is pending before the High Court.

**5. Muhammad Jan and others. V Dilaram Khan and others**

In this case subject matter of dispute was spring water. This spring water used for drinking and irrigation, but defendant started resistance. That plaintiff not use spring water. The dispute was not settling locally, so they came to court. Within two months the dispute was solved.

**Observation and Recommendation:**

It was noted that this regulation is not give fruit full result. To achieve objectives of regulation so following observation and recommendation must be follow.

**Observation**

- (i) For peace fundamental requirement is rule of law. In Malakand Division fully peace is not maintain that is why military is still there. The state bodies and others have not implemented said Regulation fully. That's why violence and fear make no place for peace.
- (ii) The failure of Regulation in point of Shariah law enforce in the system. The interpretation of higher court is necessary to remove certain abnormality in the Regulation.
- (iii) There is need that Regulation provides duration for disposal of cases in different categories. In judicial system delay is major cause of the litigants.

**Recommendation**

- (i) There should be need a mechanism for the regulation implementation on the point of keeping peace.
- (ii) Monitoring system should be evaluated by Dar-ul-Qaza.
- (iii) The submission of periodical report with context of implementation of regulation to Dar- ul-Qaza.
- (iv) For the good governance and peace power should be given to judiciary by executive machinery.
- (v) Shariah should be codifying for the system of law in the Malakand Division.
- (vi) There should be training on Shariah for all judges who are doing duty.
- (vii) The government should tackle first social injuries, unemployment, and quality of education for the true implementation of Shariah in system.
- (viii) To appoint expert lawyers and assistant for the interpretation of provisions in the light of Shariah.
- (ix) To avoid injustice and pendency of suits, so extra judicial officer are posted.

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<sup>18</sup> (2006 SCMR 562)

- (x) To avoid abuse the process of law and undue delay steps should be removed.
- (xi) There should be needed of amend the process of registration, affidavits, imposition of heavy costs and attestation etc.
- (xii) The fees of lawyers should be regulated.
- (xiii) The Ulama's role very important, so they should educate the government people in this regard.

**Conclusion**

PATA Regulations were implemented in Malakand Division. Peshawar High Court declared this Regulation null and void in 1990. Sufi Muhammad enforced Tehreek Nifaz-i-Shariat-i-Muhammadi in 1989. The aim of this Tehreek was eradication of western form of democracy in Pakistan. To control the situation in Malakand Division PPP government impose Shariat Regulation in 1994. Nawaz Sharif Government later on changed this Regulation. And new regulation was enforced in 1999.

After 9/11 the situation was change. Sufi Muhammad carried 10,000 peoples from Malakand Division to fight against Afghanistan. In 2006 Fazalullah became leader of Taliban .In start people were support him. He was started brutality in the region and also banned female education.

As such consequences President Asif Ali Zardari promulgated Nizam Adal Regulation 2009. This regulation object was protected Swat valley from Taliban. It also provide justice to people.

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