

The Legal Dimension of the Military Operations in Swat: An Analysis of ‘Actions (in Aid of Civil Power) Regulation, 2011’^{*}

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Abstract

Abstract

The Provincially Administered Tribal Areas (PATA) of the Khyber Pukhtunkhwa province has a distinct constitutional status and, somewhat, different judicial mechanism.

In 1989, a movement called Tahrik Nifaz-e-Shariat-e-Muhammadi (TNSM), movement for the enforcement of Islamic law, took a formal start and spread to Swat which led to an uprising in 1994 in Swat and then, as one of its offshoots, developed the crises of 2007–2009.

The crises that started in 2007, led to a series of military operations during 2007–2009, which caused great havoc, forced expulsion of civilians, destruction of property and infrastructure as well as loss of thousands of civilian lives. According to the claims of government and security forces, thousands of the Taliban were caught and a large number of them surrendered and interned.

In 2011, a regulation called ‘Actions (in Aid of Civil Power) Regulation, 2011’ was promulgated so that to give legal cover to the operations 2007–2009 and actions of the ‘Armed Forces’. This paper critically analyzes this regulation.

The paper is not based on media reports only; as the resident of Swat, author’s personal knowledge of the situation as well as other primary sources and interviews has been utilized in this write up.

Introduction

PATA comprises about one-third area of Khyber Pukhtunkhwa. This area has held distinct constitutional status since the British rule in the subcontinent.¹ The area of PATA has four princely or native states—

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¹ For the area’s distinct constitutional status, see Sultan-i-Rome, *The North-West Frontier (Khyber Pakhtunkhwa): Essays on History* (Karachi: Oxford

Chitral, Dir, Amb, and Swat. At the emergence of Pakistan, the rulers of these states acceded to it and hence became part of the new dominion. In 1969, the rulers of these states were divested of their powers and the states were merged in the province. The distinctive constitutional status of these areas continued, even after their merger. Judicial systems of these areas and sets of laws are different from the rest of the country.

In 1989, a movement began in Dir District. Its slogan and demand was implementation of Islamic laws in the courts in Malakand Division, of which Dir was a part. An organization² was formed and Sufi Muhammad³ was made its head. The movement became famous as Tahrik Nifaz-e-Shariat-e-Muhammadi (TNSM). It spread to Swat, Malakand Protected Area (commonly called Malakand Agency), Buner, Shangla, Indus Kohistan and Bajawar.⁴ It led to the crisis of 1994 in Swat and then as one of its offshoots to the crises of 2007–2009.

University Press, 2013), pp.351-57; 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), pp.267-69.

² The organization has an organizing body, with office bearers, to head and run the affairs of the movement. It has well net organizing structure with a chain of office bearers and *shuras* (consultative bodies) at the central, district, *tehsil* and village levels.

³ Sufi Muhammad was a member of Jamat-i-Islami, a well-organized religio-political party of Pakistan. He hails from Maidan area of Dir. He became nominated *Nazim Aala* (supreme organizer/chief) of TNSM in 1989 and hence got fame world-wide. Since then he held the office of chief of TNSM. He parted ways with Jamat-i-Islami after becoming TNSM chief.

⁴ For more details about the start of the movement, its organizational structure that evolved later on, its insignia and motto, how it was extended to other areas, and the struggle and its mode, see Sayyad Ali Shah, *Da Shariat Karwan: Manzal bah Manzal* [Caravan of the Shariat: Stage by Stage] (Pashto) (Lahore: Idara Nashr al-Maarif, 1995); Akhtar Hussain, *Tanzeem-i-Tehrik-i-Nifaz-i-Shariat-i-Muhammadi, Malakand Division: Myth and Reality*, MPhil Thesis, National Institute of Pakistan Studies, Quaid-i-Azam University, Islamabad, 1999-2001; Abu Hammad Khurshid Ali, *Asiran-e-Shariat-e-Muhammadi* [The Prisoners for Islamic Law] (Pashto) (Mingawara, Swat: Shoaib Sons, 1995); Robina Rehmat, *Tahrik Nifaz-i-Shariat-i-Muhammadi* (TNSM), MA Thesis, Pakistan Study Centre, University of Peshawar, 1994–1996; Navid Iqbal Khan, *Functioning of Local Government in N.W.F.P.: A Case Study of Malakand Division (2001–2005)*, MPhil Thesis, National Institute of Pakistan Studies, Quaid-i-Azam University, Islamabad, 2009, pp.21-44; Navid Iqbal Khan, ‘Tehreek-i-Nifaz-i-Shariat-i-Muhammadi in Malakand Division (Khyber

The background

Fazlullah was from Swat, became head of the Swat Taliban and, in 2013, was made head of Tahrik Taliban Pakistan.⁵ Overtly his movement or struggle⁶ started in October or November 2004 with his FM radio broadcasts and sermons; it got prominence by 2006 and took a new turn or shape by mid-2007 when this movement got so much strength that it started to challenge the writ of the government. The situation got tense few times, but all the times Fazlullah and the provincial Mutahida Majlas-e-Amal (MMA) government managed some reconciliation which defused the tense situation for the time being.⁷

With Fazlullah's rising power and strength, because of his popularity in some areas of Swat and his standard being joined by people from those areas, the first contingent of the army was deployed in Swat in July 2007. However, no armed action was taken till late October 2007. As his FM radio broadcasts and other activities were allowed a free hand by both the provincial and federal governments, Fazlullah soon started

Pakhtunkhwa): A Case Study of the Process of "State Inversion", *Pakistan Journal of History & Culture*, Islamabad, 31:1 (2010), pp.131-58; Fazal-ur-Rahim Marwat and Pervez Khan Toru, *Talibanization of Pakistan: A Case Study of TNSM* (Peshawar: Pakistan Study Centre, University of Peshawar, 2005).

⁵ Tahrik Nifaz-e-Shariat-e-Muhammadi (TNSM), Swat Taliban and Tahrik Taliban Pakistan (TTP) are three different entities or organizations. Main objective of the three is the same, namely implementation of Islamic laws. However, TNSM has different point of view about the course of action or policy for achieving the objective. Tahrik Taliban Swat is part of and the local branch of TTP, but TNSM is not part of TTP. Fazlullah, the head of Tahrik Taliban Swat, became the head of TTP as well.

⁶ As the struggle was overtly started by Fazlullah, the movement that later became famous as Tahrik Taliban Swat is referred to as Fazlullah's struggle. Others joined him with the passage of time.

⁷ For some detailed academic and objective view of the whole Swat crises and for a detailed background to this article, see Sultan-i-Rome, 'Swat: A Critical Analysis', *Research Paper 18*, Institute of Peace and Conflict Study, New Delhi, January 2009 (available as pdf version on the website www.ipcs.org); Sultan-i-Rome, 'Crises and Reconciliation in Swat', *Pakistaniaat*, 3:1 (2011), pp.53-79 (available as pdf version on the website www.pakistaniaat.org); Sultan-i-Rome, 'Swat in Transition' in Madiha R. Tahir, Qalandar Bux Memon and Vijay Prashad (eds.), *Dispatches from Pakistan* (New Delhi: LeftWord Books, 2012), pp.237-57; Sultan-i-Rome, 'The Swat Crises' in Magnus Marsden and Benjamin D. Hopkins (eds.), *Beyond Swat: History, Society and Economy along the Afghanistan-Pakistan Frontier* (London: Hurst & Company, 2013), pp.149-61, 307-14.

issuing orders, especially to eradicate obscenity, implemented by his armed contingent, called 'Shaheen Force'. This worsening of the situation led to more troops deployment in the region. But before taking armed action the then caretaker provincial government, headed by Engineer Shamsul Mulk, convened a meeting at Peshawar with some selected persons from Swat who were brought to Peshawar for this purpose. The government termed it a meeting of the Swat *jargah*⁸ with the Chief Minister Shamsul Mulk. The provincial caretaker government claimed, after the meeting, that the *jargah* members from Swat have requested the provincial government for an operation against Fazlullah's group. The group later became famous as Swat Taliban and Tahrir Taliban Swat.

In pursuance of or consequent upon this, the security forces started armed action, called Operation Rah-e-Haq [Operation the Righteous Path], in October 2007. At first only paramilitary forces were used at few places. Later, in November 2007, the regular army was employed and hence the operation took a sort of full action thence onward. The security forces used mortars, artillery and gunship helicopters, which created great havoc, losses of property and human life and displacement of a large number of people in the areas of Kabal, Matta, Khwazakhela and Charbagh *tehsils*. The credible actual numbers of such losses and displacement are not available or provided. In the meantime Tahrir Taliban Pakistan was formed in December 2007 and Fazlullah or the Swat Taliban became its part. In January 2008, the armed forces claimed success in restoring writ of the government in Swat.

In February 2008 general elections were held with no evident or great incidents of sabotage by the Swat Taliban in Swat and the Awami National Party (ANP) bagged all the provincial assembly seats from Swat and emerged as the largest party in the provincial legislature. As the election slogan of the ANP was restoring peace in the province, it entered into peace agreement with TNSM in April 2008 and with Fazlullah's Swat Taliban in May 2008. In addition to other terms, the government promised the enforcement of Islamic laws as per the demands of the other sides, who in turn, besides other commitments on their part, agreed to support the government in its righteous endeavours

⁸ For the *jargah*'s composition and functions see note 25. This was not a *jargah*; a band of handpicked individuals were brought to Peshawar by the government authorities to make ground for, or have a plea for, legitimizing armed action in Swat.

and in the restoration of peace and maintenance of law and order.⁹ These deals, however, did not last long, both sides, TNSM and Swat Taliban on the one side and government on the other, blamed each other for not honouring the terms of the agreements.

Resultantly, hostilities renewed and, in July 2008, the security forces started Phase Second of the Operation Rah-e-Haq. With each passing day the miseries of the people increased as a result of both the prolonged operation and the use of indiscriminate force including mortars and gunship helicopters, artillery and jet areoplanes, and curfew; and also by the increasing and expanding power and writ of Taliban. By the start of 2009, the security forces claimed starting Phase Three of the Operation Rah-e-Haq but to no avail save increasing civilians' greatest miseries. At last the provincial government made a new peace deal, in mid-February 2009, with the TNSM which led to a cease fire.

Although overtly a peace deal was made between TNSM and the provincial government and cease fire was effected between the Swat Taliban and the security forces, on the ground both the Taliban and the security forces were flexing their muscles for another round. The peace deal with the TNSM (also the deals of 2008 both with TNSM and Swat Taliban) was made by members of the provincial government who were practically handicapped in complying with the terms of the deal, especially in promulgating the required regulation for enforcing the Sharia regulation, because of having no such power under the Constitution of 1973. And the federal government/President of Pakistan were using dilly-dally tactics in promulgating the regulation. Hence the provincial government, headed by Awami National Party's chief minister was accused by the TNSM and the Swat Taliban of not complying with the peace deal. This encouraged Taliban to make further inroads into the neighbouring districts of Dir and Buner.

The government termed the Taliban's inroads into Dir and Buner violation of the peace deal and it was also seen a prelude or a step towards taking over Islamabad, the capital of the country. Different circles, including NGOs, writers and local and foreign stake holders, also launched an intense campaign through the media. Consequently, a fresh round of armed action by the army termed Operation Rah-e-Rast (Operation the Straight Path) was embarked upon against the TNSM and

⁹ For full Pashto texts of the agreements, see 'Aman Muaahidah' [Peace Agreement], *Myaashitnain Pakhtoon* [Monthly Pakhtoon], 2008, No.5, pp.51-52, and 'Da Subaayi Hukumat au da Swat da Muqaami Talibanu tar myanza shaway muaahidah' [Peace Agreement entered into between the provincial government and Swat local Taliban], *ibid.*, No.6, pp.6-7.

Swat Taliban, in April 2009, which was officially announced by Prime Minister Yusuf Raza Gilani in an address to the nation later on 7 May 2009. This operation was more intense in nature and hence greater numbers of civilians were displaced compared to the previous ones. By the end of June 2009 the security forces claimed success of routing the Taliban and taking control of the area and after mid - July the internally displaced persons (IDPs) were allowed to come back.

The need for the regulation

As is evident from the above narrative, the crises that started in 2007 led to a series of military operations during 2007-2009, which caused great havoc, forced expulsion of civilians, destruction of property and infrastructure as well as casualties and loss of thousands of civilian lives. The security forces also occupied private and public properties in huge number.¹⁰ According to government and security forces' claims, thousands of the Taliban were caught and thousands surrendered.¹¹ It is to be mentioned that the claimed and reported numbers are not actual.

¹⁰ See Sultan-i-Rome, 'Swat: A Critical Analysis', *op.cit.*; Sultan-i-Rome, 'Crises and Reconciliation in Swat', *op.cit.*, pp.53-79; Sultan-i-Rome, 'Swat in Transition', *op.cit.*, pp.237-57; Sultan-i-Rome, 'The Swat Crises', *op.cit.*, pp.149-61, 307-14; Fazle Rabi Rahi, *Aur Swat Jalta Raha* [And Swat was Burning] (Urdu) (Mingawara, Swat: Shoaib Sons Publishers & Book Sellers, 2011); Aqeel Yusufzai, *Talibanization: Afghanistan sey FATA, Swat aur Pakistan tak* [From Afghanistan to FATA, Swat and Pakistan] (Urdu) (Lahore: Nigarishat Publishers, 2009). See for details the dailies for the years 2007-2009, especially the local Urdu dailies published from Swat and also those published from Peshawar.

¹¹ As specimen, see 'Swat, Malakand 3 hazaar dihshatgard surrender kar chukay, Gilani' (Swat, Malakand three thousand terrorists surrendered, Gilani), *Roznama Azadi Swat*, 3 October 2009, p.1; 'Swat operation mayn 2 hazaar dihshatgard halaak, 800 gariftaar: Major General Sajjad' [Two thousand terrorists killed in Swat operation, 800 arrested: Major General Sajjad], *Roznama Azadi Swat*, 9 January 2010, p.1; 'Swat operation: 1950 afraad gariftaar, taftish jaari hay, Wazir Daakhilah' [Swat operation: 1950 persons arrested, investigation in progress, Interior Minister], *Roznama Azadi Swat*, 27 March 2010, p.1; 'Operation Rah-e-Rast kay dawraan 4 hazaar askariyat pasand gariftaar' (on line) [Four thousand militants arrested during Operation Rah-e-Rast], *Roznama Azadi Swat*, 1 April 2010, p.1; 'Operation Rah-e-Rast kay dawraan 4 hazaar sey zaayad askariyat pasand gariftaar kiyey gayey' [More than four thousand militants arrested during Operation Rah-e-Rast], *Roznama Azadi Swat*, 2 April 2010, p.1; 'Operation kay dawraan arrhaayi hazaar shidat pasandon ko gariftaar kiyaa giyaa, zaraayey' [Two and half thousand extremists arrested during

A legal protection to the aforesaid armed operations and actions of the ‘armed forces’ and taking over of the public and private properties; and framing the procedures as to how the imprisoned and surrendered militants or the people interned were to be dealt with was obligatory. As the armed forces actions underwent in an area that is in PATA, under the constitution of the country, the central and provincial legislatures and the governments possess no power to make procedures and rules in this connection. Therefore, to meet this need and legal obligation, the President of Pakistan promulgated a regulation titled ‘Actions (in Aid of Civil Power) Regulation, 2011’, on 27 June 2011, as an ex-post justification and legal cover because, per Article 247(4) of the Constitution of 1973, only the President of Pakistan is authorized to do.¹² In this connection the regulation itself states:

F.No. 11(5)P/L/2011.—WHEREAS there exists grave and unprecedented threat to the territorial integrity of Pakistan by miscreants and foreign funded elements, who intend to assert unlawful control over the territories of Pakistan and to curb this threat and menace, Armed Forces have been requisitioned to carry out actions in aid of civil power;

AND WHEREAS continuous stationing of Armed Forces in territories, that have been secured from miscreants in the Provincially Administered Tribal Areas, is necessary and it is, therefore, imperative that a proper authorization be given to the Armed Forces to take certain measures for incapacitating the miscreants by interning them during the continuation of the actions in aid in civil power and it is also necessary to ensure that Armed Forces carry out the said operation *in accordance with law* [italics mine];

AND WHEREAS the miscreants are no longer loyal and obedient to the State and Constitution of the Islamic Republic of Pakistan;

AND WHEREAS to address this situation, the Federal Government have directed Armed Forces to act in aid of

operation, sources], *Roznama Azadi Swat*, 5 May 2010, p.1; ‘Operation Rah-e-Rast wa Rah-e-Nijat kay dawraan intelligence idaaray awar fauj nay 3 hazaar khatarnaak dihshatgarday ku hiraasat mayn liyaa’ [Intelligence agencies and army arrested three thousand dangerous terrorists during Operation Rah-e-Rast and Rah-e-Nijat], *Roznama Azadi Swat*, 19 June 2010, p.1.

¹² For Article 247(4) of the Constitution of 1973, see Safdar Mahmood, *Constitutional Foundations of Pakistan* (enlarged and revised) (Lahore: Jang Publishers, 1997), p.970.

civil power to counter this threat to the solidarity and integrity of Islamic Republic of Pakistan while being subject to the law provided hereinafter;

NOW, THEREFORE, in exercise of powers conferred by clause (4) of Article 247 of the Constitution of Islamic Republic of Pakistan, the President is pleased to make the following Regulation, namely:—

1. **Short title, application and commencement.—**

(1) This Regulation may be called the Actions (in Aid of Civil Power) Regulation, 2011.

2. It shall be applicable to the Provincially Administered Tribal Areas of Khyber Pakhtunkhwa.

3. It shall come into force at once and shall be deemed to have taken effect from 1st February, 2008.¹³

An analysis

While defining ‘calling-in-aid of civil power’, it is stated in the regulation that it ‘means a direction for the requisition of the Armed Forces made by the Federal Government under Article 245 of the Constitution of Islamic Republic of Pakistan’.¹⁴ Article 245 of the Constitution run thus:

- (1) The Armed Forces shall, under the directions of the Federal Government, defend Pakistan against external aggression or threat of war, and, subject to law, act in aid of civil power when called upon to do so.
- (2) The validity of any direction issued by the Federal Government under clause (1) shall not be called in question in any Court.
- (3) A High Court shall not exercise any jurisdiction under Article 199 in relation to any area in which the Armed Forces of Pakistan are, for the time being, acting in aid of civil power in pursuance of Article 245:

Provided that this clause shall not be deemed to affect the jurisdiction of the High Court in respect of any proceeding pending immediately before the day on which the Armed Forces start acting in aid of civil power.

- (4) Any proceeding in relation to an area referred to in clause (3) instituted on or after the day the Armed Forces start acting in aid of

¹³ *The Gazette of Pakistan*, ‘Actions (in Aid of Civil Power) Regulation, 2011’, Government of Pakistan, State and Frontier Regions Division, Islamabad, 27 June 2011, pp.241-42.

¹⁴ *Ibid.*, p.242.

civil powers and pending in any High Court shall remain suspended for the period during which the Armed Forces are so acting.¹⁵

In defining ‘actions in aid of civil power’ it has been stated that it ‘means series of measures that involve the mobilization of Armed Forces, in aid of civil power or their requisition by the Federal Government, including measures such as armed action, mobilization, stationing etc., *till such time they are withdrawn by the written order of the Federal Government* [italics mine]’.¹⁶

The regulation authorizes the authorities to ‘internment’ of persons in the ‘defined area’ for which purpose certain terms has also been elucidated. For example the definition of ‘internment’, ‘Interning Authority’, ‘internment center’, ‘internment procedure’, ‘Orders of Internment’, ‘miscreant’, and ‘Register of Internees’.

It also has been stated in the definitions that ‘internment’ means restricting any person to a defined premises during the period the counter-insurgency operation is ongoing in order to incapacitate him from committing any offence or further offences under this Regulation or any other law, for securing peace in the defined area’.¹⁷

The regulation has prescribed certain ‘minimum preventive measures and precautions during the actions in aid of civil power’, in Chapter-III, which, besides other things, includes warning ‘the civilians to vacate the area’; taking ‘special measures in respect of the life and safety of children, women and elderly persons’; and taking ‘feasible precautions in the choice of means and methods of attack with a view to avoiding and minimizing collateral loss of civilian life and object’. Moreover, ‘The Commander of Armed Forces shall issue instructions to troops under their control that the Armed Forces shall adhere to the principles of proportionality and necessity and shall ensure that the collateral damage to life and property shall be minimum’.¹⁸

It was subject to the mentioned precautionary and preventive measures that ‘the Armed Forces’ were ‘authorized to use force, arms and ammunitions, including but not limited to firearms, weapons and air power etc., to achieve the objective during any armed action and to take any action, measure, decision that is necessary in this regard’.¹⁹ As only the federal government can call—under Article 245, clause (1), of the Constitution of Islamic Republic of Pakistan—the ‘Armed Forces’ for

¹⁵ Safdar Mahmood, *op.cit.*, pp.968-69.

¹⁶ *The Gazette of Pakistan*, 27 June 2011, p.242.

¹⁷ *Ibid.*, p.243.

¹⁸ *Ibid.*, pp.244-45.

¹⁹ *Ibid.*, p.245.

actions ‘in aid of civil power’²⁰ there was no justification or legal cover of deploying the forces in Swat in July 2007 and then in October-November 2007 on the ground of the request of the provincial government and also embarking upon an armed operation in October 2007 on the plea or ground that a *jargah* from Swat requested for this. To fill this legal lacuna, as also stated above, section 3, sub-section (2), in Chapter-II, of the Regulation enunciates: ‘Any existing direction already issued for requisition of the Armed Forces shall be deemed to have validly issued under this Regulation and the Armed Forces already requisitioned shall conduct themselves in accordance with the provisions of this Regulation’.²¹

It is evident from the text of Chapter-III of the regulation that even at the time of the use of active force it was mandatory upon the ‘Armed Forces’ to ensure minimum collateral damages, but the ground reality is a testimony that on the whole they did not adhere to the laid down principles. Not only this but after the active armed action or after the hot time of the operation, they did not adhere to the principles and destroyed properties and blew up with explosive residences and commercial buildings not only of the Taliban suspects but of their relatives and nears and dears; and also of the other civilians.²² Besides,

²⁰ See Safdar Mahmood, *op.cit.*, p.968.

²¹ *The Gazette of Pakistan*, 27 June 2011, p.244.

²² See for details the dailies for the year 2007-2010, especially the local Urdu dailies published from Swat and also those published from Peshawar. As specimen of destroying such properties in the post active operations days, see ‘Mingawara mayn 4 shidat pasandon kay ghar urraa diyey gayey, ISPR’, [Houses of four extremists blown up in Mingawara, ISPR], *Roznama Azadi Swat*, 13 August 2009, p.1; ‘Kabal mayn fauj nay shidat pasandu kay 6 makaanaat ku baarudi mawaad say urraa diyaa’ [Army blown up six houses of extremists with explosive in Kabal], *Roznama Azadi Swat*, 22 August 2009, p.1; ‘Security ahal kaaru nay 6 shidat pasandu kay ghar mismaar kar diyey, ISPR’ [Security personnel razed houses of six extremists, ISPR], *Roznama Azadi Swat*, 25 August 2009, p.1; ‘Forces nay shidat pasandu kay 5 makaan mismaar kar diyey’ [Forces razed five houses of extremists], *Roznama Azadi Swat*, 1 September 2009, p.1; ‘Shidat pasandu kay 14 ghar mismaar’ [Fouteen houses of extremists razed], *Roznama Azadi Swat*, 9 September 2009, p.1); ‘Dihshat gradu kay 9 makaanaat tabaah’ [Nine houses of terrorists destroyed], *Roznama Azadi Swat*, 18 September 2009, p.1; ‘Askariyat pasandu kay 3 makaanaat nazr-e-atash’ [Three houses of militants burnt], *Roznama Azadi Swat*, 8 October 2009, p.1; ‘Charbagh: Bashir Qasaab samait 2 Taliban kamaandarru kay ghar tabaah’ [Charbagh: houses of two Taliban commanders, including Bashir Qasaab, destroyed], *Roznama Azadi Swat*, 9 October 2009, p.1;

relatives of the Taliban suspects have been incarcerated so as to pressurize them to surrender their near and dears wanted to the security forces in connections with the alleged militant activities or supporting the Taliban etc. Moreover, a number of the Taliban families were exiled from Swat and were put in a camp near Palai in the Malakand Protected

‘Kuza Bandai mayn 3 Taliban kamaandaru kay ghar tabaah’ [Houses of three Taliban commanders destroyed in Koza Bandai], *Roznama Azadi Swat*, 11 December 2009, p.1; ‘Bara Bandai mayn 5 matlub afraad kay ghar urra diyey gayey’ [Houses of five wanted persons blown up in Bara Bandai], *Roznama Azadi Swat*, 12 December 2009, p.1; Muhammad Usman Yusufzai, Sayyad Shahabuddin, ‘Security forces nay 2 Taliban kamaandaru kay ghar dhamaakah khaiz mawaad say urraa diyey’ [Houses of two Taliban commanders blown up with explosive devises by security forces], *Roznama Azadi Swat*, 16 December 2009, p.1; ‘Security forces nay Kuza Bandai mayn 2 askariyat pasandu kay makaanaat ku mismaar kardiyaa’ [Security forces razed houses of two militants in Kuza Bandai], *Roznama Azadi Swat*, 27 December 2009, p.1; ‘Security forces nay 3 askariyat pasandu kay makaanaat mismaar kar deyey’ [Security forces razed houses of three militants], *Roznama Azadi Swat*, 31 December 2009, p.1; ‘Matta, security forces nay aham Taliban commander kaa ghar nazr-e-ataash kar diyaa’ [Matta, security forces burnt house of a great Taliban commander], *Roznama Azadi Swat*, 10 January 2010, p.1; Anwar Anjum ‘Manglawar mayn 6 askariyat pasandu kay ghar nazr-e-ataash, 3 kay ahl-e-khaanah zila badar’ [Houses of six militants burnt in Manglawar, families of three exiled from the district], *Roznama Azadi Swat*, 13 June 2010, p.1; ‘Swat, 3 shidat pasand halaak, 2 kay khaanadaan zila badar, 2 kay makaan nazr-e-ataash’ [Swat, three extremists killed, families of two exiled from the district, house of two burnt], *Roznama Azadi Swat*, 14 June 2010, p.1; Mian Syed Umar Nasih, ‘Swat mayn jaari operation, 2 shidat pasandu kay makaanaat urraa diyey gaiyey’ [Continued operation in Swat, houses of two extremists blown up], *Roznama Shamal Swat*, 13 December 2009, p.1; Mian Syed Umar Nasih, ‘Swat bhar mayn forces ki kaarrawaayi, commander samait 14 mushtabih afraad gariftaar, makaanaat tabaah’ [Forces’ action throughout Swat, 14 suspects including a commander arrested, houses destroyed], *Roznama Shamal Swat*, 27 December 2009, p.1; ‘Security forces nay dihshatgardu kay tin makaanaat mismaar kar diyey’ [Security forces razed houses of three terrorists], *Roznama Shamal Swat*, 19 June 2010, p.1; Hazrat Ali Bacha, ‘Swat: Security forces ki kaarrawaayi, tin dihshat gardu kay makaanaat tabaah’ [Swat: action of the security forces, houses of three terrorists destroyed], *Roznama Salam Swat*, 11 December 2009, p.1; ‘Dihshatgardu kay makaanaat tabaah’ [Houses of terrorists destroyed], *Roznama Salam Swat*, 30 April 2010, p.1.

Area (commonly called Malakand Agency) for the purpose mentioned above.²³

²³ For the exile of the Taliban families from Swat and putting them in a camp, see as a specimen 'Askariyat pasandu ku surrender karnay kiliyey 30 April ki deadline, muqarrarah taarikh tak hathyaar nah daalnay walay matlub dihshat gradu kay ahl-e-khaanah ku fauri tawar par division say nikaal diyaa jaayegaa' [30 April as deadline for militants to surrender, families of those who do not lay arms till the deadline will be exiled from the division], *Roznama Azadi Swat*, 25 April 2010, p.1; Daulatmand Nashad, 'Rufush askariyat pasandu ku bis May tak qaanun ki hawaalay karnay kaa muqa diyaa jaayegaa baad mayn un kay khaanadaan ku Malakand badar kiyaa jaayegaa' [Underground militants will be provided chance of surrender before law till twentieth May, after which their families will be exiled from Malakand], *Roznama Azadi Swat*, 18 May 2010, p.1; '25 shidat pasandu kay khaanadaan alaaqah badar' [Families of 25 militants exiled from the area], *Roznama Azadi Swat*, 22 May 2010, p.1; 'Mukhtalif muqaamaat par poster chaspaan, surrender nah kar nay waalay shidat pasandu kay ahl-e-khaanah ku zila badar kar diyaa jaayegaa' [Poster pasted at different places, the families of those who don't surrender will be exiled from the district], *Roznama Azadi Swat*, 24 May 2010, p.1; 'Askariyat pasand jargay kay faisalay kay mutaabiq khud ku forces kay hawaalay kar dayn warnah un kay ahl-e-khaanah ku zila badar kar diyaa jaayegaa, hukaam ki taraf say hidaayat' [The militants has to surrender to the forces per the decision of the *jargah*, otherwise their families will be exiled from the district, instructions from the officials], *Roznama Azadi Swat*, 27 May 2010, p.1; 'Matlub 92 askariyat pasandu kay makaanaat par surkh nishaanaat, surrender karnay ki warning, matlub shidat pasandu ki taraf say hathyaar nah daalnay ki surat mayn un kay ahl-e-khaanah zila badar awar jaaidaad ku zabt kar liyaa jaayegaa', [Red marks on the houses of 92 wanted militants, warning to surrender, in case of not laying arms their families will be exiled from the district and their property confiscated], *Roznama Azadi Swat*, 3 June 2010, p.1; Anwar Anjum, 'Manglawar mayn 6 askariyat pasandu kay ghar nazr-e-atash, 3 kay ahl-e-khaanah zila badar, Manglawar kay muzaapaati alaaqu Taghwan, Dherai awar Arq mayn security forces awar muqaami Aman Jargah nay mushtarikah tawar par kaarawayi ki' [Houses of six militants burnt in Manglawar, families of three exiled from the district, joint action of security forces and local Peace Jargah in the outskirt areas of Taghwan, Dherai and Arq], *Roznama Azadi Swat*, 13 June 2010, p.1; 'Swat, 3 shidat pasand halaak, 2 kay khaanadaan zila badar, 2 kay makaanaat nazr-e-atash' [Swat: three terrorists killed, families of two exiled from the district, houses of two burnt], *Roznama Azadi Swat*, 14 June 2010, p.1; Hazrat Ali Bacha, 'Kabal, mukhtalif alaaqu say 70 dihshat gardu kay khaanadaan alaaqah badar' [Kabal, families of 70 terrorists exiled from different areas], *Roznama Shamal Swat*, 22 May 2010, p.1; 'Tahsil Kabal say shidat pasandu kay ahl-e-khaanah ki alaaqa badri kaa silsilah jaari'

The ‘Armed Forces’ personnel has their own grounds for justifying the incarceration of the Taliban’s relatives, exiling their families and destroying their properties and blowing up their houses etc., namely the plea of collective responsibility of the families concerned and the use of *jargahs*.²⁴ And as stated, to Anatol Lieven, by Major Tahir:²⁵ ‘We have demolished more than 400 houses belonging to Taleban [Taliban] members. Destroying houses in this way is an old punishment among Pashtuns.’ And also because ‘seeing their homes demolished’ the ‘local people’ may be ‘encouraged’ to give the message that this time the

[Exile of militants’ families from Tahsil Kabal in progress], *Roznama Shamal Swat*, 23 May 2010, p.1; Mian Syed Umar Nasih, ‘3 rupush dihshatgardu kay ahl-e-khaanah alaaqa badar’ [Families of three underground terrorists exiled from the area], *Roznama Shamal Swat*, 13 June 2010, p.1; ‘Swat, jangjuwu kay 30 khaanadaan zila badar’ [Swat, 30 families of militants exiled from the district], *Roznama Aaj Peshawar*, 22 May 2010, p.1; ‘Swat, 3 shidat pasandu kay khaanadaan alaaqa badar, 5 ghar nazr-e-atash’ [Swat, families of three extremists exiled from the area, five houses burnt], *Roznama Aaj Peshawar*, 13 June 2010, p.12; ‘Manglawar mayn askariyat pasandu kay 6 khaanadaan alaaqa badar’ [Six families of militants exiled from the area in Manglawar], *Roznama Aaj Peshawar*, 14 June 2010, p.1.

²⁴ *Jargah/jarga* (erroneously transliterated as *jirga*) is the traditional consultative institution and forum where matters of common interest and communal affairs are discussed and decided. In *jargahs* all the stakeholders are represented; all those attending express their viewpoints and present their arguments freely; the decisions are made by consensus or unanimously, after deliberations. All abide by decisions made in this manner; violators are liable to be fined and punished. The *jargahs* formed in Swat in the post-Taliban scenario—at the overt or covert behest and directives of the armed forces—are devoid of these dimensions; and the decisions made and pronounced in their names are manoeuvred. Hence their decisions lack the essence and spirit as well as the force and legitimacy of the forms of gathering whose name they take and which they seek to emulate. *Jargah* has other meanings and functions in different contexts; its composition and status also vary in all the contexts.

At the reports of the exile of the Taliban families and putting them in a camp in remote and hot area outside Swat, in the Malakand Protected Area, criticism came to surface by some quarters and human rights organization (see for example, Saifullah Khan, ‘Swat say lugu ki alaaqah badri awar hukamraanu ki bi hisi’ [Exile of people from Swat and the rulers’ senselessness], *Roznama Azadi Swat*, 30 May 2010, p.4.

²⁵ A major of the Pakistan Army, interviewed by Anatol Lieven in 2009, after the operation, and quoted in his book as primary source.

armed forces ‘are really serious about fighting the Taleban’.²⁶ However, none of the mentioned grounds, nor did the demolition of the Taliban’s and others’ houses and destroying their other properties, have been authorized and provided legal cover by the regulation, even not by any law of the country applicable to the area. Moreover, such destruction and punishments were old practice in the Pukhtun tribal society and social system, but Swat rather PATA, on the whole, never remains that sort of tribal society in which such punishments were in vogue and meted out. These customs and tribal practices vanished during the Swat state period of the Swat history. The Swat state rulers, who ruled from 1917 till 1969, greatly transformed the social organization and tribal structure of the society in Swat. And hence these types of punishments no more remain custom and norm of the Swat society. And no law of the country authorizes the so-called *jargahs* to make decision to exile people and destroy houses and other properties.²⁷ It is to be noted that in the context

²⁶ Anatol Lieven, *Pakistan: A Hard Country* (London: Penguin Books, 2011), p.471.

²⁷ For the so-called Nikpi Khel *Qaumi/Aman Jargah* and such like other *Aman Jargahs*’/committees’ decisions and announcements to this effect see ‘Kabal: rupush askariyat pasandu ku surrender kiliyey 20 May tak muhlat; gariftaari nah dainay waalay shidat pasandu kay makaanaat mismaar, ahl-e-khaanah ku alaaqa badar kar diyaa jaayegaa, Nikpi Khel Qaumi Jargah’ [Kabal: underground militants have time till 20 May to surrender, houses of those will be razed who don’t surrender and their families will be exiled from the area, Nikpi Khel Qaumi Jargah], *Roznama Azadi Swat*, 9 May 2010, p.1; ‘Rufush askariyat pasandu ku bis May tak qaanun ki hawaalay karnay kaa muqa diyaa jaayegaa baad mayn un kay khaanadaanu ku Malakand badar kiyaa jaayegaa’ [Underground militants will be provided chance to surrender before law till twentieth May, after which their families will be exiled from Malakand], *Roznama Azadi Swat*, 18 May 2010, p.1; ‘Askariyat pasandu ku milnay waali muhlat aaj khatam, 150 ki pihrist jaari; security forces awar Aman Committee ki taraf sey shidat pasandu ku 20 May ki deadline daydi gayi thi ju aaj puri hu rahi hay’ [The time given to the militants ends today; security forces and Aman Committee has given them the deadline of 20 May which ends today], *Roznama Azadi Swat*, 20 May 2010, p.1; ‘Surrender ki mazid muhlat nahi daingay, Nikpi Khel Jargah kaa ilaan’ [No further time be given for surrender, Nikpi Khel Jargah announces], *Roznama Azadi Swat*, 23 May 2010, p.1; ‘Kabal: rupush askariyat pasandu ki gariftaari kiliyey hikmat amali tayaar, surrender nah karnay waalay shidat pasandu ki khilaaf sakht kaarrawaayi amal mayn laayi jaayegi, fauji hukaam awar amaayedin allaqah kaa ijlaas’ [Kabal: strategy for the arrest of the underground militants prepared, strict action will be taken against those who don’t surrender, meeting of the army officers and

and background of the Swat crises (2007-2009), the security forces formed and encouraged some of the civilians to form some bodies in the names of Qaumi Jargahs (People's/National Jargahs), Aman Jargahs [Peace Jargahs], Qaumi Committees [People's/National Committees] and Aman Committees [Peace Committees] as well as Village Defence Committees (VDCs), both overtly and covertly, so that to use these names and bodies in the security forces' support; and also to use them as a shield or cover to some of the decisions and acts of the security forces that otherwise cannot be taken and done.²⁸ It, however, still is a question mark that under what law of the country the so-called *Qaumi/Aman Jargahs/Committees* functions and operate and make such decisions, if that are theirs? The massive destruction of the properties and houses etc. of the Taliban and their relatives, rather the civilians in general, and the tortures, punishments and the extra-judicial killing of the Taliban re-calls to one the policy and behaviour of and the treatment meted out by the

elders of the area], *Roznama Azadi Swat*, 30 August 2010, p.1; Salim Khan and Javed Iqbal, 'Rupush dahshatgard 20 May tak hathyaar daal dein, Kabal Grand Jargah; 20 May kay baad rupush dihshat gardu kay ahl-e-khaanah awar haamiyu ku zila badar kiyaa jaayegaa' [Underground terrorists must lay arms till 20 May, Kabal Grand Jargah; families and supporters of the underground terrorists will be exiled after 20 May], *Roznama Shamal Swat*, 9 May 2010, p.1; 'Swat, Aman Jargah kaa rupush askariyat pasandu ki jaaidaad zabt karney kaa faisalah, Tahsil Kabal sey shidat pasandu kay ahl-e-khaanah ki alaaqa badri kaa silsilah jaari, askariyat pasandu ki zila badari awar makaanaat mismaar karnay kaa hatmi faisalah kar liyaa giyaa, Kabal kay satha par Aman Jargah kaa aham ijlaas, askariyat pasandu ki saath kisi qisam ki riaayat nahi ki jaayegi, Aman Jargay say araakin kaa khitaab' [Swat, Aman Jargah decided confiscation of property of the underground militants, the process of the exile of the families of the militants from Tahsil Kabal continues, final decision of the exile of the militants and razing their houses made, important meeting of Aman Jargah on Kabal level, no relaxation will be made with the militants, address of the members to Aman Jargah], *Roznama Shamal Swat*, 23 May 2010, p.1; 'Swat, janguwu kay 30 khaanadaan zila badar' [Swat, 30 families of the militants exiled from the district], *Roznama Aaj Peshawar*, 22 May 2010, p.1; 'Swat, shidat pasandu ki jaaidaadayn zabt karnay kaa faisalah, Nikpi Khel Aman Jargah, askariyat pasandu kay khaanadaanu ki zila badari kaa faisalah bhi kar liyaa' [Swat, confiscation of the militants' property decided, Nikpi Khel Aman Jargah, exile of the militants' families from the district also decided], *Roznama Aaj Peshawar*, 23 May 2010, p.12. It is worth mentioning that these so-called *jargahs* and committees are in reality hands picked and puppets of the security forces.

British colonial authorities, in respect of the natives, in India after the uprising or War of Independence of 1857.

It is to be mentioned that at the reports of the extra-judicial killings in Swat the spokesman of the Pakistan Army denied any such happening.²⁹ Provincial Information Minister Mian Iftikhar Hussain also denied the extra-judicial killings and violation of the human rights.³⁰ However, firsthand information provided by Anatol Lieven, too, testifies extra-judicial killing, which runs thus: ‘The widespread use of extra-judicial executions was confirmed for me in an off-hand way by Afzal Khan [Lala]. Immediately after my interview with him, he went to sit in a jirga [*jargah*] with elders from the nearby Sakha [Sakhra] side-valley. They were trying through Afzal Khan to negotiate the surrender of the local Taleban commander in their valley, named Gul Yar (whom most of them had reportedly supported), so as to avoid attack by the army. I asked what terms they were trying to negotiate: ‘Well, firstly of course that the army should not shoot him out of hand, because that is what they do most Taleban commanders they capture’, I was told.³¹

Chapter-VI, titled ‘HUMAN RIGHTS AND OVERSIGHT’, of the Regulation envisages:

14. Oversight Board:

- (1) The Provincial Government shall notify an Oversight Board for each internment center comprising two civilians and two military officers to review the case of each person interned within a period of time, not exceeding one hundred and twenty days, from the issuance of the order of internment, and prepare a report for consideration of the Provincial Government.

²⁹ See ‘Fauj ney Swat mayn maawraayey adaalat halaakaton kaa ilzaam mustard kar diyaa’ [Army dismissed allegation of extra judicial killings in Swat], *Roznama Azadi Swat*, 16 September 2009, p.1; ‘Pak fauj Swat mayn 238 afraad kay maawraayey adaalat qatal mayn mulawis, Human Rights Watch kaa ilzaam; Pehlay bhi aisi reportayn saamnay aati rahany magar saabit nahi hu sakay: Tarjuman Pak Fauj’ [Pak Army involved in extra judicial killing of 238 persons in Swat, Human Rights Watch alleged; previously too such reports came to front but could not prove: Spokesman Pak Army], *Roznama Azadi Swat*, 18 July 2010, p.1.

³⁰ See ‘Malakand mayn maawraayey adaalat qatal nahi huyey, Mian Iftikhar; Insaani huquq ki paamaali nahi huyi’ [Extra judicial killing did not take place in Malakand, Mian Iftikhar; Human rights has not violated], *Roznama Azadi Swat*, 9 October 2009, p.1.

³¹ Anatol Lieven, *op.cit.*, p.472.

- (2) The Oversight Board shall periodically review the conditions of internment centers and recommend suitable action for consideration of the Provincial Government.
- (3) The Oversight Board may also take notice of any complaint or information in respect of any degrading treatment of any person interned or any torture or any indignified treatment and in this regard carry out any inquiry in the matter and where necessary recommend suitable departmental action against the official concerned.
- (4) The Oversight Board shall also be responsible to impart training and awareness regarding human rights standards and laws applicable on the conduct actions in aid of civil power of this nature to all the concerned officials of the interning authority.

15. Prohibition on Torture:

No person interned under this Regulation, shall be subjected to inhuman or degrading treatment or torture.³²

The aforesaid sections and sub-sections are clear as to how the persons interned under the regulation are to be treated and dealt with; what is the timeframe of the preparation of a report about them by the Oversight Board; and that the persons interned shall not be subjected to and treated in degrading or indignified or inhuman or torturous manner. But, although there are no documentary or overt evidences, the circumstantial evidences and the narratives of those got released testify, on the whole, non-compliance of or proper implementation of or not following the tenets of the aforesaid in letter and spirit.

It is worth-mentioning that those got released talks of inhuman, torturous and degrading treatment at internment centres, when they talk in private or confidence but not in open because of the fear of re-internment and reprisal by the security forces and intelligence agencies. Therefore, such persons could not be quoted by names for reasons of their safety and security. This statement, made on 4 December 2013 by one such person to the author in Swat, is alarming that the Americans have not meted out such atrocities, tortures and degrading treatment in the detention centre in the Guantanamo Bay as the Pakistanis did with the internees.

³² *The Gazette of Pakistan*, 27 June 2011, p.249.

Section 9, sub-section (7) of the regulation states: ‘The Provincial Government shall prescribe internment procedure’.³³ Whereas, in the definitions it has been stated that ‘internment procedure’ means procedures to be prescribed by the Provincial Government in respect of the well being, food, health, treatment, religious freedom, visitation by family, counseling and psychological treatment etc, of the miscreants interned’.³⁴

It is, however, observed that most of the points or rules mentioned in the definition of the ‘internment procedures’ are not followed, but, as stated by Sher Muhammad Khan Advocate,³⁵ these required procedures are not yet prescribed by the provincial government, at all, which was obligatory upon or is the responsibility of the provincial government. For example complaints of inadequate food and health facilities are observed; and the facility of ‘visitation by family’ do not exist.³⁶ Therefore, families of the interned persons do not know whether they are alive, and if yes where they are and in what condition? This not only creates continuous mental and psychological problems and anxiety for the last few years for the families concerned but also has created the anomaly and complaint of the missing persons, that is as the families of the internees do not know about their where-about and whether they are alive, they are considered missing persons. Therefore, some of the aggrieved families submitted applications in the higher courts that their family members are missing. And even females members of some of such internees do agitations and take out processions stating that they do not know where their family members are and whether they are alive; and demand that if they (the interned persons) really are guilty they may be produced before the courts and be put to trial.³⁷

³³ *Ibid.*, p.247.

³⁴ *Ibid.*, p.243.

³⁵ Personal communication with Sher Muhammad Khan Advocate (hails from Hayatabad, Mingawara, Swat), at Kanju Township, Swat, 15 December 2013.

³⁶ The information got through talks with those released by the army and the author’s personal observation of the situation. The names of those from whom the information is collected cannot be mentioned because of their security concern.

³⁷ For some of such protests and agitations, see ‘Laapatah afraad ki baazyaaabi kiliyey Swati khawaatin kaa muzaahirah, dharnaa, hukumat laapatah afraad ku fauri baazyaab karaayey warnah ruzaanah ihtijaaj karingi, khawaatin ki dahmki’ [Swati women’s set-in and protest for missing persons; government must recover the missing persons immediately otherwise we will protest on daily basis, women’s threat], *Roznama Express Peshawar*, 9

Section 9 of the regulation, ‘Power to Intern’, has given unbounded power to the ‘Interning Authority’ to ‘intern any person’ in which speculative words are also used, e.g. ‘has committed or *likely to*

October 2013, p.1; ‘Swat, Kabal kay laapatah afraad ki rihaayi kiliyey lawaahiqin kaa muzaahirah, bachay walidain kay saayah sey mehrum hain, hamaaray pyaaray shidat pasandi mayn mulawis nahi, muzaahirin’ [Swat, protest of the families for release of the Kabal missing persons, children are deprived of the parents’ shade, our beloved are not involved in militancy, protesters], *Roznama Express Peshawar*, 12 October 2013, p.8; ‘Swat, laapatah afraad ki baazyaaabi kiliyey lawaahiqin kaa muzahirah, khawaatin awar bachu kaa Kanju chowk tak march, police ki yaqin dahaani par muzaahirin muntashir hugayey’ [Swat, protest of the families for release of the missing persons, women and children marched to Kanju chowk, the protestors dispersed at the assurance of police], *Roznama Aaj Peshawar*, 9 October 2013, p.12; ‘Swat, laapatah afraad ki rishtadaar khawaatin wa bachu kaa muzaahirah, muzaahirin nay ihtijaaji walk bhi kiyaa, laapatah afrad ku fauri baazyaab karaanay kaa mutaalibah’ [Swat, protest of the relative women and children of the missing persons, protestors made a walk, immediate recovery of the missing persons demanded], *Roznama Aaj Peshawar*, 12 October 2013, p.12; ‘Faaqay aagayey, beqasur baittu ku rihaa kiyaa jaayey, walidah, kisi juram mayn mulawis nahi payey gayey, insaaf faraaham kiyaa jaayey, appeal’ [We are starved, innocent sons may be released, mother, did not found involved in any crime, justice may be provided, appeal], *Roznama Azadi Swat*, 12 May 2010, p.1; ‘Kanju: laapatah afraad ki baazyaaabi kiliyey rally, long march ki dhamki, apnay pyaaray sey milnay ki tamannaa liyey dar dark ki tthukrayn khaa rahay hayn kahi bhi shinwaayi nah huyi, Jan Saba, Rishma, Taj Mahal; laapatah afraad agar gunaahgaar hayn tu adaalatu mayn paysh kiyaa jaayey awar muqadimaat chaalyey jaayey, lawaahiqin kaa mutaalibah’ [Kanju, rally for recovery of the missing persons, threat of long march, with hope of meeting our beloveds we go to the concerned quarters but no relief from anywhere, Jan Saba, Rishma, Taj Mahal; if the missing person are guilty they may be produced in the courts for trial, demand of the relatives], *Roznama Azadi Swat*, 9 October 2013, p.1; ‘Kabal, laapatah afraad ki rishta daar khawaatin kaa grassy ground tak paidal march, rihaayi kaa mutaalibah, ihtijaaj karniwaali khawaatin nay Kanju kay muqaam par road block kar diyaa; traffic jam, grassy ground tak paidal march’ [Kabal, relative women of the missing persons marched by foot to grassy ground, demanded release, the protester women blocked road at Kanju, traffic jam, marched by foot to grassy ground], *Roznama Azadi Swat*, 12 October 2013, p.1. Even in the Month of Ramazan the women made such a protest and procession on 20 July 2014, see ‘Kanju mayn laapatah afraad kay rishtadaar khawaatin kaa ihtijaaji march awar muzaahirah’ [March and protest of the missing persons’ relative women in Kanju] <http://www.zamaswat.com/story-news-04-26675.html>

commit [italics mine]’. Its sub-section (2) is especially worth noting, which enunciate: ‘If, *in the opinion of the Interning Authority, the internment of any person is expedient* [italics mine] for peace in the defined area, it shall pass an order of internment’. Thus it is on the discretion and will of the Interning Authority to intern any person on the plea that he ‘shall not be able to commit or *plan to commit* [italics mine]’³⁸ any offence under this regulation or that his internment ‘is expedient for peace in the defined area’; a big and unbounded chunk of discretionary power vested in the Interning Authority.

Section 11 of the regulation deals with the ‘duration of interment’ and states: ‘The power to intern shall be valid from the day when this Regulation deemed to have come into force, or the date the order of internment is issued, whichever is earlier, *till the continuation of actions in aid of civil power* [italics mine]’.³⁹ It is clear that if a person interned fails to get free through withdrawing his ‘order of internment’ by the interning authority or is ‘handed over to the law enforcement agencies for formal prosecution’ in any of the manners mentioned in section 10 of the regulation, he will remain interned for an indefinite and uncertain period as far ‘the actions in aid of civil power’ continues. As there are no signs in sight of ‘the notification of termination of the actions in aid of civil power by the Federal Government’ after which ‘the persons interned shall be handed over to the functioning civilian law enforcement authorities alongwith evidence and material collected against such persons in accordance with the provisions of this Regulation’,⁴⁰ the future as well as prospect of proper prosecution of such persons in the civil courts are bleak.

Besides, punishment and prosecution of the accused interned under the regulation also seems un-judicious. For example section 17, sub-section (1) states: ‘Whosoever commits an offence under this Regulation shall be punished with death or imprisonment for life or imprisonment up to ten years; and may also be liable to fine. The convict shall also be liable to forfeiture of his property’.⁴¹ Whereas, section 18, sub-section (1) states: ‘Whosoever commits or attempts to commit any offence under this Regulation shall be proceeded against under the Code of Criminal Procedure, 1898 (Act IV of 1898) or the Anti-Terrorism Act, 1997 (XXVII of 1997), or any applicable law, as the case may be, and shall be handed over to the prosecuting or investigating agency

³⁸ *The Gazette of Pakistan*, 27 June 2011, p.247.

³⁹ *Ibid.*, p.248.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, p.250.

concerned for effecting formal arrest only after his order of internment has been withdrawn'.⁴² The anomalous point in the aforesaid is that a great number of persons have been interned since 2007 or during the last few years but have so far not been handed over to a 'prosecuting or investigating agency concerned', by withdrawing their orders of internments, so as to be tried under the law in the civil courts nor is this in sight in the near future.

Similarly, the contents of section 19, regarding admissibility of evidence and its handing over, are also worth noting, especially of sub-section (2) which run thus:

Notwithstanding anything contained in the Qanun-e-Shahadat, 1984 (P.O. 10 of 1984) or any other law for the time being in force, any member of the Armed Forces, or any authorized official deposing on his behalf in or any official statement or before the court to prove any event offence or happening, *shall be deemed to have proved the event, offence or happening by his statement or deposition and no other statements, depositions or evidence shall be required. Such statement or deposition shall be sufficient for convicting the accused as well* [italics mine].⁴³

The italicized text speaks of what an authoritative status has been granted to the statement and deposition of 'any member of the Armed Forces, or any authorized official deposing on his behalf in or any official statement or before the court to prove any event offence or happening' against the accused.

Giving 'overriding effect' to the regulation, its section 24 has stated: 'This Regulation shall have over-riding effect, notwithstanding anything contained to the contrary in any law for the time being in force'.⁴⁴ However, an inherent weakness or flaw in the regulation is the date from which it has been stated to 'be deemed to have taken effect', namely 'from 1st February, 2008'.⁴⁵ The same has also been stated and endorsed in section 26, which run thus:

Validation.—Anything done, actions taken, orders passed, proceedings initiated, processes or communication issued, powers conferred, assumed or exercised, by the Armed Forces or its members duly authorized in this behalf, *on or after the 1st February, 2008* [italics mine] and before the

⁴² *Ibid.*, pp.250-51.

⁴³ *Ibid.*, p.251.

⁴⁴ *Ibid.*, p.252.

⁴⁵ *Ibid.*, p.242.

commencement of this Regulation, shall be deemed to have been validly done, issued, taken, initiated, conferred, assumed, and exercised and provisions of this Regulation shall have, and shall be deemed always to have had, effect accordingly.⁴⁶

In fact the 'Armed Forces' started the operation or armed action in Swat in October 2007 and it was claimed in January 2008 that the Taliban has been routed; but the regulation has not provided legal cover or protection to what they did during that period, namely from October 2007 till 31 January 2008. Therefore, the destruction wrought, the orders issued to the people to vacate the villages, occupation of both public and private buildings and residences, people interned and so forth during the said period have not been provided legal cover or backing under Article 245, clause (2) of the Constitution or the regulation itself.

Conclusion

As is evident from the preceding pages, there are a number of black spots and anomalies in this law or regulation enacted for PATA, from justice, human rights and legal perspectives; and its implementation position is also not praiseworthy from many counts. The main finding of this paper is that there are anomalies in this regulation; and that it has not been followed in letter and spirit in its entirety, by all the concerned governments quarters, which no doubt has created and creates misunderstanding, mistrust, abhorrence, and resentment in greater circle of the society especially against the 'Armed Forces'. This, in turn, is likely to ignite and spark unrest, once more, in which case there will be violent reaction against the 'Armed Forces' as has been observed in respect of the police as a result of the police degrading and abusive behaviour and treatment with the TNSM's activists after the rising of 1994. Therefore, the main recommendation is that the anomalies needs to be removed and the regulation may be followed in letter and spirit, in its entirety, by the federal and provincial governments and the 'Armed Forces'. The law of the country and the law under discussion is required to be upheld and followed in letter and spirit, whatsoever it may be.

⁴⁶ *Ibid.*, p.252.