



Forest Governance in Transition

From the Princely State of Swat, and Kalam to the State of Pakistan

WP2/IP6 Working Paper No. 9

Sultan-i-Rome, Ph.D.

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To Shah Salam Khan Advocate, Gulkada, Swat

Acknowledgements

Research on subjects like the present study is always a hard and painstaking undertaking and could not be completed without assistance and cooperation of others. A number of persons assisted and cooperated in the course of this study.

Akbar Ali (in charge) and the other staff members of the District Record Room, Gulkada, Swat; Rustam Ali Qazalbash and Irfanullah Khan (Research Officers), Liaqat Ali and the other staff members of the Tribal Affairs Research Cell, Peshawar; Mian Muqarab Shah, Range Officer, Pakistan Forest Institute; Qalb-e-Ali and Mumtaz Hasan of the Library of Pakistan Forest Institute; Muqarab Khan and the other staff members of the Record Section of the Directorate of Archives and Libraries, Peshawar; and Bakht Rashid, District Qanungo, Swat, greatly cooperated during the course of my research work in the said places.

Saifullah Khan (hails from Mingawara, Swat; Assistant Professor of History, Government Jhanzeb Post-Graduate College, Saidu Sharif, Swat), Saeed-uz-Zaman (Project Director, Palas Conservation Project, Indus Kohistan) and Sultan Alam, M.Phil. (hails from Dedawar, Swat; Lecturer in Chemistry, Government Jhanzeb Post-Graduate College, Saidu Sharif, Swat), Mehbub-ur-Rahman (hails from Tutkay, Matta, Swat; Lecturer in Botany, Government Jhanzeb Post-Graduate College, Saidu Sharif, Swat), Haidar Ali Khan (hails from Amankot, Swat; Conservator Forests, Malakand Forest Circle), Surgeon Muhammad Usman, FRCS (hails from Saidu Sharif, Swat), and Zafar Ali alias Zafar (hails from Hazara, Swat) cooperated. Nawsherawan Khan Advocate (hails from Kotah, Swat), Ghulam Taqi Bangash, Ph.D. (hails from Sher Kot, Hangu; Professor, Department of History, and Dean, Faculty of Arts, University of Peshawar), Altaf Qadir (hails from Bazargay, Swabi; Lecturer, Department of History, University of Peshawar), Islamuddin (hails from Khwazakhela, Swat) and Architect Shaukat Ali Sharar (hails from Sapal Bandai, Swat) showed their interest in the study all along.

Shah Salam Khan Advocate (hails: Gulkada, Swat); Abdul Halim Advocate (hails: Ghaligay, Swat; formerly Information Officer-cum-Assistant Secretary, Swat State), and Abdul Wahab Khan, M.Phil. (hails: Ronryal, Swat; Assistant Professor of Biology, Government Degree College Matta, Swat) encouraged, cooperated and took interest in the study all along. Abdul Halim Advocate and Shah Salam Khan Advocate went through the draft thoroughly. Their cooperation and evaluation contributed a lot to the study.

The present study would not have been possible without the support of my elder brothers, Alamzeb Bacha and Sultan Mahmud, which they extended at all times. My nephews Irfanullah and Abdullah shared the burden of some of my domestic responsibilities. My wife showed her interest in the completion of the study and also shouldered a lot of responsibility.

Urs Geiser, Ph.D. is in charge of the Pakistan research component of the research programme undertaken by the Swiss National Centre of Competence in Research North-South (NCCR N-S), Switzerland of which the present study is a part. He initiated the work, developed the draft proposal, made and discussed some queries and remarks after going through the draft report, and coordinated the study. The study was partially funded by the NCCR N-S.

Besides all the above mentioned, I am grateful to all those who have shown interest in the study and helped me in many ways but whose names I have not mentioned (this is unintentional), to Simon Pare for the English editing, and to Barbara Bitzi and Bernd Steimann for text editing and layout. I would also like to thank those, quoted or not, who gave of their precious time to be interviewed and provided valuable information.

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1 Introduction

The historic Swat valley in the North-West Frontier Province (NWFP) of Pakistan – whose beauty and landscape have been compared with Switzerland – and its adjoining areas were covered in forest since the earliest times. These forests remained intact for centuries, if not millennia, for specific reasons. The nineteenth century proved a turning point in respect of the exploitation of these forests when some outsiders, mostly the Kaka Khel Mians, started to exploit the forest in the area and extracted timber for export.

By the beginning of the twentieth century, the colonial authorities of the Frontier got alarmed at the potential consequences and negative impacts of the ruthless felling of the trees in the forests of Swat and adjoining areas and their export to the downstream plains. They tried to end or at least halt the practice. In the meantime, Swat State came into being in 1915 and Miangul Abdul Wadud became its ruler in 1917. Miangul Abdul Wadud on the one hand endeavoured to exploit the natural resource of forests and on the other also agreed and collaborated with the colonial authorities to exploit and conserve the forests of Swat State according to their prescriptions.

Miangul Jahanzeb succeeded Miangul Abdul Wadud in 1949 and ruled till the merger of the State in 1969. In the meantime colonial rule had come to an end in India and the two Dominions of India and Pakistan came into being in 1947. The Ruler of Swat State acceded to the Dominion of Pakistan and the legal status in respect to the forests and their management and exploitation was renewed. The Walis of Swat State, i.e. rulers of the State, namely Miangul Abdul Wadud and Miangul Jahanzeb who ruled from 1917 till 1969, on the one hand managed the forests in collaboration with at first the colonial Government and later Pakistan and on the other hand gave their own orders and made their own rules.

Research into the present-day forest issues in NWFP has always recognised the importance of the historical past. Even today, people recall the period under the Walis as a golden age and suggest that forest-related rules be made as during the time of the Walis. However, very little was known about the details of forestry in the areas that comprised the princely State of Swat, and Kalam – both before and during the period of the Princely State of Swat. This was the point of departure for this study on the subject.

Therefore, the author researched in detail the period from the sixteenth century up to 1947 and gave an overview of the period from 1947-1969. This study was published by the Swiss National Centre of Competence in Research North-South (NCCR N-S) as IP 6 Working Paper No. 6, in 2005.

As the historical dimension is crucial to the understanding of present-day forestry, a study of forestry issues in the areas of Swat State, and Kalam from 1947 up to the present day was urgently required as well, hence the present Follow-up Study.

The objective of the present Follow-up Study is to cover in detail the Walis period from 1947 till 1969 and also the post-State period; and to show how forests have been managed and used in the Swat State areas and Kalam during the period 1947-2005. This includes more precisely the following points:

- How are the forests used in the study area and for what?
- What kind of rules and regulations did the Walis impose during the period 1947-1969?
- Were these rules and regulations followed in actual practice?
- What was the relationship between the Walis' rules and regulations regarding forests and the traditional rules and regulations (*riwaj*)?
- What was the relationship between the Wali and the new Pakistan administration, especially the Forest Department?
- How was the forest service in Swat State organised? How were the rules and regulations enforced?
- How did procedures change after the merger of Swat State?
- What were the consequences of the merger of Swat State on forestry in the study area?
- How did the Pakistan State adjust the rules and regulations to the new situation?
- What are the links between the introduction of *Sharia* laws in 1990s in the study area and forestry?
- What is the legal situation of forestry today in the study area?

The present study covers the area of the former Swat State, and Kalam which was directly controlled by the Walis from 14-15 August 1947 until 12 February 1954; and from 12 February 1954 onwards by the Last Wali, as Administrator on behalf of the Government of Pakistan.

The study is related to past developments for which the traditional historical approach has always proven to be a suitable methodology. This approach has therefore been followed while working on the study. Besides, the descriptive/analytical method has been used to provide the reader with an analysis and evaluation of the developments in respect to forestry in the study areas so as to arrive at some valuable conclusions.

Being a scientific study, emphasis is given to the archival records within NWFP, Pakistan. Most of the primary and secondary sources are available both in unpublished and published form in the District Record Room (Gulkada, Swat), Directorate of Archives and Libraries (Peshawar), Tribal Affairs Research Cell (Peshawar), Home and Tribal Affairs Department, Government of NWFP, Library of the Pakistan Forest Institute (Peshawar); Library of Shah Salam Khan Advocate (Gulkada, Swat), and the author's personal library and collection, which have been liberally consulted. A number of personnel and officials of Swat State, who served in different capacities and in important posts, as well as other people including personnel from the former Swat State and Provincial Forest Departments, have also been personally interviewed. Hailing from this very region, the author's personal knowledge accumulated since early childhood through personal observation, discussions and other means, has also provided an insight into the understanding and judgement of various dimensions of forestry in the study area during the State and post-State eras.

The contentions in the study, where no specific source is quoted, are based on the critical evaluation of not only the source materials consulted but also on that of the interviews conducted by the author and the common talks both in official and private capacities. They are also based on the author's personal observations since there is a lack of statutory source material available. In this way, they have been recorded and will thus be preserved in written form.

It should be mentioned that during the rule of Miangul Abdul Wadud (1917-1949), affairs inside the State were, on the whole, conducted by word of mouth; neither were written orders issued, nor were records kept of the orders and correspondence. Moreover, the Pakistani authorities had not properly kept and preserved the records of Swat State, e.g. files of the correspondence with colonial and later Pakistani authorities after the merger of the State, owing to which these have either been destroyed or stolen by people with vested interests. Therefore, we found almost no remaining information regarding forests during the reign of Miangul Abdul Wadud in the records of Swat State. The only details that can be found about the said period are held in the official records in the Tribal Affairs Research Cell, Peshawar, and in the Directorate of Archives and Libraries, Peshawar. However, some record of the reign of Miangul Jahanzeb (1949-1969) still remains in the District Record Room, at Gulkada, Swat, in which quite a lot of references to the forestry issues are found. Moreover, decrees of Miangul Jahanzeb and his rules about forestry can be found in their original form.

The report is structured as follows: Chapter 1 gives an introduction to the study. Chapter 2 evaluates and analyses the Walis' era from August 1947 till the end of their rule in 1969. Chapter 3 gives introductory details of land ownership and discusses and evaluates the post-Swat State period from 1969 till 2005. Chapter 4 examines the Gawri tract or Kalam area from 1947 till 2005. Chapter 5 contains the Conclusions based on the research findings.

2 The Walis' Period (1947-1969)

During British rule, India was divided into two political entities, each of which had a different constitutional status. One part was known as British India, i.e. the territories directly ruled by the colonial government and subjected to the laws made and enacted by them from time to time. The second part were called Indian States and Princely States.

The colonial government had neither direct control over, nor were their laws applicable to, the Princely States. However, they made treaties with rulers of these states, on the whole, under which *inter alia* the states recognised paramountcy of the colonial government and surrendered some powers such as currency, external affairs and communication. The colonial government, for its part, recognised the sovereignty of the rulers within their states. They moreover bound the rulers to accept colonial control in some matters or to manage certain affairs within the overall framework of the colonial government's policy and instructions.

In the context of the present study, the case of forests of the Princely State of Swat has been taken as an example of how the colonial government obliged the rulers of these states to manage matters in accordance with the overall framework of colonial policy and instructions. Under Clause 6 of the Agreement entered into on 3rd May 1926 by the Government of India and Miangul Abdul Wadud, the then ruler of Swat State, an undertaking was made by the Swat State ruler that he would manage the forests in his State under the supervision of the colonial government's officers.¹

2.1 Instrument of Accession

With the emergence of the sovereign states of India and Pakistan on 15th August 1947 under Article 1 (1) of the Indian Independence Act, 1947,² the treaties entered into by the colonial government and the Princely States, of which Swat State was one, lapsed. On the one hand, the British Government transferred its sovereignty in India to the successor states of India and Pakistan. However, on the other hand, the Princely States were not bound to honour the agreements they had earlier made with the colonial government with the successor states.

¹ For details see Sultan-i-Rome, *Forestry in the Princely State of Swat and Kalam (North-West Pakistan): A Historical Perspective on Norms and Practices*, (Swiss National Centre of Competence in Research (NCCR) North-South, IP6 Working Paper No. 6, 2005), chap. 5. Details are also provided in chapter 5 of the Working Paper on the extent to which the colonial authorities controlled affairs related to the forests, their management and conservancy in Swat State till 1947. This earlier study also detailed the discrepancy between *de jure* and *de facto* situations of forestry during this period.

² "The Indian Independence Act, 1947" in Safdar Mahmood, *Constitutional Foundations of Pakistan* (Lahore: Publishers United Ltd., n.d.), p. 1.

Therefore, to solve the issue of future relations between Swat State and the dominion of Pakistan, Swat State entered into a *Standstill Agreement* with the Dominion of Pakistan, under which relations between Swat State and Pakistan were to continue on the same lines, and both sides were to abide by the same terms, as those agreed between British Indian Government and the ruler of Swat State, until the time when the sides might agree on new terms and sign a new agreement. Under the Standstill Agreement, therefore, the Swati ruler was bound to abide by the terms and arrangements made with the colonial government. And this also applied to forests.

After a lengthy correspondences,³ both sides agreed on the terms on which Swat State was to accede to the Dominion of Pakistan. Hence, on 3rd November 1947, Miangul Abdul Wadud, ruler of Swat State, while exercising his “sovereignty in and over” Swat State, stated in the formal *Instrument of Accession to the Dominion of Pakistan* that:

I do hereby declare that I accede to the Dominion of Pakistan and promise full loyalty to Pakistan.

I accept that in respect of *External Affairs, Defence and Communication as specified in the Schedule attached herewith* the Government of Pakistan have full control and authority both Legislative and Executive. Nothing in this Instrument affects the continuance of my sovereignty in and over this State or save as provided by or under this Instrument the exercise of any power or authority and rights now enjoyed by me *in regards to the internal administration of my State* [my italics].⁴

This Instrument of Accession executed by the Ruler of Swat State was accepted by M.A. Jinnah, Governor-General of Pakistan, on 24th November 1947. With this Instrument, the earlier Standstill Agreement came to an end. It is evident from the text of the Instrument that the Swat State ruler accepted the control and authority of the Government of Pakistan only in respect of “External Affairs, Defence and Communication”. He made no commitment like the one in the Agreement of 3rd May 1926, executed with the colonial Government of India, to manage forests in the State according to the instructions and under the supervision of the Government of Pakistan or its Forest Department.

The birth of Pakistan and the consequent accession of Swat State brought great change from a legal point of view regarding the control and management of the forests of Swat State; as a matter of fact, the ruler was now free of the restrictions and control imposed under the agreement executed on 3rd May 1926.

³ See *TRCA*, Chitral Files, B.N. 25, S.N. 668, F.N. 105-S.St.I, Subject: Future Agreements of the Trans Frontier States with the Pakistan Government.

⁴ Copy of the Instrument of Accession executed by the Ruler of Swat State on 3 November 1947 and accepted by M.A. Jinnah, Governor-General of Pakistan, on 24 November 1947, *TARC*, S.N. 14/Swat, F.N. 107-S. St-I.

In spite of there being no mention in the Instrument of Accession of 1947 that Swat State forests will be supervised by the Pakistani Forest Department or that Clause 6 of the Agreement of 1926 with the Government of India will still be honoured, some in the Pakistani official circles held the opinion that the said Clause 6 must still be honoured by Swat State. This is evident from the following extract from the 'Minutes' of a meeting held in the office of the Chief Secretary, NWFP, on 6th February 1951, and the first item on agenda was "I. Control over export of timber from Swat Forests & Kalam." The 'Minutes' state that:

As regards No. I, although it was agreed that under clause 6 of the Treaty of 1926 all forests of Swat State should have been brought under the control of the Forest Deptt., in practice, only the Upper Swat Valley forests or Swat Kohistan forests have been brought under the Working Plan. There are certain areas which are outside this Working Plan and which are worked by the Wali of Swat in his own discretion. It is necessary now to bring all these forests under control by drawing the attention of the Wali of Swat to the relevant clause of agreement of 1926 and by instructing the Forest Department to work out a proper plan or scheme for conserving the timber wealth throughout the State.⁵

It is however also evident from a Memorandum of the Political Agent, Dir, Swat and Chitral, that the Wali was still "competent to legislate on the subject of forestry" under the Supplementary Instrument of Accession, 1954 (see section 2.3), and "he can also pass executive orders regulating fellings etc."⁶

2.2 Change of Ruler

On 12th December 1949, the then ruler of the Swat State, Miangul Abdul Wadud, abdicated in favour of his son and heir apparent Miangul Abdul Haq Jahanzeb. Miangul Jahanzeb, who became the next Wali of the State the same day, was not unmindful of the importance of the income generated by the exploitation of the forests' resource to the State and was at the same time aware of the need for conservation.

⁵ "Minutes of the meeting held in the Chief Secy.'s office on February the 6th, 1951, attended by M. Ahmad (Chief Secretary), Ghulam Ishaq Khan (Secy., DD), Chowdary Mohd Ali (Advocate General) and K.S. Taj Mohd Khan (Conservator of Forests, NWFP)," *ibid.*, S.N. Swat/nil, F.N. 11/46-FRP, Vol. I, Subject: Unauthorised felling of trees from Kalam & Serai Forests.

⁶ PA, DSC, to CPD, No. 906/X/97 (A.2), dated, Malakand, 13 February 1962, *TRCA*, Chitral Files, B.N. 27, S.N. 703, F.N. 212.S.St. I, Subject: Economic Survey of Tribal Areas – Development of Forests in Chitral State.

2.3 Supplementary Instrument of Accession

The Government of Pakistan, in the meantime, was ambitious to do away with the existing constitutional status of the Princely States due to which, according to an official report, “the Rulers of Dir and Swat shelved their traditional differences, and formed a united front to resist attempt at constitutional changes, if any.”⁷ Although the rulers of Dir and Swat States “felt assured to some extent” due to the declaration of the Pakistani leaders and Government that the Government of Pakistan “had no intention of depriving them of their States,”⁸ the Pakistani authorities continued to apply pressure to sign a new Instrument of Accession by the rulers of the Frontier States so as to surrender more powers to the Government of Pakistan. The matter was therefore discussed at length at various levels.⁹

The ruler of Swat State at last bowed to the pressure and signed a new Instrument of Accession, called *Supplementary Instrument of Accession*, on 12th February 1954 which was accepted by Ghulam Muhammad, Governor-General of Pakistan, on 17th February 1954. Besides other things, the Wali stated in the Supplementary Instrument of Accession that:

(ii) I further declare that as to all matters included in part III of the Schedule the State shall have exclusive powers to make laws. ¹⁰

Part III of the Schedule also contains “22. Forests,”¹¹ and this now meant that Swat State forests were to be under the exclusive control of the Wali. Only he can make laws for these forests and hence the Pakistani Central and Provincial Governments can neither make nor extend its forest laws for Swat State.

The status and position of the Wali in respect to the forests both under the Instrument of Accession, 1947, and the Supplementary Instrument of Accession, 1954, was no doubt a major and significant step in aspects of policy and control of Swat State forests.

Under the Supplementary Instrument of Accession, 1954, the Wali surrendered to the Federal Legislature of Pakistan, the authority of enactment of laws by the State only in the Federal and Concurrent fields, just as in other parts of Pakistan. Hence forestry remained the State’s affair as it had been included neither in the Federal nor in the Concurrent lists. Nevertheless, he stated that:

⁷ *The North-West Frontier of Pakistan: Report on the Border Administration (NWFP-RBA) for the year 1950-51*, p. 11.

⁸ *NWFP-RBA for the year 1951-52*, p. 22.

⁹ For some detail see *TARC*, S.N. 58/Swat, F.N. 21-S/48.

¹⁰ “Supplementary Instrument of Accession” in (i) *Supplementary Instrument of Accession*. (ii) *Agreement with the Wali of Swat Regarding the Privy Purse, Private Property and Rights and Privileges*. (iii) *Government of Swat (Interim Constitution) Act, 1954* (n.p., n.d.), p. 1.

¹¹ See No. 22 of Part III of the Schedule of the “Supplementary Instrument of Accession” in *ibid*, p. 12.

I further declare that the Constitution of Pakistan which may be framed by the Constituent Assembly of Pakistan shall be the Constitution for the State as for other parts of Pakistan and shall be enforced in the State in accordance with the tenor of its provisions, and the provisions of the said Constitution shall have effect from the date of its commencement superseding and abrogating all other constitutional provisions inconsistent with the terms which may be in force at that time.¹²

In this manner he empowered the Constituent Assembly of Pakistan to change the status of the State and/or to enact new laws too, if it so wishes.

Therefore, at the enforcement of the *Establishment of West Pakistan Act, 1955*, passed by the Constituent Assembly of Pakistan on 30th September 1955, Swat State was made part of “Special Areas” under section 2 (3). This section states that “nothing in this Act shall authorise any change in the internal administration” of the special areas “except in accordance with this subsection.”¹³

Subsequently, under Article 1 (2) of the *Constitution of the Islamic Republic of Pakistan (1956)* adopted on 2nd March 1956, Swat State’s special status was retained by keeping it as part of the “Special Areas”, to which special status has been given under Article 104, making these areas constitutionally different from the rest of the Province of West Pakistan.¹⁴ In the Constitution of the Republic of Pakistan (1962), enacted on 1st March 1962, special status was again given to Swat State by making it part of the “Tribal Areas” to which special status was given under Article 223, which again made these areas constitutionally different from the rest of the Province of West Pakistan.¹⁵ The same status was retained under Article 3 (1) of the *Provisional Constitutional Order, 1969*.¹⁶

¹² Ibid., p. 3. Also see *Memorandum on Federated States of Pakistan*, by Abdul Hamid, Joint Secretary, Constituent Assembly of Pakistan (Karachi: Printed by the Manager, Govt. of Pakistan Press, n.d.), p. 3.

¹³ *PLD*, Vol. 7, Acts, Ordinances, Orders, Regulations and Notifications, pp. 273-74. Also see Ishfaq Ali, *Laws Extended to the Tribal Areas with Jirga Laws*, Second, Revised and Enlarged Edition (Peshawar: New Fine Printers, n.d.), pp. 7-8. The special provisions (a), (b), (c) and (d) that shall apply to the special areas has also been given under subsection (3)

¹⁴ *The Constitution of the Islamic Republic of Pakistan (1956)* in Mahmood, *Constitutional Foundations of Pakistan*, pp. 243, 275-76. Also see Ali, *Laws Extended to the Tribal Areas with Jirga Laws*, pp. 8-10.

¹⁵ *Constitution of the Second Republic (1962)* in Mahmood, *Constitutional Foundations of Pakistan*, pp. 576, 588. Also see Ali, *Laws Extended to the Tribal Areas with Jirga Laws*, pp. 11-12. It is worth mentioning that the word “Islamic” was added later to the name of the Constitution as a result of the resentment and agitation of the religious-political party Jamat-e-Islami, under a Constitutional Amendment Act, due to which full name of the Constitution of 1962 became as *The Constitution of the Islamic Republic of Pakistan, 1962*.

¹⁶ “Provisional Constitution Order,” *PLD*, Vol. 21 (1969), Central Statutes, p. 41.

By the granting and retaining of this special status for Swat State throughout all of the aforesaid constitutional developments, any laws made and enacted by both the Central and Provincial legislative bodies were not automatically applicable and extendable to Swat State, but instead required special procedures. This state of affairs gave an edge to the Wali in continuing to promulgate his own decrees, rules and regulations. In this manner, he practically exercised all powers and authority also in respect of the forests right up till the end.

2.4 Ownership of Forests

We come across no formal agreement between the landowners (with whose lands the forests were attached as *Shamilat*) and the Wali on the point of forest ownership rights. Thus there is no formal legal document that made the State's ownership claim over forests official. As detailed in the first Working Paper (chapter 5, sections 5.1 & 5.2), the ownership of the forests was claimed by Miangul Abdul Wadud, the then Ruler of the State, but the people still considered themselves as the rightful owners. Thus, the question as to who were the rightful owners of the forests during Abdul Wadud's reign is somewhat difficult to answer.

The claim of ownership of the forests by the State has also been made during the reign of Miangul Jahanzeb vide Memorandum No. 709/J dated, Saidu Sharif, the 11th April 1963, from the Chief Secretary, Swat State, to the Working Plan Officer, Indus Kohistan Forests, Mingawara, Swat State, with a copy to the Political Agent at Malakand. It contains answers to some queries made by the Working Plan Officer, and it states that the "forests belong to the State". The concerned landowners have been referred to as right-holders, to whom only a meagre portion, i.e. 10%, of the sales proceeds of the trees harvested was paid.¹⁷

On the other hand, the concerned landowners still held the view that ownership of the forests belonged to them. But despite considering themselves the rightful owners of the forests, they acceded to the claim of the State at least at face value by accepting the 10%. This royalty was raised to 15% in 1969 before the merger of the State. It is noteworthy and of great significance that though the forests were subjected to the State laws and decrees of the Wali, he paid a share of the sales proceeds to the concerned landowners and thus the traditional owners of the forests. This, in other words, means that the Wali recognised the ownership of the concerned landowners and shared their views by giving them a share in the sales proceeds – thereby accepting that the State was not the sole owner.

¹⁷ See Faqir Muhammad Khan, *Working Plan for the Lower Indus Kohistan and Buner Forests, Swat State, (1964-1978)* (n.p., n.d.), p. 160; M. A. Qadeer Khan, *Working Plan for the Forests of Swat and Swat-Kohistan, Swat State (Malakand Agency) (1965-1980)* (n.p., n.d.), p. 228.

Moreover, a letter from Mashir-e-Maal (Revenue Minister) to Wazir-e-Mulk (Minister of State) states that first names of 'the owners of the forest' (*da Zangal da maalikaanu*) who have a right to the amount of *mundan* (stumps)¹⁸ of the forest should be written down.¹⁹ This in other words means that the State still considered the forests to be the property of the concerned people – and not of the State itself, otherwise they will not have been mentioned as owners (*maalikaan*) but as concessionaires or right-holders instead.

Notwithstanding this, the people themselves recognised the State as owner (or at least co-owner) of the forests in agreeing to receive only a meagre share of the sales proceeds as royalty. Otherwise they would have refused to receive such a meagre share and would have claimed the whole amount of the sales proceeds, as was the case previously before the reign of Miangul Abdul Wadud.

Consequently, the mentioned practice on the part of both the State and the people concerned gives some kind of formal legal status to the claims and viewpoints of both sides.

Another issue was the ownership of trees standing in agricultural fields, no matter what kind of trees they were. This was related not to the ownership question between the State and people but to relations between individuals. Usually the trees planted by one person would become the property of another person when the specific field changed hands in the new *wesh* under the periodical or rotational *wesh* system.²⁰ Therefore, sometimes the person(s) who planted the tree(s) and did not fell it when the *wesh* changed would make a claim by virtue of having planted the tree(s) despite no longer owning the field; whereas the owner of the field at the moment claimed ownership of the tree as it stood in the field he now owned. To end such disputes it was decreed that a tree standing in a field belonged to the owner of that field, whoever planted it.²¹

One negative aspect of the *wesh* system for agro-forestry and fruit trees was that, as the fields were going to change hands along with the trees standing/planted there, such trees were generally cut at the time of the *wesh* by the people about to move to another village or to other fields within the same village.

¹⁸ As the State paid the sales proceeds of the forests on the basis of the number of trees harvested, the stumps of the felled trees were counted and hence the sum paid to the right-holders was called *Raqm-e-Mundan* (Stumps' Amount).

¹⁹ Wazir-e-Maal, Riyasat-e-Swat, to Wazir-e-Mulk, [Riyasat-e-Swat], 30 May 1968, *DRRGS*, B.N. nil, F.N. nil; copy also in *PCA*.

²⁰ See Sultan-i-Rome, *Forestry in the Princely State of Swat and Kalam*, chap. 3.1

²¹ "Hukam Namah," Signed by Hukamran Riyasat-e-Swat, n.d. (the number and date later on written by hand are 50 and 20 June 1962 respectively), *DRRGS*, B.N. nil, F.N. nil, copy also in *PCA*.

2.5 The Wali (Miangul Jahanzeb) Rules and Regulations

On the whole there was no practice of issuing written orders and rules during Miangul Abdul Wadud's reign (1917-1949), but with Miangul Jahanzeb's (1949-1969) coming to power, this started to change. Miangul Jahanzeb, though at first continuing the oral tradition, gradually started issuing decrees and rules in writing or keeping them in written form in the State records or registers.

After 1949, Miangul Jahanzeb introduced no drastic changes to the major rules and regulations in vogue during the reign of his father.²² He did however keep and hence preserve the rules and regulations and the periodic changes made to them, not only in written but to a greater extent also in printed form.

2.5.1 Rules for Granting Timber to State Residents

We come across forest rules both in written and printed form during Miangul Jahanzeb period, i.e. issued and printed in 1956 under the title "*Da Zangalatu Mutaliq Ahkam*" (Rules Regarding the Forests). They are as follow:

1. A resident of a Tahsil when makes a demand for timber in another Tahsil, whether for trading purpose or personal construction, trees shall be granted to him at the local rate prevalent at the time. (Local rate prevailing at the time means the price at which the latest deal has been made with a timber contractor in the relevant forest).
2. A resident of a Tahsil when makes a demand for timber in the forest of that Tahsil for the construction of hotel or shop or such a bungalow house which he is constructing for rental purpose trees shall be granted to him on half of the local rate prevalent at the time.
3. A resident of a Tahsil when demands for timber in the forest of that Tahsil, whether he is a shareholder in the *dawtar* of that Tahsil or not, for meeting the need of the construction of his own residential quarter, the houses for Faqir Fuqara,²³ cow and buffalo room (*ghujal*), trees shall be granted to him. Save the Barikot Tahsil meaning some of the villages of the Barikot Tahsil who have no share in the forest. They (the residents of the said villages of Barikot Tahsil) will not be granted trees in that forest (situated in the Barikot Tahsil limits).

²² Ghani-yur-Rahman, IA, Verbal, Malukabad, Mingawara, Swat, 11 December 2005.

²³ A person who resided in someone else's house and paid no rent for it was called *Faqir* of the owner of the house. Such people were commonly referred to as *Faqir Fuqara*. Although the *Faqirs* paid no rent, they were required to do manual work called *bigar* (forced labour) for the proprietor of the house concerned at different occasions and in different manners.

4. If outsiders purchase landed property (*jaidad*) in a Tahsil of the State and do construction on that property, he shall be granted trees in the forest of that Tahsil at half of the local rate prevalent and if he brings timber from another Tahsil, trees shall be granted to him at the full local rate prevailing at the time.

5. A resident of the State when he is resident of one Tahsil and purchases landed property in another Tahsil and does construction on that property, trees shall be granted to him at half of the local rate prevailing at the time [my translation].²⁴

A note on the copy of these rules, written in English later, states that these rules have been amended via circular dated 22nd August 1959. We could not however find a copy of the said revised circular.

The rules have, however, been amended from time to time. In the circular dated 6th January 1960 some changes in the wording of Clause 3 has been made but the meaning is the same, and some amendments have been made to Clause 5. The new version of Clause 5 states that if a resident of one Tahsil of the State has purchased landed property (*jaidad*) in another Tahsil and permanently resides on that property or is going to do so and does not come back to his (own previous) Tahsil to reside and build on the purchased property, he shall be granted free timber in the forest of that Tahsil and if he is not permanently settled there then he shall be granted trees at the given concessional rates.²⁵

Rates for different kinds of trees, i.e. deodar, kail, spruce and longleaved pine, are given in this circular. Moreover, people from the entire State (excluding Kalam area for it was designated an Agency under the Agreement of 12th February 1954 and therefore no longer formed part of Swat State; c.f. chapter 4 for details) were divided into groups, and different rates for the same kind of trees were fixed for the different groups. The groups were named Qaum Swat Alaqa, Qaum Buner, Qaum Ghwarband, Chakisar, and Qaum Abasind Kohistan. The rates per tree are high for Qaum Swat Alaqa, less for Qaum Ghwarband and Chakisar, and even less for Qaum Buner. Furthermore, the concessional rates for Qaum Swat Alaqa are half of the full rates whereas for Qaum Buner, Qaum Ghwarband and Chakisar they are less than half of the full rates fixed for the people of those areas. Moreover, all kinds of trees have been given as free for Qaum Abasind Kohistan and no price for any kind of tree has been defined in the columns for that area.²⁶

²⁴ “Da Zangalatu Mutaliq Ahkam,” signed by Hukumran Riyasat-e-Swat, 1 May 1956, *DRRGS*, B.N.nil, F.N.nil; copy also in *PCA*.

²⁵ “Da Zangalatu Mutaliq Ahkam,” Hasbul Hukam Hukumran Riyasat-e-Swat, 6 January 1960, *ibid.*; copy also in *PCA*.

²⁶ See *ibid.*

In the circulars for the succeeding years, we come across the same five clauses as in the circular dated 1st May 1956 and somewhat amended in the circular dated 6th January 1961. Although the same difference in the rates for the same kind of trees has been retained for different areas, the discrimination in the concessional rates, i.e. half for the Swati areas and less than half for Buner and Shangla areas, has been done away with. Instead, half of the rates fixed for the different areas have been fixed as concessional rates. However, some areas of Swat have been grouped together with Buner for the purposes of the rates for the trees and the rate for deodar has not been fixed. Rates have only been given for kail, spruce, and longleaved pine. The same rule of free provision has been retained in respect of the Indus Kohistan.²⁷

An other decree of the Wali, issued in 1968, makes some rules and codes of conduct by stating that ‘this is my order’ that:

1. Annual qaumi quota of the forest of each area shall be divided proportionate to the needs of the people of the area. In case of a person’s acute or urgent need, he shall be granted trees at concessional rates in the local forest or that of another area.
2. Those people shall not be granted trees in the coming year who received a grant of trees in the current year. But trees shall be granted first to those to whom trees were not allocated last year and who need them. If there are surplus trees left over, then these shall be granted to the remaining people who need them.
3. A person to whom trees are granted for local need in the local forest can neither sell its timber nor give it to someone else. If the same is proved against him, he will pay a fine of Rs. 50/- per sleeper.
4. In future no one will either keep stock of construction timber without need nor should apply for it. In case it is proved that timber has been kept by someone as stock for construction and he has no immediate need for, the timber will be forfeited by him [my translation].²⁸

2.5.2 Rules and Steps for Conservation

The Wali, Miangul Jahanzeb, also took steps to conserve and protect the forests and agro-forest trees. The Wali issued his own orders and decrees both for the conservation and exploitation of the forests. He at one stage even banned not just the felling of trees

²⁷ See “Da Zangalatu Mutaliq Ahkam,” signed by Hukamran Riyasat-e-Swat, 12th September 1961, and 22 April 1963, *ibid.*; copies also in *PCA*.

²⁸ “Da Zama Hukam Day,” signed by His Highness Hukamran-e-Swat, No. 74, 25th September 1968, *ibid.*; copy also in *PCA*.

standing in agricultural fields but also cutting their branches without prior permission from the State's officials, i.e. Tahsildars/Hakims.²⁹

An order issued in 1957 states that a person who cuts hill trees like Nakhtar (longleaved pine), Piwuch (Kail), Achar (Silver fir), Ranzra (Deodar), Khuna (Olive), Chinar (Plane), Ughuz/Ghuz (Walnut), or Shawa (Sissoo) without a permit will pay a fine of Rs. 20/- for a plant (*Warukay Dakay*) and, in the case of a tree, a fine of Rs. 200/- for Ranzra, Rs. 100/- for Piwuch and Achar, Rs. 50/- for Nakhtar, Chinar, Ughuz, Shawa and Tut (Mulberry), and Rs. 20/- for Khuna per tree. Moreover, the timber extracted will be confiscated in the Government's favour.³⁰

The same rules were maintained in an amended Hukam Namah issued in January 1960 but the rates of the fines were increased. Moreover, fines were also levied and fixed at the rates of Rs. 10/- per tree for irregular and without permit lopping of the aforesaid trees in large quantities and Rs. 5/- for lopping in the same manner in small quantities.³¹

The fines for illicit felling of trees were increased for some trees in an amended Order dated 28th August 1961. In the list, the number of the trees given was increased to include other kinds of trees, which is evident from the comparison of the above-mentioned names and the names given in the following table.³²

SN	Local Name	Fine per <i>Wana</i> (mature tree)	Fine per <i>Dakay</i> (immature tree/plant)	English Name	Botanical Name
1	Ranzra	Rs. 300	Rs. 100	Deodar	<i>Cedrus deodara</i>
2	Piwuch	Rs. 150	Rs. 50	Blue pine, Kail	<i>Pinus wallichiana</i>
3	Achar	Rs. 150	Rs. 40	Silver fir	<i>Abies pindrow</i>
4	Nakhtar	Rs. 100	Rs. 30	Longleaved pine	<i>Pinus longifolia</i>
5	Chinar	Rs. 100	Rs. 30	Plane, Oriental plane	<i>Platinus orientalis</i>
6	Ughuz (Ghuz)	Rs. 100	Rs. 30	Walnut	<i>Juglans regia</i>
7	Shawa	Rs. 100	Rs. 30	Shisham, Sissoo	<i>Delbergia sissoo</i>
8	Tut	Rs. 50	Rs. 30	Mulberry	<i>Morus lavaegata</i>
9	Khuna	Rs. 50	Rs. 30	Olive, Indian olio	<i>Olea ferruginea</i>
10	Jawaz	Rs. 30	Rs. 10	Indian horse chestnut	<i>Aesculus indica</i>

²⁹ Amir Zaman (1922-1994), IA, Verbal, Hazara, Swat, 15 March 1987; Bahadar (1902-2001), IA, TR, Ningwalai, Swat, 16 March 1997. Also see Sultan-i-Rome, "Riyasat-e-Swat: Aik Nazar Mayn" (Unpublished, 1987), pp. 11-12.

³⁰ "Hukam," Hasbul Hukam Hukamran Riyasat-e-Swat, 6 July 1957, *DRRGS*, B.N. nil, F.N. nil; copy also in *PCA*.

³¹ "Hukam Namah," signed by Hukamran Riyasat-e-Swat, 6 January 1960, *ibid.*; copy also in *PCA*.

³² The names of the trees and the respective fines in the table have been given serial wise as is given in the table in the original "Hukam Namah," signed by the Ruler of Swat State, but the English and botanical names have been added for the reader's convenience. It should also be mentioned that the local names given are used locally for all kinds of the species.

11	Tarkana (Chinaranga)	Rs. 30	Rs. 10	Maple	<i>Acer caesium, Acer cultratum</i>
12	Bareet	Rs. 30	Rs. 10	Bird cherry	<i>Prunus cornuta</i>
13	Kanar	Rs. 30	Rs. 10	Brown oak	<i>Quercus semicarpifolia</i>
14	Banj	Rs. 10	Rs. 3	Oak	<i>Quercus incanna, Quercus leuco- trichopora, Baloot</i>
15	Banrya	Rs. 10	Rs. 3	Himalayan yew	<i>Taxus wallichiana</i>

A tree with a girth/circumference of four or more feet will be considered *wana* and that of less than four feet as *dakay*. Fines for lopping have been retained at the same rates in Note 1, but it has been added in Note 2 that whosoever cuts tree(s) without a permit will also hand over the extracted timber to the Government as well as paying the fine. If he has used the timber, the fine is doubled.³³

In the Order dated 14th November 1966, the fines in respect of the aforesaid trees given in the table have been slightly increased. The fine for unauthorised lopping has also been increased under Note 1 and under Note 2 the same rule of handing over the unauthorised cut timber to the Government besides the payment of the fine (or in case of consuming the timber payment of double fine) has been retained.³⁴ The amounts of the aforesaid fines seem meagre these days but were quite heavy and burdensome in those days.

At first, not just the trees standing in the fields but also the trees within the houses too were subjected to the rule that no tree or its branches will be cut without the permission of the relevant Tahsildar/Hakim. Later on some amendments were made in this respect. A decree issued in January 1960 states that:

1. All kinds of trees standing within the four walls of a person are governed by the will/discretion of the owner of that house and trees, whether he cut them or tend them.
2. All kinds of trees standing in gardens and fruit orchards are governed by the will/discretion of the owner; if he so wishes, he may cut them.
3. Any kind of fruit tree of any person that stand in the outer fields can be cut by the owner anytime at his own will. However, to cut shady or other non-fruit trees, he can do so only after planting trees in their stead two or three years prior to the cutting, at

³³ See "Hukam Namah," signed by Hukamran Riyasat-e-Swat, 28 August 1961, *DRRGS*, B.N., nil, F.N. nil; copy also in *PCA*.

³⁴ "Hukam Namah No. 71," signed by Taj Muhammad, Mashir-e-Mal, Swat State, 14 November 1966, *ibid.*; copy also in *PCA*.

their side and they, i.e. the newly planted plants, reach the stage at which they replace the trees that are to be cut down.

4. Trees of Walnut, Plane, Olive, Silver fir, Kail, Deodar where-ever they are, save the houses, should not be cut by anyone without the permit of the Government [my translation].³⁵

A rule was also made for the owners of tobacco furnaces to the effect that they will have to plant new plants near their old trees and tend them. In case they are still green the next year and the Government deems it appropriate, then the Government shall give a permit to lop or fell the said old trees in the coming year.³⁶

Similarly the owners of brick kilns were allowed the use of only 200 maunds of firewood per annum for the sole purpose of lighting the fire in the kiln, and they were obliged to use mined coal in their kilns.³⁷

An order stated that besides trees whose felling is prohibited a plant or tree may not be uprooted for firewood purposes, and if someone wants to bring firewood from one Tahsil to another Tahsil he can do so. There is no ban on this.³⁸

It was decreed that no one will uproot oak trees. If he cuts oak trunks (*satay*), the tree will be cut five feet above the ground. If someone cuts oak trees beneath the five feet limit, he shall pay a fine of Rs. 100.³⁹

To protect the longleaved pines, their debarking was banned if it should cause the tree to become dry but permitted if the bark - used for dyeing - were extracted in a way which does not cause the tree to dry out. Undertakings have been taken to the effect that the said tanners will extract bark in such a manner so as not to harm the trees. If they do harm the trees, they will pay a fine to the Government for every tree harmed.⁴⁰

One reason for the depletion of forests is the conversion of forestland into land for cultivation. This was also practiced in the Swat State areas since the earliest times. Some steps were taken to put an end to this practice. Therefore, converting land, both covered by forests and deforested, into agricultural land was banned, and special permission was made mandatory to be able to do so. This is evident from the decree of

³⁵ "Hukam Namah," signed by Hukamran Riyasat-e-Swat, 1 January 1960, *ibid.*; copy also in *PCA*.

³⁶ Copy of an order made through Mashir-e-Maal to Hakim Buner, 20 February 1967, *ibid.*; copy also in *PCA*.

³⁷ See No. 214 (dated 29 June 1962) in "Kitab No. 5: Register Zamant Dafter-e-Hizur, Az 19-2-1958 Ta 8-11-1965," *DRRGS*.

³⁸ "Hukam Namah," signed by Hukamran Riyasat-e-Swat, 5 November 1962, *ibid.*; copy also in *PCA*.

³⁹ "Likalay Shi," signed by Hukamran Riyasat-e-Swat, 6 December 1965, *ibid.*; copy also in *PCA*.

⁴⁰ For example see No. 71 (dated 3 November 1951) in "Register No. 1: Kitab Faisala Jat Wali Sahib, 16-12-50 Ta 18-9-65," *DRRGS*.

the Wali which states that Karins in general are banned, but where ploughing is possible, Karin can be made with the permission from the Government. But where ploughing by oxen is not possible (due to steep terrain), it is also forbidden to sow crops using a pickaxe.⁴¹ New Karin should not be made on any account.⁴²

Nevertheless, the demarcation of forest and non-forest land was not carried out during the period 1947-1969, due to which the anomalous situation of felling trees to convert forestland into agricultural land continued, since landowners earned extra by felling the trees. This conversion also hampered the regeneration of the forests. Moreover, no serious attempt was made to carry out afforestation on any large scale. That was why it is correctly stated that despite the preparation of the Working Plans, “only the felling prescriptions of the working plans” were followed and the “silvicultural and developmental aspects” of the management and the resource base “have been fully” and “outrightly neglected”⁴³ during the Wali’s rule.

Notwithstanding this, rules were made about planting crops on roadsides, according to which:

1. If the road is 24 or more feet wide and the trees are immediately at the side of the road, then new plants will be planted two feet away from the side of the road.
2. If the road is less than 24 feet wide, then new plants will be planted 14 feet away from the centre. The plants are to be planted in line, one and half feet deep and straight. Where the plants are sown according to the rule and there is some shortage in-between to be filled up, the space between two plants is to be five feet [my translation].⁴⁴

2.5.3 Rules and Procedures for Export

Besides the rules for providing timber within the State to meet the bona fide needs of the State residents and the construction needs of the non-State residents within the State, the Wali made rules concerning exports of timber from the State. A decree by the Wali, written and printed not in the State’s official language Pukhtu but in Urdu (probably because it is mainly meant to be read by non-Swat State residents), gives the following instructions:

⁴¹ In some deforested places, cultivation by bullock-drawn plough was not possible due to the steepness of the terrain. Therefore, the people used to sow crops using apickaxe. The decree bans this practice and also the conversion of such places into cultivable fields.

⁴² “Hukam Namah,” signed by Hukamran Riyasat-e-Swat, No. 65, 5 January 1966, *DRRGS*; copy also in *PCA*.

⁴³ Yar Muhammad Khan and Mohammad Ikram, *Model Forest Management Plan for the Forests of Swat-Swat Kohistan, 1984 to 1994* (Peshawar: Printed at Nizam Printing Press, n.d.), pp. 32-33.

⁴⁴ “Da Sarak da Gharay da Daku Lagawalu Tariqa,” Hasbul Hukam His Highness Hukamran Riyasat-e-Swat, 4 February 1967, *DRRGS*, B.N. nil, F.N. nil; copy also in *PCA*.

1. Export of any kind of construction timber from Swat is not permissible without the permission of the Forest Department of the Government of Pakistan.
2. There are regular traders of construction timber who submit tender to the State as per need. And working permits for the concerned forest are given to the one whose tender is at the genuine rates and formal agreement is made with him.
3. As the forests of Swat are under the supervision of the Forest Department of the Government of Pakistan, therefore this Department gives permits to the aforesaid traders to export timber from Swat.
4. Timber to meet the local needs of the residents of Swat is also given to the traders in the aforesaid manner, which they provide only to those persons who are in possession of a permit from the State, on which the number of the timber, etc. is written.
5. If the applicant does not use the said timber inside Swat, the permit as mentioned in paragraph 4 will not be given to anyone save the residents of Swat.
6. The Government of Pakistan will file legal proceedings against any person who wants to smuggle timber out of Swat. Should the Swat State's reputation suffer injury, due to the aforesaid persons, therefore Swat State will instigate penal proceedings against those persons.
7. A person who wants to purchase timber in Swat State and to take it out for his personal use must follow the right procedure by getting a permit from the Forest Department of the Government of Pakistan.
8. If the purchaser of wood did not follow or abide by instruction No. 7, he is not permitted to take timber out in other manner [my translation].⁴⁵

The implementation of these rules, however, was virtually non-existent, in almost all aspects (see section 2.10).

2.6 Tools and Techniques

The main strategy adopted to enforce the State's rules and regulations, which were enacted and amended from time to time, was to fix and impose heavy fines for each and every kind of breach or violation of the rules and regulations. The concerned

⁴⁵ "Hukam Namah: Swat sey Imarati Lakri ki Baramad key Mutaliq Hidayat," signed by Hukamran Riyasat-e-Swat, n.d. (a later written, by hand, number and date are 22 and 8 January 1960 respectively); "Swat sey Imarati Lakri ki Baramad key Mutaliq Hidayat," No. 22, 8 January 1960, *ibid.*; copy also in *PCA*.

Tahsildars and Hakims were made responsible for and entrusted with duties over the forests as well (see section 2.11). As is evident from the Wali's decree No. 10, dated 4th January 1960 (see also section 2.11), they had, moreover, been made responsible for keeping a vigilant eye and watch over the foresters. They and the Thanradars (Thanidars) of the Police, along with the Subidars and Jamadars of the Qalas, were also required to stop any attempt to smuggle timber.

Incentives were also given to the personnel of the State Forest Department. They were rewarded and given prizes either in the form of a share of the fine levied or some other amount should they report unauthorised felling in the forests. The amount to be paid for reporting illicit cutting was however not fixed but left to the discretion of the Wali and paid only to the person who reported the case. In case of best performance in this respect, the reward was sometimes given in the shape of a salary increase.⁴⁶ However, later, the reward was limited to 'the amount equal to one salary' of the person concerned rather than an increase in salary.⁴⁷ This limit is also evident from an order issued in April 1968, which states that a person entitled to a share of the fine should not receive more than his salary.⁴⁸

Furthermore, if someone reported illegal felling, he was paid 10% of the fine levied if the fine was less than Rs. 100/- and, should the fine be more than 100 rupees, 10% on the amount of first 100 rupees and 5% on the remaining extra amount. For example, in a fine of 200 rupees, the reporter was paid 15 rupees, i.e. Rs. 10/-, at the rate of 10% for the first 100 rupees and Rs. 5/- at the rate of 5% for the remaining 100/- rupees.⁴⁹ The rate, however, was harmonised in 1966 at 5% however large the fine.⁵⁰

Collective local responsibility to either surrender or point out the culprit, or to pay collectively the fine in cases of unauthorised felling and lopping or burning trees and setting fire to the hills and forests, also worked well as a tool. If the culprit(s) was/were not known, the technique was to impose a collective fine, on the people of the locality concerned or on the owners of the forestland if they failed to point out the real culprit.⁵¹ This is also evident from a case in which twenty-five longleaved pine trees were felled in the forest of village Amnawar, Buner. To prove the innocence of the residents of Amnawar and to point out the real culprits, three people from Amnawar swore on oath that the said felling has been done by the Gujars. Hence the villagers of Amnawar were acquitted and the Gujars were made to pay the fine and the penalty.⁵²

⁴⁶ Muhammad Shoaib, IA, Verbal, Makanbagh, Mingawara, Swat, 7 December 2003.

⁴⁷ Ghani-yur-Rahman, IA, Verbal, Malukabad, Mingawara, Swat, 11 December 2005.

⁴⁸ Ghulam Habib Khan (comp.), *Riwaj Namah-e-Swat* (n.p., n.d.), No. 92, p. 123.

⁴⁹ See *ibid.*, No. 460, p. 381.

⁵⁰ *Ibid.*, No. 461, p. 381.

⁵¹ Muhammad Shoaib, IA, Verbal, Makanbagh, Mingawara, Swat, 7 December 2003; Ghani-yur-Rahman, IA, Verbal, Malukabad, Mingawara, Swat, 11 December 2005

⁵² See copy of the case in *DRRGS*, B.N. nil, F. N. nil. Also in *PCA*.

Steps were also taken to ensure that those to whom trees have been granted might enjoy full and rightful use of timber and wood from the granted trees. In various cases they had committed themselves not to misuse, sellout or give the granted timber and wood to anyone else; not to use any more or any other timber, wood etc. than had been granted or allowed; and that in case of violation, i.e. its use for other purposes or for sale, he/they would be liable to a penalty of paying the price of the trees - whatever this might be - to the Government. This is evident from a number of bonds taken from such persons and found in the State's record. The responsibility, penalty etc. in case of violation varies however somewhat in the different undertakings.⁵³

Besides, undertakings were also made by *jargas* and people from different areas to the effect that should there be unauthorised fellings or lopping or fire and the culprit(s) not be known, they would collectively pay the fine to the Government.⁵⁴ An undertaking was that if the said person caused damage to any kind of tree in the forest, he would pay a fine of 1000/- rupees to the Government.⁵⁵

A Thanradar, to whom 20 trees were granted for the construction of his house in Banjut but who cut only 7 out of them, was allowed to sell the extracted 360 sleepers, but was required to make an undertaking (written statement) that in future he would not apply for construction timber in Banjut.⁵⁶

An undertaking was even taken of a Khan that he will bring Deodar sleepers from the Dir forests, but should it be proved that this cutting had been done in the Swat State's forests, he would be required to pay 10,000 rupees to the Government and the Government had the right to confiscate his bond.⁵⁷ In another undertaking by a Malak, it has been stated that lopping and cutting roots of three Chinar's (plane) trees had been reported against him and that this had been proven by an official inspection. Therefore,

⁵³ For example see No. 57 (dated 28 May 1966), No. 58 (dated 30 May 1966), No. 76 (dated 5 May 1966), No. 120 (dated 10 January 1967), No. 251 (dated 16 February 1968), No. 256 (dated 26 February 1968), No. 261 (dated 16 March 1968), No. 282 (dated 27 May 1968), No. 358 (dated 4 January 1969), and No. 360 (dated 11 January 1969) in "Register No. 2: Title nil"; No. 214 (dated 29 June 1962), No. 392 (dated 8 June 1964) in "Register No. 5: Register Zamant Daftar-e-Hizur, Az 19-2-1958 Ta 8-11-1965," *DRRGS*.

⁵⁴ For examples of such undertakings see Faisalsh No. 318 (dated 16 July 1960), in the records of the former Madyan Tahsil; its copy can be seen in *DRRGS*, B.N. nil, F.N., nil, and in *PCA*; Khan, *Riwaj Namah-e-Swat*, Nos. 455-458, pp. 377-79.

⁵⁵ No. 457 (dated 19 September 1956) in "Kitab No. 1: "Kitab Faisalsh Jat Wali Sahib, 16-12-1950 Ta 18-9-1969," *DRRGS*.

⁵⁶ No. 86 (dated 26 August 1966) in "Register No. 2: Qism Register, Zamanat Daftar-e-Hizur, Az 8-11-65 Ta 12-8-69," *ibid*.

⁵⁷ See No. 282 (dated 12 March 1963) in "Kitab No. 5: Register Zamant Daftar-e-Hizur, Az 19-2-1958 Ta 8-11-1965," *ibid*.

should the Chinars become dry within two years, he would pay to the Government, without excuse, a fine of Rs. 500/- per tree.⁵⁸

An undertaking has also been taken of some residents of Martung area that they will plant trees in their own fields to meet their firewood needs. Until then, they shall lop Piwuch (Kail) trees supposedly two-fifths of the way up from the ground. In case of violation, they will pay Rs. 5000/- to the Government, and after two years will not apply for permits to lop Piwuch trees for firewood.⁵⁹

2.7 Rights and Concessions

As there had been no permanent forest settlement in the State during the period 1947-1969, the extent of the rights and concessions enjoyed by the local population was not properly defined and recorded.⁶⁰ Nevertheless, the rights enjoyed and practised by the people were:

1. The locals were allowed to graze their cattle, etc. free of charge.
2. Grass cutting and lopping for fodder was allowed free.
3. The local people were entitled to collect and remove the suitable dry twigs, branches and fallen trees for use as fuelwood. The export of timber as firewood was not allowed. However, individuals could sell it on a small scale within the State for commercial purposes.
4. The inhabitants of villages adjoining forests were entitled to obtain construction timber for their bona fide domestic requirements. The Tahsildars/Hakims usually sanctioned the grants locally but the Ruler himself granted the Deodar trees. A nominal application fee was charged for this purpose however.
5. The timber requirements of the population of the areas of the State where there were no forests were met under *qaumi* quota and the timber was provided at concessional rates.
6. Ten percent (increased to 15% in 1969 before the merger of the State) of the sales proceeds from the forests was distributed among the landowners of the village

⁵⁸ See No. 335 (dated 25 September 1963), *ibid.*

⁵⁹ See No. 458 (dated 10 April 1965), in *ibid.*

⁶⁰ See Malik Ali Muhammad, *Working Plan for Upper Indus Kohistan Forests of Swat District (1972-73 – 1981-82)*, (n.p., n.d.), p. 2; Khan, *Working Plan for the Forests of Swat and Swat-Kohistan, Swat State (Malakand Agency), (1965–1980)*, p. 13; Khan, *Working Plan for the Lower Indus Kohistan and Buner Forests, Swat State, 1964–1978*, p. 11.

concerned or in other words among the landowners to whose villages or *dawtar* the concerned forests were attached or belonged.

7. The concerned landowners raised a fee, called *qalang*, from the nomadic Gujars, Ajars and Shpunkis for allowing them to graze their cattle, sheep and goats in the high-lying pastures called *bandajat*. The State received no share of the *qalang*.
8. Stone were quarried for construction purposes by everyone in the concerned village and locality.
9. *Nautor*, however, was not allowed in the forest area.⁶¹

Besides these rights and concessions - which were mostly for the landowners and people of the areas of the concerned forests (i.e. for those upon whose lands or within the limits of whose lands there were forests, or to whose lands forests were attached as *shamilat*) - there were also rights and concessions for residents of the State who had no forests, or to whose lands no forests were attached, or those who were not landowners at all. One of these rights and concessions was also the provision of timber to meet their bona fide needs and requirements both in respect of timber for construction purposes and non-construction purposes like implements, household appliances and firewood.

Moreover, both the local and non-local people were allowed to collect non-timber produces like medicinal plants, morels, herbs and shrubs. Similarly, extracting charcoal from the forest-wood was allowed for local and non-local people of the State to meet their bona fide needs.

A decree by the Wali states that, in future, when a resident of the State applies for trees above and beyond the quota specified for his Tahsil for his bona fide construction needs, and his need is genuine and certified by the Amil of the area, the residents of the Tahsils of Chagharzi, Chamla Amazi, Khudu Khel, and Martung shall be granted trees at a quarter of the price of the tree. The residents of the remaining areas of the State shall be granted trees at half the price.⁶²

Furthermore, the Wali made a decree stating that carrying the following wooden items was allowed both outside the State and from one Tahsil to another Tahsil inside the State in the given numbers: *Katunah Takwahali* (assembled bedsteads): 5; *Sundaqunah Tayar* (ready-made boxes): 5; *Takhtapushunah Tayar* (ready-made prayer mats/seats):

⁶¹ Also see Khan, *Working Plan for the Forests of Swat and Swat-Kohistan, Swat State (Malakand Agency), (1965–1980)*, pp. 13, 228; Khan, *Working Plan for the Lower Indus Kohistan and Buner Forests, Swat State, 1964–1978*, pp. 11, 160–61.

⁶² “Hukam Namah,” signed by Hukamran Riyasat-e-Swat, No. 64, 12 June 1965, *DRRGS*, B.N. nil, F.N. nil; copy also in *PCA*.

2; *Almarai Tayar[ay]* (ready-made almirahs): 5; *Taunrai Tayar[ah]* (ready-made chest): 1; *Chaukatunah Tayar* (ready-made door frames): 4; *Darwazay Tayar[ay]* (ready-made doors): 4; *Zangu Tayar[ah]* (ready-made cradle): 1; *Mizunah Tayar* (ready-made tables), *Karaitunah da meywey dak* (crates full of fruits) and *Kursai-Kuchunah* (chair-coaches): an unlimited number.⁶³

2.8 Forest uses

The forests were generally used and exploited to generate income for the State exchequer; to meet the bona fide needs of the local population and all the State residents both for construction and firewood purposes; to meet the needs of the State or Governmental constructions; for use as telephone and electricity poles, etc.; for the rulers' construction purposes; as favoritism, political gains, obligations on others and so forth. The forests were used and exploited for the said purposes in the following manner (see also section 2.11).

Apart from felling for export purpose, the forests were subject to felling under five types of quotas: local quota, qaumi quota, special quota, concessional quota and central quota.

- Local quota was to meet the bona fide needs of the right-holders or local people to whom the timber/wood was provided free save the nominal application fee⁶⁴ (see section 2.5.1).
- Qaumi quota was to meet the bona fide needs of the persons of the State who did not have rights in the forests. Under this quota, trees were granted at concessional rates to the aforementioned type of the State residents⁶⁵ (see section 2.5.1).
- Special quota was to grant trees free to State officials or other persons the Wali wished to favour. It was at the Wali's discretion to which State officials and others (whether State residents or not) he wished to grant trees free and in what quantities.

⁶³ "Hukam Namah," signed by Hukamran Riyasat-e-Swat, n.d. (the number and date, written later on by hand is 24 and 9 January 1960 respectively), *ibid.*; copy also in *PCA*. This printed version do not mention number in respect of readymade doors but another printed version bearing No. 24 and date 9 January 1960 and circulated per order of the Ruler of Swat State gives the number in respect of readymade doors as 4. See "Da Mundarjazail Ashyawu da Riyasat na au pa Riyasat kay da yau Tahsil na bal Tahsil ta da Wru Ijazat day," Hasbul Hukam Hukamran Riyasat-e-Swat, No. 24, 9 January 1960, *ibid.*; copy also in *PCA*.

⁶⁴ Muhammad Shoaib, IA, Verbal, Makanbagh, Mingawara, Swat, 7 December 2003.

⁶⁵ *Ibid.*, Also see Khan, *Working Plan for the Forests of Swat and Swat-Kohistan, Swat State (Malakand Agency), (1965–1980)*, p. 45.

- Concessional quota was not a quota in the true sense of the word. It was at the Wali's discretion to whom he wanted to grant trees at concessional rates under this quota. There were no restrictions on his power to grant trees to anyone and in any number. The Wali Sahib Miangul Jahanzeb used to grant trees to his nears and dears, favourites, for political gains and out of favouritism under special quota and concessional quota. But in Bacha Sahib Miangul Abdul Wadud's reign, the forests were least utilised under special and concessional quotas for the above mentioned purposes.⁶⁶
- Central quota was to meet emergency needs such as caused by fire and floods or to provide for those people whose needs could not be fulfilled by the trees granted to them in the local quota. Moreover, the Wali gave permission for felling to meet the timber requirements of State constructions and buildings such as roads, bridges, police posts, hospitals, schools and telegraph poles.⁶⁷

The marking of trees under the aforesaid quotas was done exclusively by the State Foresters or Tahsildars, who, according to M.A. Qadeer Khan, rarely observed silvicultural principles. Their main guidelines were the accessibility of the forests and the convenience of the consumers. Quite often these fellings were done in the same forests where export fellings were in progress due to which the Provincial Forest Department (PFD) was unable to stop the confusion. Since the timber was mostly hammer-marked by Range Forest Officer at the launching *ghat* (spot, point) or at the roadside depot, and no records of the fellings under these quotas was maintained, the possibility of a mix-up of this timber with timber meant for export was quite real. As the record of the fellings under the aforesaid quotas or of the said type of fellings was not maintained it was neither available in the Divisional Forest Office of the PFD nor with the State authorities, and therefore the extent of the drain on the forests could not be ascertained.⁶⁸

Commercial fellings were in addition to the fellings carried out under the aforesaid quotas. It was only from the sales proceeds from the commercial fellings and the fellings carried out at concessional rates that a share - or royalty - was paid to the concerned landowners or right-holders. And working plans were prepared only for the commercial fellings.. Here, the following procedures applied.

For commercial fellings, "marking lists" were prepared jointly by the PFD and the State Forest Department (SFD) and signed by both the Divisional Forest Officer (DFO) of the PFD and Forests Officer of the SFD. Then there needed to be a call for bids or

⁶⁶ Muhammad Shoaib, IA, Verbal, Mankanbagh, Mingawara, Swat, 7 December 2003.

⁶⁷ Ibid., Also see Khan, *Working Plan for the Forests of Swat and Swat-Kohistan, Swat State (Malakand Agency), (1965-1980)*, p. 45.

⁶⁸ Khan, *Working Plan for the Forests of Swat and Swat-Kohistan, Swat State (Malakand Agency), (1965-1980)*, p. 46.

tenders for the harvesting or fellings. In actual practice, however, advertisements were not put in the newspapers and leases or contracts were granted at the Wali's discretion. After the Wali had granted the lease to some people (generally his friends, favourites and state officials), agreements were then drawn up with these so-called bidders and copies sent to DFO of the PFD. Marking the trees for felling was done by the PFD in collaboration with the SFD. The DFO of the PFD contacted the relevant contractors.⁶⁹

Only personnel of the SFD supervised the fellings on the ground, for which Field Registers (also called Field Books and Form A) were issued to them by the PFD. Each Range Officer of the SFD was responsible for the maintenance of the Field Book and to delegate forest staff to supervise the fellings and maintain the records. Fortnightly or monthly reports were sent by the field staff to the Department.⁷⁰

Property Marks or Trade Marks were allotted and registered to prevent illegal fellings. Hammer Mark was usually done by the Guard or Chalan Nawis in the field on the spot, but the timber for export was again hammer-marked by both the SFD and PFD officers. Then *rahdaris* were issued by the SFD and were signed by the Forest Officer, Wazir-e-Maal/Mashir-e-Maal, and the Wali. Then lists were prepared for the export and both the SFD and PFD issued *chalans* for transit. The timber exported had to be checked at each Tahsil, Thanra and Qala through which it passed and the *rahdaris* also had to be marked at each Tahsil, Thanra and Qala. The local administration was responsible; the SFD only needed to supervise matters. If irregularities were reported or brought to light at export, sometimes joint action was taken by the PFD and the SFD and sometimes only the SFD was involved.⁷¹

The Hammer Mark used during Miangul Abdul Wadud's reign was AW and during Miangul Jahanzeb's reign it was JZ⁷², whereas the contractors' used their own registered Property Marks or Trade Marks.⁷³

Generally standing trees were sold to the purchasers, who then arranged for felling. Felling was generally done by axe. The trees were felled without lopping and roping. The logging and conversion into sleepers or scants of different sizes was mostly done *in situ*. For some major contracts, the logs were rolled down through depressions and rolling paths to the main stream and then converted into scantling by power sawing

⁶⁹ Ghani-yur-Rahman, IA, Verbal, Malukabad, Mingawara, Swat, 11 December 2005.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Muhammad Shoaib, IA, Verbal, Makanbagh, Mingawara, Swat, 7 December 2003.

⁷³ For the registered Property Marks or Trade Marks of some of the contractors see the Wali's letters to the Chief Minister NWFP, Governor NWFP, and CS NWFP, dated 2 January 1953, *TARC*, S.N. 60/Swat, F.N. 11/46-F.K.P., Vol. II, Subject: Unauthorised felling of trees from Kalam & Serai Forests.

machines. Occasionally sawn scantlings were slid down the slopes to save labour and the cost of carriage.⁷⁴

2.9 The Royalty

When Miangul Abdul Wadud's position became somewhat secure in the 1920s, he claimed ownership of the forests for the State and at first paid a fixed sum as a royalty on the sales proceeds to the former owners of the forests (or the landowners of the relevant area or the related landowners) and later a fixed share at the rate of 10%.⁷⁵ The same procedure continued during the period between 1947 and 1969.

However, in 1969 before the State merged with Pakistan, the Wali raised the share of the concerned landowners (or former forest owners) to 15%. Moreover, the amount paid as royalty in the sale proceeds was called *raqm-e-mundan* (stumps' amount) and record of its payment (and that of the decisions of any disputes regarding them) was kept in the State registers.⁷⁶ The royalty was paid only for the authorised fellings done by the contractors; the right holders received nothing at all for illicit fellings.⁷⁷

In Swat itself, the royalty was distributed on the *dawtar* and thus on the basis of local landholding rights. In the Swat Kohistan areas of the State, there were different rules for different localities and tribes. These were: *dawtar*, *logay*, and both *dawtar and logay*. *Dawtar* means that the royalty was distributed on the *dawtar* share basis among the *dawtaris* only. *Logay* means that though the *dawtar* was owned by the *dawtaris* in proportion to their shares, the royalty was distributed among all households. The *dawtar and logay* rule meant that a portion of the royalty was distributed among the *dawtaris* only on the basis of their *dawtar* shares and a portion was distributed among all householders on the household basis.⁷⁸ Below there are further details:

In the Chail Valley, the *dawtar* rule was in practice in two villages and the *logay* procedure was implemented in another two. In contrast, in the Bahrain Tahsil on the

⁷⁴ See Khan, *Working Plan for the Forests of Swat and Swat-Kohistan, Swat State (Malakand Agency), (1965–1980)*, p. 31; Khan, *Working Plan for the Lower Indus Kohistan and Buner Forests, Swat State, 1964–1978*, p. 13.

⁷⁵ See Sultan-i-Rome, *Forestry in the Princely State of Swat and Kalam*, chap. 5.

⁷⁶ For example see “Kitab No. 8: Front Cover: Kitab Indiraj Mukhtalif Khatam Shudah, Faisala Jat Az Safha No. 1 Ta Safha No. 347; Kitab Daftar Sher Bahadar Khan Mashir Sahib; Back Cover: Kitab Wazir-e-Mulk Sahib, Faisala Jat, Maurkha 28-9-60 Ta 8-8-70”; “Kitab No. 38: Kitab Wazir-e-Mulk, Mausula 3-9-68 Ta 23-11-70, Faisala No. 1 Sey 70 Tak, Taqsim Raqm-e-Mundan”; “Kitab No. 63: Register Bayanat, Az 5-9-64 Ta 3-7-68”; “Kitab 64: Iqramama Jat Babat-e-Mundan, Az 29-11-1963 Ta 22-6-1968”; “Kitab No. 65: Iqramama Jat, Az 15-7-67 Ta 10-11-70,” passim, *DRRGS*.

⁷⁷ Sirajuddin Swati, *Sarguzasht-e-Swat* (Urdu) (Lahore: Al-Hamra Academy, 1970), p. 53.

⁷⁸ Sultan-i-Rome, “Land Ownership in Swat: Historical and Contemporary Perspective,” in *Land Tenure and Resource Ownership in Pakistan*, eds. Zabta Khan Shinwari and Ashiq Ahmad Khan (Peshawar: Ethno-Botany Project, WWF, Pakistan, 2002), p. 138.

western side of the Swat River, the rules of *dawtar* was applied. However, some minor portions in the forest have been defined a *logay* area for the benefit of those who had no share in the *dawtar*. In the territory on the eastern side of the Swat River, different villages practised different rules. In some villages the royalty was owned only by the *dawtaris* according to their existing shares; in some villages it was distributed both on a *dawtar* and a *logay* basis (in different villages at different rates) so that non-*dawtaris* also benefited; and in a few other territories, the whole royalty was distributed only on *logay* basis.⁷⁹

In Swat Kohistan, the ownership rights in the *dawtar* and *banda* can be sold but the rights of *logay* cannot be sold.

Steps have been taken to regulate the distribution of the amount of royalty of the sales proceeds of the forests among the concerned royalty right holders. Not only has a record of the payments been maintained, but steps have also been taken to ensure that no embezzlement is possible and that the State officials distributing the amount may not take a share of the royalty. This is reinforced by a letter from Mashir-e-Maal, Swat State, to Wazir-e-Mulk, Swat State, in which it has been stated that

By Order of Hizur Wali Sahib Bahadar in future when amount of *mundan* is paid, at first names of the owners of the forest who have a right to a certain amount of *mundan* of the forest must be written down. And the amount is to be distributed in presence of a person of my department, namely Ghani-yur-Rahman, Swat Forest Officer, or Muhammad Zarin Tahsildar [my translation].⁸⁰

2.10 Illicit Cutting and Smuggling

One side of the picture, i.e. the Wali Sahib's orders, decrees and some decisions, and steps for the conservation of the forests are preserved to a large extent in written form, as is evident from the above sections. But the other side – the reality on the ground – is not properly archived or preserved in written form. It thus needs proper and careful documentation and analysis in the light of the available records and the evidences collected through interviews with a variety of persons. It is quite a complex endeavour to explain that there were strict forest rules and control, while at the same time there was illicit cutting, exploitation and smuggling; and to explain why and how, in spite of the illicit cutting and smuggling, the forests still remained conserved to a great extent during the State period.

⁷⁹ Ibid.

⁸⁰ Wazir-e-Maal, Riyasat-e-Swat, to Wazir-e-Mulk, [Riyasat-e-Swat], 30 May 1968, *DRRGS*, B.N. nil, F.N. nil; copy also in *PCA*.

It is commonly said that there was no illegal cutting of forest trees and smuggling of timber in Swat State era during the Wali Sahib rule. This opinion is found especially among supporters and fans of the Wali Sahib and also in the Pakistani official and Forest Department circles. We do, however, come across the claim and contention in statutory sources and also made by a number of people in the course of interviews, discussions and general conversation that there were illicit fellings and smuggling of both timber and firewood; and that the Wali Sahib himself was using the forests to make obligations to people, for political gains and favouritism.

Moreover, the Swat State's high rank officials and the Wali's maternal uncles and friends were involved in the forest contracts and operations. It was therefore practically impossible for the staff of the State Forest Department to report any factual position about cutting more than the granted trees by such persons and also the smuggling of illicitly extracted timber. Moreover, the Wali Sahib has some handicaps in taking action against people who cut more than the allotted or granted trees and who smuggle the timber.

Illicit cutting and smuggling were no secret to the Wali Sahib and were done with the consent and collaboration of staff from the forest, administrative and law enforcement departments. This contention can be proved by the decree of the Wali Sahib that "it is my Order that if a Thanradar, Subidar or Jamadar allows sleepers to be transported without *rahdari* and the concerned officer should find him doing so, this local officeholder should be dismissed from service [my translation]".⁸¹

Although the said decree speaks only of the involvement of Thanradars, Subidars and Jamadars in the smuggling of the timber, the smuggling was also carried out with the consent and collaboration of the Tahsildars and Hakims posted in the Tahsils and Hakimis situated on the routes by which the timber used to be smuggled. The technique and procedure adopted was for the concerned Tahsildars, Hakims, Thanradars, Subidars, and Jamadars to receive an agreed amount per truck loaded with smuggled timber and to allow its passage from the jurisdiction of his Tahsil, Hakimi, Thanra, and Qala.

That was why the smugglers who used to smuggle timber from far off forests paid more because there were more Tahsildars, Hakims, Thanradars, Subidars and Jamadars involved; while those who were smuggling from the nearer forests paid comparatively less because in their case the Tahsildars, Hakims, Thanradars, Subidars and Jamadars involved were fewer in number. In other words, smuggling from the nearer forests was cheaper than from the far-off forests. For example, smugglers of timber from the Malamjaba area only had to pay to the Tahsildar Babuzi and Landakay and the

⁸¹ "Da Zama Hukam Dey," Signed by His Highness Hukamran-e-Swat, 27 April, 1968, *ibid.*; copy also in *PCA*.

Thanradars, Subidars and Jamadars on the way. They paid less compared to someone smuggling from Madyan or Bahrain. The smuggling in this way was done at mid or late night-time to be kept secret from the public and also to dodge the concerned Hakims, Tahsildars, Thanradars, Subidars and Jamadars to the greatest possible extent. In this way, the amount required to pay them for allowing transit of the illicitly extracted timber was saved, and the *rahdaris* were not marked and could thus be used afterwards for the transit of more timber.⁸² The second smuggling technique was that the holders of *rahdaris* (received for transporting/exporting legally extracted timber) used to pay the Tahsildars/Hakims/Thanradar or whoever so that they did not mark the *rahdaris* required of them under the law. In this manner, a *rahdari* issued for example to transport/export the timber extracted from one tree was used to transport/export the timber extracted from many trees, or *rahdari* issued for carrying one truck full of timber was used to carry many trucks full of timber. Another technique was to have false *rahdaris* made by 'greasing the palms' of the relevant clerks at the Wali Sahib's office.⁸³ Yet another technique was to make *rahdaris* by forging the Wali's signature.⁸⁴

Moreover, *rahdaris* were also issued by the Wazi-e-Maal and he signed contracts for fellings as well. It was using the *rahdari* issued by the Wazir-e-Maal that the Sipah Salar⁸⁵ made a bid to export timber via Ambela instead of Landakay, which was a failure.⁸⁶ As these persons had their friendly relations and common interests they collaborated with each other. That was why, alongside the legal, illicit fellings and timber smuggling were the logical outcome.

Not only was the forest staff not in a position to report irregularities in such cases, but neither was the Wali Sahib himself in a position to take action against such persons due to his fear of the potential negative effects for him. This is illustrated by the following example. The Government of Pakistan did not recognise the occupation of Kalam by Swat State⁸⁷ and therefore considered the Wali's forest operations in the tract as unauthorised. They therefore impounded the timber extracted from Kalam at Landakay,

82 Tajunu (In-charge, District Mal Khana, at Saidu Sharif, Swat), IA, Verbal, Saidu Sharif, Swat, 27 February 1997. Tajunu stated that Rs. 10/- per truck had to be paid to each Tahsildar and hence more payment was necessary when more Tahsils were involved; and that people always tried to dodge and deceive the Tahsildars to avoid making payments to them. Tajunu statement got strength and support from a narrative of Abdul Halim Advocate about a Tahsildar posted in Charbagh at that time (Abdul Halim Advocate, IA, Verbal, Gulkada, Swat, 9 June 2004).

83 The contention is based on the interviews of a number of persons personally interviewed by the author.

84 Saifullah Khan, IA, Verbal, Mingawara, Swat, 7 January 2006.

85 Sayyad Badshah Gul, who belonged to the powerful and influential family of the Sayyads of Sar-Sardaray, commonly called the Miangan of Sar-Sardaray.

86 See *TARC*, S.N. 60/Swat, F.N. 11/46-F.K.P., Vol. II, Subject: Unauthorised felling of trees from Kalam & Serai Forests.

87 See Sultan-i-Rome, *Forestry in the Princely State of Swat and Kalam*, chap. 6.5; and chap. 4 hereinafter.

on the border of Swat State and Malakand Protected Area. The impounded timber was recorded and kept in the custody of the Pakistani forest staff at Landakay, which also contained timber owned by Sipah Salar of Swat State. The Sipah Salar, on his own, took back a portion of the impounded timber and this was reported by the relevant Provincial Forest Department staff member. To cut the long story of how this became a great issue between Swat State and Pakistan and how it was finally resolved short,⁸⁸ the Sipah Salar's actions show that powerful people were involved in the forest contracts, operations and exploitation.

Another example is that of the Chief Secretary of the State, who also used to take forest contracts. The following note of Governor NWFP is sufficient to endorse this position in his respect. The Governor, Qurban Ali, writes that:

Recently the Ruler of Swat discussed with me the cutting of timber from Kalam forests for securing sufficient funds to run the administration of Kalam. He said that if the Central Government were not in a position immediately to grant funds, this was a source which we could tap. While telling him that we will see what can be done in the matter, I reminded him that if trees have at all to be cut and cleared on contract basis, his Chief Secretary should have no hand in the matter of contract, etc. because there are already complaints that by unfair means he has been able to collect large amounts of money while employed in the State and that he has, in fact, been able to put up a textile mill of the value of over rupees fifty lakhs in the Hazara District.

This morning Mr Atullah, the Chief Secretary, came to see me and said that he wished to discuss the Kalam forest. I told him that these matters should be discussed by him with the Chief Secretary and not with me. Before he left I told him what I had told the Ruler, namely that if Government decides to sell timber from Kalam forest, he should have nothing to do directly, or indirectly through his sons, etc. with the contract of felling and selling the trees. I advised him that as there are already complaints of his conduct as a public servant in the Swat State, he should either retain his post as Chief Secretary and do no business in the State or he should give up his post and go straight into business.

My purpose in writing this note is to leave it on record, so that when the question of Kalam forest is decided, it should be made a specific condition that the Chief Secretary or any other public servant in the State shall have nothing to do with this contract.⁸⁹

⁸⁸ For details see *TARC*, S.N. 60/Swat, F.N. 11/46-F.K.P., Vol. II, Subject: Unauthorised felling of trees from Kalam & Serai Forests, and also S.N. nil/Swat, F.N. 11/46-F.R.P., Vol. II, Subject: Unauthorised felling of trees from Kalam & Serai Forests, *ibid*.

⁸⁹ "Secret," Sd./- Qurban Ali, Governor NWFP, to CS [NWFP] (By Name), dated 24 March 1955, *TARC*, S.N. 58/Swat, F.N. 21-S/48, Subject: Annexation of Kalam by the Wali of Swat.

Interestingly, the Governor's quoted instruction to both the Wali Sahib and the Chief Secretary of Swat State, as well as to the Chief Secretary of the Province had no effect to the extent of either making the said condition part of the Agreement made with the Wali about the administration of Kalam nor did the Chief Secretary stop taking forest contracts. Although the Chief Secretary of the State was not granted contracts for trees, afterwards, in his own name, in the Kalam forests, according to Muhammad Shoaib, the trees of the Bahrain area forests were reserved for him and the Sipah Salar, meaning that trees in the said area for commercial fellings were granted only to them. Usually dry trees were allotted to the Sipah Salar and green to the Chief Secretary.⁹⁰ The aforesaid instruction of the Governor has been disregarded to the extent that the Chief Secretary had been indirectly given contracts in the Kalam forests by granting them in the name of his son Sanaullah.⁹¹ The Bahrain forests were adjacent to those of Kalam due to which the timber extracted by illicit fellings in the Kalam area forests were transported and smuggled on the *rahdaris* issued for the timber extracted from the Bahrain area forests.⁹²

Another Governor of the Province, Khwaja Shahabuddin, while expressing his views about Col. Rahim's suggestion that "the Wali should be permitted to choose contractors for the export of timber from Kalam without any check or hindrance," has also written that:

I am strongly against this suggestion. The selection of the contractors should not, in my opinion, be left entirely to the Wali. It is common knowledge that he is using his own Chief Secretary, his Sipah Salar and some of his personal friends as contractors. If we were to acquiesce into this practice, we would become party to the transaction and would have to bear the odium of serious criticism from public. The better way, therefore, would be to adopt the normal practice of auction to the highest bidder. The final acceptance of the contractor will still have to be approved by the Local Administration, as in the case of contracts assigned by the Wali for working the State forests. This will safeguard the position of the Wali as well as of the Government of Pakistan [my italics].⁹³

In his book *Yusufzai*, published in 1960, Allah Bakhsh Yusufi has also criticised the fact that the export of timber from the State is done neither through a department of the State nor any external agency, but that a minister of the State is running the business in his personal capacity. Despite being a minister, he personally gets the felling contract for the forests and remains involved in this personal trade along with his official duty.

⁹⁰ Muhammad Shoaib, IA, Verbal, Makkanbagh, Swat, 7 December 2003.

⁹¹ For example see *Progress Report on Forest Administration in West Pakistan (PRFA-WP) for the year 1961-62*, p. 316; *PRFA-WP for the year 1963-64*, pp. 116, 119.

⁹² Ghani-yur-Rahman, IA, Verbal, Malukabad, Mingawara, Swat, 11 December 2005.

⁹³ K. Shahabuddin, Governor NWFP, to Col. Abdur Rahim, Secy to GP, MSFR, Karachi, D.O. No. 48/GH, 18 March 1953, *TARC*, S.N. 58/Swat, F.N. 21-S/48.

One can only be amazed that a minister in a state like Swat, especially in the twentieth century, can be on official service and conduct trade at the same time.⁹⁴

Besides, the Wali Sahib's friends, favourites, maternal uncles and such like were granted contracts of fellings because, as has been stated earlier, there was no bidding process but the Wali Sahib gave the contracts at his own discretion. This meant that the same people remained involved in the business and therefore made connections, relations and friendships both in the Forest Department and in administration circles – which made it easy to make deals to fell more trees as well as their consequent export or transit.⁹⁵

The Wali Sahib used the forests to oblige people he wanted to favour by granting them trees at concessional rates. They then not only sold the timber extracted at full market rates but generally also exploited more than the granted trees, and they used to bring the extra timber on the basis of the *rahdaris* issued for the timber granted in the manner described above.⁹⁶

The forests were used for political gains not only by making grants to the State residents but also to outsiders in the way that trees were granted, at concessional rates, to those who the Wali Sahib deemed to be useful in countering the anti-Wali or anti-State propaganda. For example, the Wali used to grant trees to two religious figures from Mardan so as to counter, through them, both the anti-Wali and anti-Swat State propaganda of Jamat-e-Islami. Twenty trees were also once granted to a person from Radio Pakistan Peshawar for the said purpose. They had to sell the timber extracted at concessional rates at the full market rate in the downstream areas and thus made money,⁹⁷ while the Wali Sahib benefited from their pro-Swat State and pro-Wali propaganda outside the State.

2.11 Forest Management Service

On the administrative and control side, the previous system and arrangements continued. The Wali wielded all the power over the forests, especially after 1947 under the Instrument of Accession and then under the Supplementary Instrument of Accession, 1954. However on the Pakistani side, its Forest Department was also involved to the extent that it collaborated in the preparation of the Working Plans, the

⁹⁴ Allah Bakhsh Yusufi, *Yusufzai* (Urdu), (Karachi: Muhammad Ali Educational Society, 1960), pp. 488-89.

⁹⁵ Deduced from the interviews conducted by the Author. Also see Swati, *Sarguzasht-e-Swat*, pp. 37-39, 109.

⁹⁶ Deduced from the interviews conducted by the Author.

⁹⁷ Muhammad Shoaib, IA, Verbal, Makanbagh, Mingawara, Swat, 7 December 2003.

marking of trees to be harvested for commercial purposes under the Working Plans, and to some extent in the export of timber.

In the forest management set-up within the State, the Wali wielded all the power and he himself controlled it. However, in the reign of Miangul Jahanzeb, the Wazir-e-Maal was in charge of the affairs of the forests under the Wali until 1965 and later this task was taken over by the Mashir-e-Maal. Under the Wazir-e-Maal/Mashir-e-Maal, the Tahsildars and Hakims were responsible also for the administration and affairs of the forests at local level, besides staff of the Forest Department (see below). The Tahsildars and Hakims also had the power and the function of granting trees in the areas under their respective jurisdictions under the *local quota* to meet the bona fide needs of the local population. However, only the Wali had the power to grant Deodar trees.⁹⁸

Even the supervision of the Foresters has been made duty of the Tahsildars and Hakims. A decree of the Wali Sahib states that supervision of the Sardaftars, and Foresters will be the responsibility of the Amils. If fraud/embezzlement by the Sardafdar or Forester should come to the surface and the Amil has made no report of the matter, then he will be asked to provide an explanation. In case of carelessness (on the part of the Amil), he will be punished.⁹⁹

The Swat State had its Forest Department with its own staff from about 1946-1947. At first an officer called the Head Forester headed the State Forest Department (SFD). There were 7 or 8 local Foresters under him who were posted at Tahsil level. However, according to Muhammad Shoaib, in 1964 the Wali inducted two Forest Officers into the SFD and also recruited two Range Officers. Both these Forest Officers and Range Officers and the other staff employed in the SFD were employees of Swat State, were paid by the State and were to manage and supervise the forests on the State's behalf. There were no Forest Guards. Some Foresters (three in number) were, however, named Central Foresters. The staff-members of the SFD were recruited by the Wali himself, were liable to dismissal and promotion by him and were answerable to him until the merger of the State. The Forest staff had to supervise the cutting and operations on the spot so that illegal fellings could not happen.¹⁰⁰

However, according to a letter of the Wazir-e-Maal, in 1963 the SFD consisted of 1 Range Officer, 28 Foresters and seven Forest Guards for the Swat State areas. Four Forest Guards were provided for the Kalam forests. All of them looked after the forests

⁹⁸ For some of the points also see Khan, *Working Plan for the Lower Indus Kohistan and Buner Forests, Swat State, (1964-1978)*, p. 160; Khan, *Working Plan for the Forests of Swat and Swat-Kohistan, Swat State (Malakand Agency) (1965-1980)*, p. 228.

⁹⁹ See Clause/Paragraph 5 of "Hukam Namah: Da Ushar Mutaliq Ahkam," Signed by Hukumran Riyasat-e-Swat, n.d. (a later written, by hand, No. and date are 10 and 4 January 1960 respectively); also see "Da Ushar Mutaliq Ahkam," Hasbul Hukum Hukumran Riyasat-e-Swat, No. 10, 4 January 1960, *DRRGS*, B.N. nil, F.N. nil; copy also in *PCA*.

¹⁰⁰ Muhammad Shoaib, IA, Verbal, Makanbagh, Mingawara, Swat, 7 December 2003.

under the guidance of the local administrators.¹⁰¹ The head of the SFD was called 'Afsar-e-Jangalat' (Forests' Officer).¹⁰²

An order of the Wali, issued in 1965, specifies the names of the people under whom the work of the forests of the given areas is to be done. They were: (1) Ghani-yur-Rahman for Tahsils of Nikpi Khel, Bar Swat, Bahrain, Madyan, Fatehpur, (2) Shah Jahan for Tahsils of Azi Khel, Maturizi, Babuzi, Aba Khel Musa Khel, Hakimi Buner, Hakimi Khudu Khel, (3) Karim Bakhsh for Shanglapar: Hakimi Alpurai, Hakimi Chakesar, Hakimi Puran, Hakimi Abasind Kohistan.¹⁰³

A circular issued by Wazir-e-Maal's office stated in September 1961 that henceforth each Forester will go around for twenty five days per month in the forests of his jurisdiction and will send a monthly report to the office, in which he will detail that whether illicit cutting has taken place in the area or not. He will take the certificate of his duty from the local administrator. The Forester will have to take leave from Hakim Buner. And the said Hakim will inform the office of Wazir-e-Maal to this effect. This order was for the Foresters of Buner area. Hakim Buner adds that all the Foresters have been informed in this respect and their signatures have been taken to the effect.¹⁰⁴

On the Provincial Government's side, the forests of Swat State and Kalam were made part of the newly created Malakand Forest Division in 1956¹⁰⁵ and were divided into 6 Forest Ranges. The Forest Staff of these Ranges conducted the duty of marking trees meant for commercial fellings only. The staff members of the aforesaid Ranges were employees of PFD and were paid by the Provincial Government.

The said 6 Ranges were the Ranges of Buner, Indus Kohistan, Swat, and Swat Kohistan for the forests of Swat State; and the Kalam Utror and Kalam Ushu Ranges, for the Kalam Kohistan Tribal Area (administered by the Wali of the State on behalf of the Government of Pakistan).¹⁰⁶ Its headquarters were first at Mardan and then at Mingawara. After the separation of Dir and Chitral in 1960, the Malakand Forest Division had to manage seven Forest Ranges, of which four consisted of pure Swat State areas, two of the areas of the Kalam Agency administered by ruler of Swat State

¹⁰¹ See Khan, *Working Plan for the Forests of Swat and Swat-Kohistan, Swat State (Malakand Agency), (1965–1980)*, p. 230; Khan, *Working Plan for the Lower Indus Kohistan and Buner Forests, Swat State, 1964–1978*, p. 162.

¹⁰² Ghani-yur-Rahman, IA, Verbal, Malukabad, Mingawara, Swat, 11 December 2005.

¹⁰³ "Da Landey Likali Shawi Alaqu da Jangalatu kaar bah pah dey Tariqah Keygi," Signed by Humkamran Riyasat-e-Swat, 19 January 1965, *DRRGS*, B.N. nil, F.N. nil; copy also in *PCA*.

¹⁰⁴ "Forester ki Mahwari Duty," *Riwaj Namah-e-Swat*, Comp. Ghulam Habib, No. 453 (dated 27 September 1961), *Az Register Tahsil Daggar*, p. 373.

¹⁰⁵ Khan, *Working Plan for the Lower Indus Kohistan and Buner Forests, Swat State, 1964–1978*, p. 30

¹⁰⁶ *PRFA-WP for the year 1959-60*, p. 69.

and only one, namely Malakand Anti-Erosion Range, was for the Malakand Protected Area.¹⁰⁷

2.12 Swat State Forest Department and Pakistan Forest Department's Relationship

Despite the Wali having sole authority of making rules and regulations and wielding all powers and control in respect of forests, there was continued collaboration with the Pakistani administration and its Forest Department (PFD). Although the Wali issued his own decrees and implemented his own rules and regulations in respect of forest control, preservation, exploitation and conservancy, the PFD had its role in making Working Plans, marking trees in accordance with the Working Plans for commercial harvesting and the export of timber. That was why a Pakistani official report stated in 1950 that “the staff of Forest Department continued to assist the authorities of Swat, Dir and Chitral States in working their forests” and “Swat State exported 254,155 cubic-feet of timber yielding a duty of Rs. 23,884 to the Government” in the year 1949-50.¹⁰⁸

One obvious reason for the collaboration of the Swat State ruler with the PFD was that the State had no trained forest staff to prepare the Working Plans and mark the trees. Moreover, the recruitment of such staff in the required number also meant the State would have to bear an extra monetary burden to provide the infrastructure for offices and the payment of salaries and allowances, to keep records and such like.

Besides, in case of refusing collaboration with the PFD the Pakistani Central and Provincial governments could ban entry of the timber extracted from Swat State forests into the territories under their control, which were the main market for the said timber. This would have created an anomalous situation for the State because there was no commercial market for timber inside the State, as the bona fide needs within the State were already met by the State with the provision of the required timber either free or at concessional rates. In such a situation, both the State and the concerned people would have been deprived of the income from the rich forest resource and wealth – a situation which neither the State nor the people concerned could afford. The impounding of timber extracted from Kalam area (see chapter 4, section 4.3) is testimony to this.

Due to the collaboration, the State not only got the required services without bearing the financial burden and at the same time also averted the threat of a ban on the export of timber extracted from Swat State forests into territories under the administrative jurisdiction of both the Central and Provincial governments. On the other hand, both the Central and Provincial Governments were finally satisfied that the State forests

¹⁰⁷ *PRFA-WP for the year 1961-62*, p. 312; *PRFA-WP for the year 1963-64*, p. 114; *PRFA-WP for the year 1964-65*, p. 139.

¹⁰⁸ *NWFP-RBA for the year 1949-50*, p. 19.

were worked for commercial purposes under the Working Plans prepared in collaboration with PFD; that the trees for commercial fellings under the Working Plans were marked under the supervision of the PFD; and that the PFD had some control over exports of timber.

It has been claimed that Swat State's forests were "managed since 1950 by the [Provincial] Forest Department under the Working Plan approved by the Local Administration."¹⁰⁹ However, although the PFD has had its role in the preparation of the Working Plans, it held practically no authority in the management of the State's forests. Besides the role in preparation of the Working Plans it was only "entrusted with the job of marking for fellings by herh [sic, *ہرھ*] contractors," states M.A. Qadeer Khan, and "held a nominal control over the export of timber."¹¹⁰ This is also evident from the procedure for timber meant for export given in section 2.5.3 above (see also section 2.8).

The aforesaid claim about the management of the Swat State forests by the PFD has also been put right by Bashir Ahmad in the statement that with the creation of the Malakand Forest Division in 1956-57 "*the technical management* of these forests was transferred to the [Provincial] forest Department [my italics]."¹¹¹

The role of the PFD was minimal because the forests were the Swat State subject under both the Instrument of Accession, 1947, and Supplementary Instrument of Accession, 1954. It is also minimal due to the handicaps faced by the Pakistani Government in the implementation of its laws if extended to the State, because the authority for implementation rested with the State. This handicap is also evident from the correspondence between Pakistani officials about the question of extending the Forest Act, 1927 to Chitral State as a means of facilitating the preparation of Working Plan for the Chitral forests. The following extract from a Memorandum of the Political Agent, Dir, Swat and Chitral, to Commissioner, Peshawar Division, also makes many facets of forestry matters in the Frontier States of Swat, Dir and Chitral clear.

5. The Frontier States are competent to legislate on the subject of forestry under their Interim Constitutions. They can also pass executive orders regulating fellings etc. At the moment, all the three States have imposed restrictions on the exploitation of the forests. If the Forest Department feel that these restrictions are not enough, they can suggest suitable legislative or executive measures to the States and the States shall be too glad to implement them. A law or an order made by the State can be enforced far more effectively than one imported from outside.

¹⁰⁹ *NWFP-RBA for the year 1954-55*, p. 36; *NWFP-RBA for the year 1955-56*, p. 35; *NWFP-RBA for the year 1956-57*, p. 38.

¹¹⁰ Khan, *Working Plan for the Lower Indus Kohistan and Buner Forests, Swat State, 1964-1978*, p. 30.

¹¹¹ Bashir Ahmad, *Revised Working Plan for Ranolia-Dubair Forests of Kohistan Forest Division (1985-86 to 1999-2000)* (Peshawar: Printed at Nizam Printing Press, n.d.), p. 25.

6. What I fail to understand is the insistence on the extension of the Act to Chitral forests when it has not been found necessary to apply it to Swat and Dir where the forest wealth is far more extensive and where working plans are also under preparation.
7. I am afraid that suggestions to extend certain Provincial or Central laws to the Frontier States are often made without giving full thought to different aspects of the problem.
8. In the Frontier States the law enforcing agency is not the [Provincial and Central] Government but the state administration. Unless the [Provincial and Central] Government has its own law enforcing machinery it cannot ensure the enforcement of these laws. This state of affairs must continue as long as the States are in existence. There would, therefore, be no point in extending laws which we are not in a position to implement ourselves. The policy so far has been to persuade the States to make such enactments as are in the interest of the development of the areas and to leave it to the states to implement these enactments. The same policy should apply to forestry.
9. The extension of laws is likely to create the impression that it is a prelude to a complete take-over of the administration by the Government. This is an impression which we must avoid to create.
10. I am not in favour of the extending the law to any of the states much less extending it to just one of them. The objectives for which the extension of law is proposed can be secured by legislation or executive action by the States themselves.¹¹²

This extract not only makes clear the legal, administrative and executive position and status of Swat State and Pakistan regarding Swat State's forests, but also clarifies why the role of the PFD remained limited and marginalised in the affairs of Swat State's forestry; why the Swat State rulers practically wielded and exercised all the powers; why the Provincial forest laws were not extended to the State; why it was deemed appropriate to leave the State rulers to manage the State forests according to their own rules and regulations; and why, in spite of the creation and maintaining of separate Forest Division for the areas of the Agency of Dir, Swat and Chitral and a number of Forest Ranges for Swat State areas, the PFD role in Swat State forests was limited to assistance in the preparation of Working Plans, marking of trees to be felled under the Working Plans and to some nominal control over the export of timber.

¹¹² PA, DSC, to CPD, No. 906/X/97 (A.2), 13 February 1962, *TRCA*, Chitral Files, B.N. 27, S.N. 703, F.N. 212.S.St. I, Subject: Economic Survey of Tribal Areas – Development of Forests in Chitral State.

3 Post-Swat State Period (1969-2005)

Swat State came to an end in 1969 after having survived for more than fifty-four years, i.e. from April 1915 till August 1969.¹¹³ It was on 28th July 1969 that General Yahya Khan, Chief Martial Law Administrator and President of Pakistan, announced the merger of the three Frontier princely States of Chitral, Dir and Swat. The formal end, however, took place on 15th August 1969 with the promulgation of *Regulation I of 1969*, under which the Wali was divested of his powers and authority.

Although Regulation I of 1969 is generally called and referred to as Merger Regulation, it neither has been titled so nor did it speak of the merger of the States of Chitral, Dir and Swat. It has been titled as “Dir, Chitral and Swat (Administration) Regulation, 1969”, stating that “a Regulation to provide for certain administrative changes in the Tribal Areas comprising the former States of Dir, Chitral and Swat.” The Regulation speaks, under Article 3, of bringing an end to the Rulers of the said States exercising powers and performing functions and refers to the said States as “the former States of Dir, Chitral and Swat.”¹¹⁴

In the Interim Constitution of 1972, the areas of the States of Dir, Chitral and Swat have been referred to, in Article 260 (a) (ii), as the former States of Chitral, Dir and Swat, while defining the “Tribal Areas.”¹¹⁵ The areas of the former States of Chitral, Dir and Swat were made, after the promulgation of Regulation I of 1969, the districts of Chitral, Dir and Swat respectively for administrative and related purposes; and the Kalam area, formerly an Agency administered by the Wali as Administrator on behalf of the Government of Pakistan, was added to the areas of former State of Swat which now became Swat District.¹¹⁶ To that effect, while defining the “Provincially Administered Tribal Areas,” the former States of Chitral, Dir and Swat and the Tribal Area of Kalam were mentioned, under Article 260 (b) (i), as “the districts of Chitral,

¹¹³ For the factors that contributed to the merger or an end of Swat State see Sultan-i-Rome, “Swat State under the Walis (1917-69)” (Ph.D. dissertation, Department of History, University of Peshawar, 2000), chap. 9.

¹¹⁴ See Regulation I of 1969, (Dir, Chitral and Swat (Administration) Regulation, 1969), in *PLD*, Vol. 22 (1970), West Pakistan Statutes, pp. 1-2.

¹¹⁵ See “The Interim Constitution of the Islamic Republic of Pakistan” in *PLD*, Vol. 24 (1972), Central Statutes, p. 279.

¹¹⁶ Gul Wali Khan states that the districts of Chitral, Dir and Swat were created under Regulation I of 1969 (see Gul Wali Khan, *Land Commission: Manual of Land Reforms*, (Peshawar: Printed by Manager, Stationary & Printing Department, NWFP, 1979), p. 35. The said Regulation, however, did not mention the creation of the said districts, but says only that the area of the States of Dir, Chitral and Swat will be constituted in administrative units (see section 3.1 below).

Dir and Swat (which include Kalam).”¹¹⁷ The same status has also been retained under Article 246 (a) (ii) and (b) (i) respectively of the Constitution of 1973.¹¹⁸

But in the succeeding Ordinances, Regulations and Notifications till date, the said areas are either mentioned as the Provincially Administered Tribal Areas of Dir, Chitral, Swat including Kalam, or as the Provincially Administered Tribal Areas of Chitral, Dir, Swat, Kalam – in spite of the separation of Buner and Shangla from Swat District and their making separate districts, in 1991 and 1995 respectively.

Therefore, in the present day Buner and Shangla districts, there is a legal void because neither of them was mentioned in the Constitution by amendment(s) made therein to that effect, nor their mention in subsequent notifications, rules and regulations.

The Indus Kohistan portion of the former Swat State and then Swat District was separated from the District, by the Constitution (Sixth Amendment) Act, 1976 (84 of 1976) with effect from 1st October 1976 and was made part of the newly created Kohistan District. Thus neither Swat District nor Swat includes that area in the subsequent Notification, Regulations and Ordinances.

3.1 General Land Ownership issues

Before further detailing the changes that occurred in the administration of forests as a consequence of the State merger, a description of the broader changes in land ownership regimes is required. This is necessary as access to forests is closely related to land ownership.

In this regard, three issues are described in the subsequent sections: first, the disputes that arose regarding the land property in the post-State period; second, the process of land settlement introduced by the Provincial Government; and third, the consequences for land ownership of the introduction of sharia laws to the study area.

3.1.1 Disputes Regarding Land in the Post-State Period

The situation of the land ownership remained under control to a greater extent in the Swat State days, but the absence of land settlement on modern lines led to disputes over land ownership after the end of the State in 1969. At this point it is worth mentioning that Miangul Abdul Wadud alias Bacha Sahib, who ruled Swat State from 1917 until

¹¹⁷ “The Interim Constitution of the Islamic Republic of Pakistan” in *PLD*, Vol. 24 (1972), Central Statutes, p. 279.

¹¹⁸ See Muhammad Munir, *Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan, 1973*, ed. Mian Bashir Ahmad, Vol. 2, [Art. 185–Subject Index] (Lahore: P.L.D. Publishers, n.d.), pp. 1359-60.

1949, owned extensive land property that he had inherited from his ancestors, the *serai* lands of his grandfather, Akhund Abdul Ghafur alias Saidu Baba. These lands were not subject to any dispute. He did however add much more land to the inherited holdings during his rule. At the same time he also possessed property as Ruler of the State, and gradually there was no discrimination made as to which he possessed as Ruler of the State and which land he owned as a private person.

In December 1949, Miangul Abdul Wadud abdicated in favour of his son and heir apparent Miangul Jahanzeb, alias Wali Sahib. He not only relinquished the State authority to Miangul Jahanzeb but also the control over the property which he held in the capacity of ruler – but which actually belonged to the State. Miangul Abdul Wadud however not only retained the remaining property as his private property but also laid claim to land upon which State buildings were constructed and which continued to be used by the State.

As stated above, Miangul Abdul Wadud added much more land to the inherited holdings during his rule. He claimed that these lands became his personal property by way of purchase and sale deeds. But most of the affectees claimed to have been deprived of their lands either through grabbing or pressure from the State machinery. Hence, there were great hue and cries, even before the merger of the State, that Miangul Abdul Wadud has deprived people of their properties through coercive methods. The same kind of hue and cry was also raised against other powerful and influential figures of the State era who remained favourites and allies of the rulers.

In this scenario, when the State was brought to an end in 1969 and the ruling family lost power, authority and control, those whose lands were occupied by Miangul Abdul Wadud and other influential figures stimulated complaints. Moreover, the aggrieved persons also attempted to regain the lands per force. On top of this, some of the tenants also claimed as their personal property the ex-ruler's - and also other people's - land on which they were tenants at the time.

To resolve the crises, the Government of the North-West Frontier Province (NWFP) constituted a Commission, named *Dir-Swat Land Disputes Enquiry Commission*, in October 1970 vide Notification No. 66/SO (Spl) HD/70 dated 8th October 1970. This Commission was required, *inter alia*, “to enquire into and identify the nature and extent of agrarian problem in Swat District with special reference to the property disputes between (a) the Wali and the ousted claimant owners, and (b) the land owners and the tenants.”¹¹⁹ Later, further terms of reference were added to the Commission’s work vide Notification No. OSD/SO/HD/70 dated 6th January 1971, which, *inter alia*,

¹¹⁹ “Working Paper on the Report of Swat Land Commission,” *GSNWFP*, B.N. 28, S.N. 234. Also see “Minutes of the Meeting held in the Government House Peshawar on 11 August 1972, at 11. A. M. under the Chairmanship of the Governor, NWFP, Peshawar,” *ibid*.

included the task of determining what was Swat State property and what was the private property of the ex-Wali/Bacha Sahib.¹²⁰

The aggrieved persons and tenant claimants filed claims before the Commission. An official statement put the total number of claims and cases filed in relation to land property disputes in Swat at 495, of which all 469 claims were against the ex-ruling family.¹²¹ The number did however increase later on.

The Gujars and other tenants also tried to take advantage of the new set-up and of the Pakistan Peoples Party's slogans and announcements, and hence started to claim ownership of the lands on which they were tenants. Even some of those who had sold their lands of their own will reclaimed the sold lands by pleading that these had been confiscated or taken per force.¹²² Some age-old land disputes were also renewed.¹²³ These disputes aggravated the situation in Swat and caused armed clashes that not only culminated in losses of lives and property but worsened the situation of law and order.¹²⁴

Steps were taken to expedite the Dir-Swat Land Dispute Enquiry Commission's work. The Commission did the required work and submitted its Report and recommendations to the Provincial Government. The Working Paper conveyed to the members of the Committee who were to attend the meeting on 15th March 1972 to discuss the Commission's recommendations that:

The Commission has gone into each and every claim and every issue on the basis of whatever evidence could be made available to it. It has been a painstaking job carried out efficiently and competently. At this stage examination of each and every recommendation by another authority, whether in the Provl. [Provincial] or in the Central Government, would not be desirable. Besides, such a step is likely to re-open all the controversies. Therefore, it is important that we make up our mind once for all and accept all the recommendations of the Commission in toto.¹²⁵

It was further suggested that full implementation was important and therefore the matter should stand closed after being accepted and announced by the Government; no further enquiry or probe should be made into the case of disputes that had not been settled thus far.¹²⁶ But the crux of the matter was the proper implementation because,

¹²⁰ See "Working Paper on the Report of the Swat Land Commission," *ibid.*

¹²¹ *Ibid.*

¹²² For an overview of and factors behind the land ownership disputes see Gul Wali Khan, *Land Commission: Manual of Land Reforms*, pp. 35-36.

¹²³ Sirajuddin Swati, *Zamshudah Qabaili Riyasatu kay Masail* (Urdu) (Mingawara, Swat: By the Author, n.d.), p. 17.

¹²⁴ For examples of such incidents and losses see the reports in *GSNWFP*, B.N. 10, S.N. 84.

¹²⁵ "Working Paper on the Report of Swat Land Commission," *ibid.*, B.N. 28, S.N. 234.

¹²⁶ *Ibid.*

according to the Working Paper itself, “the paper acceptance of the recommendations” was “a very different matter than the actual implementation.”¹²⁷

The Provincial Government sent the Report and recommendations of the Commission, with minor changes, to the Central Government for the approval of the President. Upon approval of the Report and its recommendations by the President, two Martial Law Regulations (MLR), i.e. No. 122 and No. 123 of 1972, were promulgated on 11th April 1972¹²⁸ for the Report to be implemented:¹²⁹

- *MLR No. 122 of 1972* was meant for notification by the Provincial Government that all property held by the ex-ruler in his capacity as ruler was to be devolved to the Provincial Government, and all personal property of Miangul Abdul Wadud’s was *inter alia* to be subjected to the claims of the private individuals.
- Under *MLR No. 123 of 1972* special machinery was provided for the settlement of the claims of private individuals against the ownership of the ex-ruler and other landlords.¹³⁰

In pursuance of MLR No. 122 of 1972, it was notified on 15th September 1972 which property belonged to the ex-State and which was the ex-ruler’s personal property.¹³¹ The declared personal land property of the ex-ruler was now subjected to the decisions of the claims of private individuals against his ownership, for which a special mechanism was provided under MLR No. 123 of 1972.

But while private individuals’ claims and cases against the ownership of the land property of the ex-ruler were yet to be settled under MLR No. 123, the Land Commission, NWFP, decided that the new regulation related to land reforms, i.e. *MLR No. 115 of 1972*, which was promulgated on 11th March 1972,¹³² was also to be implemented in the districts of Dir, Swat and the Protected Area of Malakand Agency. For this purpose, the provision of MLR No. 115 was extended to Swat on 7th November 1972, and a notification was issued asking the landowners concerned to fill in declaration forms for their lands by 7th December 1972.¹³³

¹²⁷ Ibid.

¹²⁸ For MLR No. 122 and No. 123 of 1972 see Khan, *Land Commission: Manual of Land Reforms*, pp. 128-30.

¹²⁹ “Minutes of the Meeting held in the Government House Peshawar on 11 August 1972, at 11. A. M. under the Chairmanship of the Governor, NWFP, Peshawar,” *GSNWFP*, B.N. 28, S.N. 234.

¹³⁰ See Khan, *Land Commission: Manual of Land Reforms*, pp. 128-30.

¹³¹ See Notification, No. 10/16-SOTA-II/72-1521, 15 September 1972, Government Gazette, Extraordinary, HTA&LGD, Govt. of NWFP.

¹³² For MLR No. 115 of 1972 see Khan, *Land Commission: Manual of Land Reforms*, pp. 80-98.

¹³³ Khan, *Land Commission: Manual of Land Reforms*, p. 16.

In this way the personal land property owned by Miangul Abdul Wadud, ex-Ruler of Swat State (who died on 1st October 1971), was not only subjected to claims of private individuals but also to the Land Reforms introduced under MLR No. 115 of 1972. These Land Reforms intended to limit the amount of land individuals were allowed to possess.

As a consequence the problem arose that it was only after the decisions and determination of which of the late Bacha Sahib's land remained free from the claims and disputes of private individuals (following MLR No. 122 and MLR No. 123) that it was to become clear which land was to be subjected to the land reform operation (i.e. MLR No. 115).

In this confused situation, the Deputy Land Commissioner passed a resumption order on 25th August 1975 under MLR No. 115 of 1972, allowing the land equivalent to 24,000 PIUs to the two sons of the late Bacha Sahib, namely Miangul Jahanzeb (the ex-Wali) and Shahzada Sultan-i-Rome, and took provision ownership of the rest.¹³⁴

However, this did not work, because there had been no final decision about a large number of claims of private individuals against the ownership of the ex-ruling family. Due to this, both the sons of the late Bacha Sahib could not take the land of their choice (which would be free from litigation).

By today, not only are disputes with a large number of private individual claimants still *sub judice* in different fora, neither has the choice by the heirs of the two sons of the late Bacha Sahib, under MLR No. 115 of 1972, been settled with the Land Commission. It is worth mentioning that both sides in the disputes accuse each other of delaying tactics and lingering on the litigation. Besides, numerous disputes and claims between other parties and individuals are also *sub judice* in different courts or in different land ownership fora.

3.1.2 The Land Settlement

In August 1971, the Provincial Government decided that "settlement operations should be undertaken w.e.f. the year 1972-73 in Malakand Division where revenue record-of-rights did not exist" so as to bring the area in line with other settled areas of the Province in the matter of land administration and development.¹³⁵ But the work did not proceed in accordance with proposed schedule for various reasons.¹³⁶

¹³⁴ See *ibid.*, p. 19; *PLJ*, Vol. 27 (1999), Peshawar, pp. 23-32.

¹³⁵ OSD, SS, to Secy BoR, NWFP, No. 2101, SOS-103/G, Gulkada 29 December 1986, p. 13, in "Settlement Report Swat District," *DQOGS*.

¹³⁶ For details see *ibid.*, pp. 11-13.

The *West Pakistan Land Revenue Act, 1967 (W. P. Act XVII of 1967)*, along with The *North-West Frontier Province Tenancy Act, 1950 (NWFP Act XXV of 1950)*, was extended to Swat including Kalam on 17th April 1974 vide *Regulation I of 1974*.¹³⁷ The provisions of the said Acts were brought into operation vide Notification No. 31056/Rev:IV/110, dated 9th October 1974, of the Revenue Department, NWFP. The Board of Revenue, NWFP, had already issued Notifications No. 23715, No. 23716 and No. 23717/Rev:IV/110, dated 9th July 1974, directing for the Revenue survey, preparation of record-of-rights, as well as a general assessment of the said area.¹³⁸

In this way the land settlement on modern lines was taken in-hand by the Revenue Department, NWFP, in the then Swat District, i.e. former Swat State and Kalam areas, in 1974. The settlement operation was started first in the then Buner Sub-Division (now Buner District) area in July 1974 and was completed on 31st January 1979. The charge of the record was handed over to DC Swat on 11th March 1980. In the then Alpurai Sub-Division (now District Shangla) area of the then Swat District, the settlement operation was started in July 1976 and completed on 30th June 1980. The record was handed over to DC Swat on 1st July 1980.¹³⁹

In the then Swat Sub-Division (the present Swat District), which also includes Kalam Tahsil area of the then Swat District, the settlement operation was started in April 1980.¹⁴⁰ It was completed on 31st December 1986 and the record was handed over to DC Swat on 1st January 1987.¹⁴¹

Although the Revenue Department tried to carry out the land settlement properly in the Kalam area (present Kalam Tahsil) as well, it could not do so in the required manner due to general resistance by the people concerned. Therefore, in spite of carrying out the field survey with the assistance of local police and Frontier Constabulary and the preparation of the record, under Section 39 (2-a) of the Land Revenue Act, 1967, as far as practicable,¹⁴² the land was filed jointly or collectively in the names of all the shareholders. This however means that the land settlement of Kalam area is in fact impracticable.

¹³⁷ See *PLD*, Vol. 26 (1974), NWFP, Statutes, pp. 62-64.

¹³⁸ OSD, SS, to Secy BoR, NWFP, No. 2101, SOS-103/G, Gulkada 29 December 1986, p. 13, in "Settlement Report Swat District," *DQOGS*.

¹³⁹ *Ibid.*, pp. 13-14.

¹⁴⁰ *Ibid.*, p. 14.

¹⁴¹ Bakht Rashid (District Qanungo, District Swat), IA, Verbal, Gulkada, Swat, 7 January 2006.

¹⁴² OSD, SS, to Secy BoR, NWFP, No. 2101, SOS-103/G, Gulkada 29 December 1986, p. 11, in "Settlement Report Swat District," *DQOGS*.

There is a difference between the settlement entries and the revenue entries.¹⁴³ The settlement entries provide very strong evidence in support of the claim of ownership, while the revenue entries have no evidential value. The essential requirements of the preparation of the *Wajib-ul-Arzs* and the settlement entries are fulfilled only with the participation and cooperation of the people concerned. That was why in the wake of the general populace's boycott of the settlement proceedings, the settlement entries made in Kalam areas had no lasting credit and value. Besides, in this scenario, the said *Wajib-ul-Arzs* and revenue entries are not binding upon the people concerned. Moreover, as the revenue record of the Kalam area is not up to date, it causes a number of problems on the ground.

As far the Indus Kohistan portion of the former Swat State and then Swat District is concerned, no land settlement was carried out because of its separation from the then Swat District in 1976 (see introduction to chapter 3) when land settlement was yet not started in the then Indus Kohistan portion of Swat District; and this is still the case evennow.¹⁴⁴

Interestingly, it was after about twenty years that The W. P. Board of Revenue Act, 1957 (The West Pakistan Act No. XI of 1956),¹⁴⁵ was extended to Swat, including Kalam, on 26th May 1994.¹⁴⁶ This extension was to give legal cover to the settlement process. However, the settlement process has been carried out and completed during the period from 1974 till 1986. Hence, as the law and authority of the NWFP Board of Revenue was not extended to the area the orders, and authority of the said body (esp. the above mentioned Act of 1957) had no constitutional and legal support nor value. It still remains so because the extension in 1994 has not been made with retrospective but immediate effect, meaning from 26th May 1994 onwards.

Anyway, under the settlement plan, the lands were entered in Buner, Shangla, Swat proper and Swat Kohistan including Kalam in the names of those who were the original *dawtaris*, *serai* and other landowners of the concerned lands/village according to the 'formula'. This 'formula' was the decree by the ruler of Swat State, dated 7th February 1950, in the name of Hakim Babuzai.¹⁴⁷ Under this 'formula' the Gujars possess no personal *dawtar* or *serai* land in Swat. In case they should make such claims, they had

¹⁴³ The settlement entries means the entries made and carried out at the time of the settlement but the revenue entries means the entries or changes made or carried out in the revenue record after the completion of the settlement.

¹⁴⁴ See *Constitution of the Islamic Republic of Pakistan*, Vol. 2 [Art. 185 - Subject Index], p. 1360, Article 246 (b) (i) and n 63; *PLD*, Vol. 29 (1977), Central Statutes, pp. 46-47.

¹⁴⁵ For The W. P. Board of Revenue Act, 1957, see M. Mahmood, *A Comprehensive and Exhaustive Commentary on West Pakistan Revenue Act, 1967 with Allied Enactments and Rules* (Baluchistan, N.W.F.P., Punjab & Sind, Amendment and Case Law upto date) (Lahore: Pakistan Law Times Publications, 2004), pp. 501-23.

¹⁴⁶ *PLD*, Vol. 47 (1995), NWFP, Statutes, p. 3; Gazette of NWFP, Extra Ordinary, 26 May 1995, *ibid*.

¹⁴⁷ See Sultan-i-Rome, *Forestry in the Princely State of Swat and Kalam (North-West Pakistan)*, p. 39.

to produce a *Tamasuk* written by a court or twenty notable elder persons as witness in order to prove the claim. It is noteworthy that both the Peshawar High Court and Federal Shariat Court of Pakistan have maintained this decree of the ruler of Swat State.¹⁴⁸ As most of the *dawtar* landowners sold a big chunk of their far-off lands and the hilly terraces to the Gujars after the merger of the State to get rid of the ownership disputes mentioned above, the soldout lands and hilly terraces were thus entered in the names of the Gujar purchasers or whoever they were under the 'formula', and also in the following manner: The claimed lands were entered in the names of the claimant(s) provided the old owner(s) did not object to and dispute the claim(s) or if he/they produced a written legal deed of the dealing of the land.

In cases of disputes of ownership between two villages or *qaums* the settlement officer directed the Afsar-e-Maal (the Assistant Settlement Officer) to decide cases of this nature according to the law and reality on the ground. The decision(s) made and order(s) passed by any competent authority and produced or presented by a person to support his claim were also entertained and maintained. The total land-dispute cases disposed of by the Revenue Officer of Swat Settlement were “3831 in Alpurai sub-division, 3321 in Buner sub-division and 20444 in Swat sub-division – total = 27596.”¹⁴⁹

According to a land settlement report, at the completion of the settlement process in the then Swat District (presently the Districts of Buner, Shangla and Swat including Kalam), the details of the total villages, estates, cultivated and uncultivated area were as given in the following table.

Sub-Division	No. of Villages	No. of Estates	Cultivated Area (Acres)	Uncultivated Area (Acres)	Total (Acres)
Buner	357	167	135,074	290,673	425,747
Alpurai	485	111	102,366	237,249	339,615
Swat	771	219	244,665	1,006,035	1,250,700
Total	1613	497	482,105	1,533,957	2,016,062

Whereas the forest area (included in the above table as part of "uncultivated area") was 79,321 acres (124 square mile) in Buner, 98,497 acres (154 square miles) in Alpurai,

¹⁴⁸ For details of the Order of the Federal Shariat Court see *PLD*, Vol. 45 (1993), Federal Shariat Court, pp. 38-43. For the endorsement of the said decree by the Wali of Swat by the Peshawar High Court see unpublished case, Judgement Sheet, In the Peshawar High Court, Peshawar, Judicial Department, C.R. No. 534 of 2004, in the Case of Juma Gul and others vs. Talizar and others, dated 17 May 2004.

¹⁴⁹ OSD, SS, to Secy BoR, NWFP, No. 2101, SOS-103/G, Gulkada 29 December 1986, p. 13, in "Settlement Report Swat District," *DQOGS*.

and 346,842 acres (542 square miles) in Swat sub-division, total of which become 524,660 acres or 820 square miles.¹⁵⁰

However, in Malamjaba area nearly 5,000 kanal of land was mistakenly left unmeasured during the settlement process. This was later measured in 1991, due to which the total area subsequently increased in acreage. As stated earlier, the landowners in Kalam Tahsil boycotted the settlement proceedings, so separate landholdings had not been identified and all the land of each village had been jointly entered as one or two units in the names of the shareholders but in proportion to their individual shares.

It was the good fortune of the landowners of the then Swat District that M.D. Mahmud of Nawshehra, a settlement officer renowned for his honesty, and Farman Ali Shah Bacha of Ismaila, Swabi, another honest officer, were deputed to Swat for the land settlement in the capacities of “Settlement Officer” and “Assistant Settlement Officer”, respectively.

It can be said that on the whole the settlement was carried out fairly by the Settlement Officers. They did their best to enter the lands in the names of the true legal owners. The present disputes regarding the land ownership pending in the courts are mostly due to vested interests. The present legal system and framework, the non-implementation of the decisions and the law, and the ineffective administrative system also contributed greatly to the land ownership disputes in the present scenario.

3.1.3 Women and Land Ownership

Women were not entitled to inherit land under *riwaj*, in the pre-Swat State era, and the practice was retained even in the State days.¹⁵¹ During the reign of the Wali Sahib, Miangul Jahanzeb, when cases were brought to him, he decided in different ways, for example:

- In some cases he had given some piece of land to the female(s) to this effect: only to receive its yield for her/their sustenance,¹⁵² in other words he has decided the cases in a clear spirit of compromise.¹⁵³

¹⁵⁰ See *ibid.*, pp. 10, 14.

¹⁵¹ See Sultan-i-Rome, *Forestry in the Princely State of Swat and Kalam*, pp. 34, 42, 43.

¹⁵² This means that the female(s) concerned would not be absolute owners of the land and hence could not sell-out or mortgage. They were entitled only to receive the produces till their death (or marriage, or remarriage) upon which the land would revert and go to the males concerned with absolute ownership. This also meant that the males concerned too were not entitled or allowed to sell or mortgage the land until the death (or marriage, or remarriage) of the female concerned.

¹⁵³ For example see No. 88 (dated 11 June 1962) in “Kitab No. 3: Register Faisala Jat Daftar-e-Hizur, Az 16-9-58 Ta 4-8-69”; No. 180 (dated 6 April 1962), No. 268 (dated 14 April 1964), and No. 332 (dated

- In some cases he ordered giving the whole Shari share(s) – the entitlement under Islamic law – of the female(s) to them.¹⁵⁴
- In some cases he allowed the Shari share(s) to be given to the female(s) when his permission was sought for doing so by the males who themselves had wanted to give the Shari share(s) to their mothers, wives, sisters, and daughters, whatever the case was, or to distribute the land according to Islamic Law.¹⁵⁵ In this category of cases, some sought permission to divide or distribute the land in their lifetime in shares according to Islamic law, that is why wives are also mentioned in the preceding sentence.

On the whole, however, the Wali Sahib did not honour and implement Islamic law. This he himself admitted during the proceedings of the Dir-Swat Land Disputes Enquiry Commission by stating that he had not been able to enforce inheritance by Sharia generally.¹⁵⁶ Moreover, he did not issue a general decree to the people to give the females their due share of inheritance as he ordered and decreed in respect of various other issues. Thus during his reign as well, *riwaj* remained the core law and practice in respect of ownership and inheritance of land, which was also supported by the fact that those who wished to give, on their own, the Shari share(s) to the female(s) concerned were required to seek special permission from the Wali.¹⁵⁷

There are also instances where the Wali refused to grant permission to the males concerned to give the females concerned their entitled share of the inheritance.¹⁵⁸ Therefore, the female(s) received share(s) only in cases where the Wali granted permission. This in other words speak that the Wali, in general and as a rule, still

- 20 April 1963) in “Kitab No. 4: Ahkamat Daftar-e-Hizur Hukamran-e-Swat”; No. 174 (dated 7 July 1965) in “Register No. 73: Register Faisala Jat/Iqarnama Jat, Az 29-8-62 Ta 30-10-68,” *DRRGS*.
- ¹⁵⁴ For example see No. 118 (dated 25 January 1961), No. 163 (dated 16 December 1961), No. 165 (dated 20 December 1961), No. 186 (dated 16 April 1962), No. 240 (dated 17 July 1962), No. 257 (11 August 1962), No. 291 (dated 10 October 1962), and No. 309 (dated 7 November 1962) in “Kitab No. 4: Ahkamat Daftar-e-Hizur Hukamran-e-Swat”; No. 174 (dated 17 August 1967) in “Kitab No. 8: Front Cover: Kitab Indiraj Mukhtalif Khatam Shudah, Faisala Jat Az Safha No. 1 Ta Safha No. 347, Kitab Daftar Sher Bahadar Khan Mashir Sahib; Back Cover: Kitab Wazir-e-Mulk Sahib, Faisala Jat, Maurkha 28-9-60 Ta 8-8-70”; No. 3 (dated 29 August 1962) in “Register No. 73: Register Faisala Jat/Iqarnama Jat, Az 29-8-62 Ta 30-10-68,” *DRRGS*. Similarly for some orders enjoining division of the sum received at the death of a deceased as inheritance among both the male and female heirs, in accordance with the Shariat, see No. 38 (dated 14 March 1966) in “Register No. 2: Qism Register, Zamanat Daftar-e-Hizur, Az 8-11-65 Ta 12-8-69”; No. 78 (dated 15 November 1961), No. 156 (dated 13 September 1967) in “Kitab No. 4: Ahkamat Daftar-e-Hizur Hukamran-e-Swat” *DRRGS*.
- ¹⁵⁵ For example see No. 8 (dated 9 September 1962), and No. 203 (dated 4 February 1966) in “Register No. 73: Register Faisala Jat/Iqarnama Jat, Az 29-8-62 Ta 30-10-68,” *DRRGS*.
- ¹⁵⁶ See *Supplementary Report of Dir-Swat Land Disputes Enquiry Commission*, Part II, (Swat), Vol. 3, (Peshawar: Govt. of the N.W.F.P., Home, Tribal Affairs and Local Government Department, n.d.), p. 2.
- ¹⁵⁷ Such applications are evident from the purports of the entries quoted in n. 154 above.
- ¹⁵⁸ Deduced from some of the interviews conducted and information sought by the author from oral sources.

considered the old *riwaj* as the core law applicable to questions of inheritance or land ownership.

3.1.4 Introduction of Sharia Laws

Though Swat State was brought to an end in 1969, the rules, laws, and *riwaj* of the State were kept continued for the time being, under Section 7 of Regulation I of 1969.¹⁵⁹ Thus Swat State's rules and *riwaj* were also retained in respect to land ownership and inheritance. In the post-state period too, there are no uniform verdicts of the courts in respect to females' right to the land in inheritance. In most of the cases, however, this right was not upheld.

On 15th January 1976, the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 (W.P. Act V of 1962), with exception to the proviso of sections 3 and 7, was extended to the then Swat District under the *Provincially Administered Tribal Areas (Application of Laws) Regulation, 1975 (NWFP Regulation I of 1976)*,¹⁶⁰ which granted the right of inheritance to the females. However, section 6 of the said Act prohibits its "retrospective operation" save as expressly provided by the provisions of sections 3, 4, and 5.¹⁶¹

This brought no practical change for the time being, but the extension of this Act along with the Land Settlement carried out by the Provincial Revenue Department in the 1970s and 1980s were no doubt designed to bring change. Although both in the courts and practice *riwaj* was still adhered to generally and in common, in the revenue entries the names of females now had to be entered in the records when land was transferred to the names of the legal heirs in the revenue record.¹⁶² And if the male heir(s) of a deceased wishes to enter all the land in his/their own name(s), he/they was(were) (and is/are still) required to produce the female heir(s) before the Patwari or the court to confirm that she/they do not want to receive her/their legal share of the inheritance and hence has no objection to its being entered only in the name(s) of the male heir(s).

During the 1980s, laws started to be islamised in Pakistan, and this influenced the judges of the Higher Courts. Special protection has, therefore, been provided to the rights of females by the superior judiciary, i.e. Supreme Court and High Courts. A landmark in this respect is the verdict of the Supreme Court of Pakistan given in 1990 in which it held that females should not be deprived of their share of inheritance.¹⁶³ It is worth mentioning that the Supreme Court held the view and delivered the verdict in

¹⁵⁹ See *PLD*, Vol. 22 (1970), West Pakistan Statutes, p. 2.

¹⁶⁰ See Ali, *Laws Extended to the Tribal Areas with Jirga Laws*, pp. 262-64.

¹⁶¹ See Section 6 of the said Act V of 1962 in M. Hakim Amir Bakhsh Awan, *Comprehensive Manual of Family Laws in Pakistan* (Lahore: Comprehensive Publishers, 1999), p. 636.

¹⁶² For revenue entries see n. 143 above.

¹⁶³ For detail see *PLD*, Vol. 42 (1990), Supreme Court, pp. 8-27.

cases where the female(s) was deprived of her inheritance by the male agnate(s) without their having obtained her/their consent. It does not bar the females from bestowing their share on or giving up their share in favour of the male agnates, notwithstanding the social constraints in such cases the Supreme Court refers to.

The Supreme Court has, moreover, not only held the view that depriving females of their inheritance is against the public policy, but has also enjoined upon the judiciary that:

The scope of rights of inheritance of females (daughter in this case [the case in which the decision is given]) is so wide and their thrust so strong that it is the duty of the Courts to protect and enforce them, *even if the legislative action for this purpose of protection in accordance with Islamic Jurisprudence, is yet to take its own time* [my italics].¹⁶⁴

It is worth noting that the said verdict of the Supreme Court of Pakistan has been passed under Chief Justice, Justice Muhammad Afzal Zullah, who himself has no male issue, only two daughters.

The Supreme Court has held the view that if the female(s) are *pardah*-observing (*pardah nashin*) and or illiterate and a deal has been made on the basis of a deed on her/their part, she/they only needs to claim that ‘I am/we are *pardah* observing and illiterate’ and therefore despite there being a registered document or deed from their side in favour of a male(s), the burden of proof will still lie with the beneficiary of the said deed.¹⁶⁵

As all the courts in Pakistan are legally bound to obey the dictum of the Supreme Court of Pakistan, under Articles 189 and 190 of the Constitution of the Islamic Republic of Pakistan, 1973,¹⁶⁶ no court can find against the judgment of the Supreme Court in cases concerning a female’s share of inheritance. Because the Supreme Court took serious notice of the tendency subordinate courts have of ignoring its verdicts and has not only “stressed the need of following the principle of law enunciated by Supreme Court” but at the same time also “warned the Courts that serious view of the matter could be taken against the delinquent as and when the misconduct came or brought to the notice of the Supreme Court.”¹⁶⁷

Nevertheless, before 12th February 1994 the Executive Officers worked as judicial officers in respect to civil rights as well. They did not care, in contrast to the judicial

¹⁶⁴ Ibid., p. 26.

¹⁶⁵ See *SCMR* (2001), Supreme Court of Pakistan, p. 1591; *PLJ*, Vol. 33 (2005), Lahore, pp. 580-85.

¹⁶⁶ See Articles 189 and 190 in Munir, *Constitution of the Islamic Republic of Pakistan*, Vol. 2, pp. 873, 881.

¹⁶⁷ *PLD*, Vol. 46 (1994), Supreme Court, p. 881.

officers, about the decisions made by the superior Courts, in spite of the fact that the aforesaid Article 190 required this of them. But as they were not from the judiciary but belonged to the civil services cadre, hence they did not behave in the manner required of them under the law. This has also been noted by the Supreme Court by stating that “experience shows the tendency on the part of Magistrates/Assistant Commissioners/Additional District Judges/District Judges to ignore the judgements of the superior Courts when cited before them.”¹⁶⁸

However, when the PATA Regulations (NWFP Regulations I and II of 1975) were declared unconstitutional¹⁶⁹ by the Supreme Court of Pakistan,¹⁷⁰ all the civil cases pending in the courts of the Executive Officers under the defunct PATA Regulations were transferred to the regular courts, which were bound constitutionally as well as traditionally to follow the judgements of the Supreme Court and High Court. Moreover, as stated above, the judicial officers of the subordinate Courts were warned that if it were brought to the notice of the Supreme Court that its decisions had been ignored, contempt proceedings would be initiated against them.¹⁷¹

All the subordinate Courts are therefore compelled to follow the decisions and verdicts of the superior Courts in respect to the Shari share of the females in cases of inheritance. Besides, when in the early 1990s the agitation for the implementation of Islamic laws was started in the areas of the former Malakand Division and Kohistan District, the judicial officers became alarmed lest un-Islamic verdicts should create problems so they started to follow the Islamic laws when deciding on cases of inheritance.

In 1994, the Provincially Administered Tribal Areas (Nifaz-e-Nizam-e-Shariah) Regulation, 1994 (NWFP Regulation II of 1994) was promulgated and also extended to Kohistan District through the Kohistan District (Nifaz-e-Nizam-e-Shariah) Regulation, 1995 (Regulation I of 1995). These are commonly called the Sharia Regulation and are basically procedural laws, meaning that they deal with the procedures of the courts. There are, however, also some substantive rights in every procedural law and the same is the case here in the case of the said Regulations as well.

Under Section 11 (1) of the Provincially Administered Tribal Areas (Nifaz-e-Nizam-e-Shariah) Regulation, 1994 (NWFP Regulation II of 1994), the earlier Provincially Administered Tribal Areas Criminal Law (Special Provision) Regulation, 1975 (NWFP Regulation I of 1975), and the Provincially Administered Tribal Areas Civil Procedures

¹⁶⁸ Ibid.

¹⁶⁹ Under Regulation No. I and No. II of 1975 and the amendments made in Regulation N. 4 of 1976 – these regulations together are commonly known as PATA Regulations – special provisions were provided for deciding both the civil and criminal cases in PATA, i.e. the judicial powers (both criminal and civil side) were transferred from the judiciary to the executive.

¹⁷⁰ For detail see *PLD*, Vol. 47 (1995), Supreme Court, pp. 281-306.

¹⁷¹ See *PLD*, Vol. 46 (1994), Supreme Court, p. 881.

(Special Provisions) Regulation, 1975 (NWFP Regulation II of 1975) – commonly called and referred to collectively as PATA Regulations – were repealed. As these PATA Regulations were repealed, twenty-three other Ordinances and Acts (given in Schedule I) were extended to and enforced in the area, under the new Regulation in 1994. These are ordinances and acts which were already enforced in the settled districts of the Province.

Nevertheless, Section 11 (2) provided protection for everything that had been done under the previous rules, laws and *riwaj*, etc. by stating that:

(2) Notwithstanding the repeal of laws under subsection (1) of this section or cessation of any law, instrument, custom or usage under section 4, the repeal or cessation, as the case may be, shall not ---

(a) revive anything not in force or existing at the time at which the repeal or cessation takes effect;

(b) affect the previous operation of the law, instrument, custom or usage or anything duly done or suffered thereunder;

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law, instrument, custom or usage;¹⁷²

The Shari-Nizam-e-Adl Regulation, 1999 (NWFP Regulation I of 1999), which was also promulgated for the Tribal Areas in Kohistan District under Paragraph 12 (1), repealed the Provincially Administered Tribal Areas (Nifaz-e-Nizam-e-Shariah) Regulation, 1994. This Regulation extended and enforced twenty-nine such Acts and Ordinances (given in the Schedule I), which were already in force in the settled areas of the Province, and most of them were already extended and enforced under the now defunct Nifaz-e-Nizam-e-Shariah Regulation, 1994. However, Paragraph 12 (2) provides protection to everything that had been done under the previous rules and laws etc. by stating that:

(2) Notwithstanding the repeal of the Regulation under sub-paragraph (1) or cessation of any law, instrument, custom or usage under section 4, the repeal or cessation, as the case may be, shall not ---

(a) revive anything not in force or existing at the time at which the repeal or cessation takes effect;

(b) affect the previous operation of the law, instrument, custom or usage or anything duly done or suffered thereunder;

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law, instrument, custom or usage;¹⁷³

¹⁷² Ali, *Laws Extended to the Tribal Areas with Jirga Laws*, p. 26.

¹⁷³ *Ibid.*, p. 47.

In other words this means that **protection has been provided to the former *riwaj* and Swat State rules in respect to the inheritance and females' share of land and royalty** to the effect of their previous operation; hence no claims about the former times and generations or demands for predecessors' shares on the basis of mother's or grandmother's shares can be entertained. The same was also recognised and endorsed by the Peshawar High Court in 1984 on the basis of clause 6 of The West Pakistan Muslim Personal Law (Shariat) Application Act, 1962.¹⁷⁴

But in practice the courts entertained such cases which were contrary to the contents and spirits of the now defunct Provincially Administered Tribal Areas (Nifaz-e-Nizam-e-Shariah) Regulation, 1994, and are still entertaining such cases contrary to the contents and spirits of The Shari-Nizam-e-Adl Regulation, 1999, and also to clause 6 of The West Pakistan Muslim Personal Law (Shariat) Application Act, 1962.

The conduct of the judiciary nevertheless remains in contrast and conflict to the extent of honouring and entertaining cases regarding inheritance that belong to the former generations or are contested on the grounds of the shares of mothers and grandmothers who died before Islamic law on inheritance became law, with the purports and spirit of both clause 6 of The West Pakistan Muslim Personal Law (Shariat) Application Act, 1962, and The Shari-Nizam-e-Adl Regulation, 1999.

As stated earlier, the Indus Kohistan portion of Swat State and then Swat District was separated with effect from 1st October 1976 and made part of the newly created Kohistan District, but it still remained part of PATA and for this reason the PATA Regulations (Regulations No. I and II of 1975) still remained applicable there. The legal position and status in the Indus Kohistan therefore remained the same, but the 1994 decision of the Supreme Court regarding the PATA Regulations, brought their operation in Kohistan District to an end. The Provincially Administered Tribal Areas (Nifaz-e-Nizam-e-Shariah) Regulation, 1994, and the Shari-Nizam-e-Adl Regulation, 1999, were also enforced in Kohistan District. Therefore the conditions detailed above are also the position of and in the Kohistan District and thereby also of and in the right-hand Indus Kohistan areas that remained part of the former Swat State and then Swat District.

With these remarks on overall land ownership issues in the post-state period, we now return to the procedural details that directly concern the forests.

¹⁷⁴ For detail see *PLD*, Vol. 36 (1984), Peshawar, pp. 117-21.

3.2 Change in Procedures regarding Forests

Despite the end of rule by the Wali, Regulation I of 1969 (Dir, Chitral and Swat (Administration Regulation), 1969 issued on 15th August 1969 retained all the old laws including regulations, orders, rules, notifications and customs with the force of law. It now delegated the powers and functions of the Ruler to a person, officer or authority to be appointed or empowered by the Provincial Government.¹⁷⁵ In pursuance of Article 3 clause (b) of the said Regulation, Commissioner Malakand Division, was empowered on 16th August 1969 to exercise and perform, subject to the general supervision and direction of the Provincial Government, all the powers and functions of the Rulers of the States of Swat, Dir and Chitral.¹⁷⁶

Article 6 of the said Regulation I of 1969 provide the provision that:

6. Constitution of administrative unit.— The Provincial Government may, by notification in the official Gazette, constitute the specified territories into such administrative unit or units as it may deems fit, and for this purpose may include in any such administrative unit, any area adjoining the specified territories.¹⁷⁷

Therefore, the former State's areas were made the districts of Swat (now including Kalam), Dir, and Chitral for administrative and other related purposes, and Deputy Commissioners were posted there.

Technically speaking, the Deputy Commissioner (DC) Swat possessed none of the powers and authority of the ex-State Ruler, as they were vested in the Commissioner,¹⁷⁸ but for all practical purposes he exercised the powers of the Commissioner, meaning that the DC acted under *riwaj* as the Ruler of the ex-State area and also Kalam.¹⁷⁹

Thus, the Commissioner (being a public servant) functioned as the Ruler of the former State per customary law because he was empowered by the Provincial Government to exercise all the powers and perform the functions of the ex-Ruler, subject to general

¹⁷⁵ See Regulation I of 1969, in *PLD*, Vol. 22 (1970), West Pakistan Statutes, pp. 1-2.

¹⁷⁶ See Notification, No. SO-VII-9-74/69, dated Lahore the 16 August 1969, (Section-VII) , Services and General Administration Department, Government of West Pakistan.

¹⁷⁷ Regulation I of 1969, in *PLD*, Vol. 22 (1970), West Pakistan Statutes, p. 2.

¹⁷⁸ See the Notification quoted in n. 174 above, and also Ghulam Habib Khan (comp.), *Riwaj Namah-e-Swat*, No. 1, p. 45.

¹⁷⁹ For the extent of the powers and functions of the Deputy Commissioner see Khan, *Riwaj Namah-e-Swat*, No. 2, p. 46. So far we have not succeeded in obtaining a copy of the Regulation or notification under which the districts of Chitral, Dir and Swat were created and Kalam was linked with Swat District, and the powers and functions of the Deputy Commissioners specified. Therefore, the contents and contentions made here about the powers and functions of the DC are on the whole based on the interviews conducted by the author, if no specific source is cited.

supervision by the Provincial Government. And the DC was thus in charge of the District or the areas of the former State and Kalam.

Hence both the Commissioner and DC also exercised the powers of the ex-Ruler in respect to the forests under *riwaj* until the extension of the Forest Act of 1927 to the area in 1974 (see below). For example it was DC Swat, Aziz-ul-Hasan, who issued a notification in 1970 that the contractors of the Governmental constructions were to be provided with trees from the forest for their needs at the full price of 500 sleepers per tree provided the need was certified by the Construction Department.¹⁸⁰

In the new situation, the State Forest Department (SFD) was retained till the end of 1970 and its staff worked under DC Swat. By the end of 1970, the SFD was integrated into the Provincial Forest Department (PFD) and from then on the Forest Department was neither under the DC nor did he play any role in the Forest Department affairs. The Forest Department personnel, however, behaved in their own traditional manner, i.e. they attended his office and sought his orders and blessings, despite no longer being under him. With the merger of the SFD in the PFD the rules and regulations of the Province were introduced regarding service structure etc. However, the rules and regulations regarding the grant of trees to the local population, the procedures of the marking, bidding and grant of contracts for felling in the forests remained the same as they were in the State era.¹⁸¹

The Provincial Government, however, started to change the rules and regulations gradually to the extent it deemed necessary. The following four are important in this context (the implications of these measures are discussed in section 3.3.1.):

- In pursuance of MLR No. 122 of 1972, the forests of the former Swat State areas were declared as the property of the Provincial Government subject to their paying 15% of the sales proceeds as a royalty to the local right holders.¹⁸²
- On 20th May 1974 the Government of NWFP extended the *Forest Act of 1927* to Swat (including Kohistan, Shangla and Buner, i.e. formerly Swat State areas) and Kalam. At the same time The Punjab Forest (Sale of Timber) Act 1913 and the NWFP Protection of Trees and Brushwood Act 1949 were also applied to Swat, and Kalam.¹⁸³

¹⁸⁰ See Khan, *Riwaj Namah-e-Swat*, No. 478, p. 399.

¹⁸¹ Ghani-yur-Rahman, IA, Verbal, Malukabad, Mingawara, Swat, 11 December 2005.

¹⁸² See Notification, No. 10/16-SOTA-II/72/1521, dated 15 September 1972, HTA&LGD, Govt. of NWFP, Extraordinary, Registered No. p. 111, Government Gazette.

¹⁸³ Notification, No. Legis. 1 (9)/70, 20 May 1974, *PLD*, Vol. 26 (1974), NWFP, Statutes, (Schedule Serial No. 20), p. 75. Also see Ali, *Laws Extended to the Tribal Areas with Jirga Laws* [1999], pp. 244-49.

- On 20th December 1975, the provision of Chapter IV of the Forest Act of 1927 was applied to all forestland in Swat, and Kalam (the then Swat District), and the forests were declared protected forests.¹⁸⁴
- And on 22nd December 1975 the Government declared all the trees within the said protected forests as reserved, and, beside other things, also prohibited the removal of any forest produce in any such forests as well as the breaking-up or clearing of land for any purpose in any such forests.¹⁸⁵ This, however, was contrary to the contents and spirit of section 30 of the Forest Act of 1927 (see section 3.2.2).

In the meeting of the NWFP Cabinet held under the chairmanship of the Prime Minister of Pakistan, Zulfiqar Ali Bhutto, at Peshawar on 10th November 1976, it was decided that “there would be no distinction between reserve and Guzara Forests” in Dir and Swat districts.¹⁸⁶ Moreover, the people’s share of the sales proceeds was raised from 15% to 60% in other parts of Swat District and to 80% in Buner.¹⁸⁷ It is noteworthy that the Provincial Government had notified the said increase in the people’s share in the sale proceeds¹⁸⁸ but not the point of the non-distinction between reserve and guzara forests in Swat and Dir districts.

As it had not been notified by the Provincial Government, the decision lost its value and efficacy because it meant that the Provincial Government withheld a decision. The reason for doing so may perhaps have been that the forests of Dir and Swat districts were not reserve but protected, under the notification dated 20th December 1975, and only the trees were declared as reserved, under the notification dated 22nd December 1975. Nevertheless, it was not only clause 2 of the said notification, dated 22nd December 1975, that imposed other restrictions; the status of the reserved trees and those in the Guzara forests is also quite different.

¹⁸⁴ Notification, No. SOFT(FAD)V-168/71(i), 20 December 1975, in Mohammad Hanif Khan, *A Collection of Forest Rules of the NWF Province* (NWFP Forest Officers Association, 1995), p. 132.

¹⁸⁵ Notification, No. SOFT(FAD)V-168/71(ii), 22 December 1975, in *ibid.*, pp. 132-33.

¹⁸⁶ There were no Guzara forests.

¹⁸⁷ Copy of letter No. SOF(FAD)V-405/76 1044, 19 January 1977, from Muhammad Ashraf Khan, Section Officer (Forests) Govt. of NWFP, Forest & Agriculture Department, to CCF, NWFP, Endorsement No. 4839-41/G&L, dated Mingora the 9 February 1977.

¹⁸⁸ See Notification, No. SOFT (FAD) V-405/77, 14 March 1977, AD, NWFP. It must be mentioned that by relying on oral information the author made the mistake in an earlier article (see Sultan-i-Rome, “Land Ownership in Swat: Historical and Contemporary Perspective,” in *Land Tenure and Resource Ownership in Pakistan*, edited by Zabta Khan Shinwari and Ashiq Ahmad Khan, p. 138), of stating that the right-holders in Barikot Tahsil Area received 80% as royalty. But the aforesaid Notification did not mention that the right-holders in the Barikot Tahsil of Swat received a royalty of 80% of the sales proceeds but states that “(subject to payment of royalty to the local right-holders at the rate of eighty percent of the income of Buner Forests and sixty percent of the income of the other forests)” in Swat District.

The people's share of the sale proceeds in the Kohistan District and therefore also in the Right Bank Indus Kohistan areas, formerly part of Swat State and then Swat District, was raised from 60 to 80% later in 1990s.

3.3 Adaptation of the Rules and Regulations

The announcement of the merger of Swat State in Pakistan created a sort of vacuum and uncertainty in the State areas. No proper planning was done by the Pakistani Government to cope with the potential new situation and this created confusion. The Central and Provincial governments did slowly adjust the rules and regulations to the new situation, however.

3.3.1 Ownership of Forests

As explained in section 2.4, Miangul Abdul Wadud, the then ruler of Swat State, declared the forests to be State property without any formal or legal agreement¹⁸⁹; in spite their deeming themselves to be the rightful owners, the people acceded to the claim at its face value by accepting a meagre share of the sales proceeds. The same remained the status during Miangul Jahanzeb's reign as well. But the Swat State too acceded to the claim of the ownership of the people concerned by paying them a share of the sale proceeds as a royalty and by also providing them other rights as right-holders.

When the State had come to an end, the Provincial Government also behaved in the same manner. It at first maintained the *status quo*. But later, as stated above in section 3.2, notified under MLR No. 122 of 1972 (c.f Notification No. 10/16-SOTA-II/72-1521, dated 15th September 1972), that:

In pursuance of clause (a) of paragraph 3 of the Devolution and Distribution of Property (Dir and Swat) Regulation (Martial Law Regulation No. 122) and on the basis of the recommendations of the Dir-Swat Land Disputes Enquiry Commission, and in accordance with the directions of the President, the Governor of the North-West Frontier Province is pleased to order that:-

(a) the property specified in column 2 of the Schedule to this Order, and more particularly described in the file of the case specified in column 3 of the said Schedule, shall be the State property of the former State of Swat;

¹⁸⁹ See Sultan-i-Rome, *Forestry in the Princely State of Swat and Kalam*, chap. 5

(b) all Forests situated in the former State of Swat shall be the State property (subject to payment of fifteen per cent of their income as royalty to the local right holders).¹⁹⁰

Moreover, serial No. 198 of the Schedule of the said Notification also declared the forests to be the property of the former State by stating that “all Forests and Minerals subject to payment of 15% of forest income to private owners.”¹⁹¹

Therefore the Government unilaterally declared that all forests in the former Swat State were its property on the basis of their being recognised as former Swat State property and did not seek agreement or consent from the people concerned.

A step further forward was made in 1975 when provisions of Chapter IV of the Forest Act, 1927, were applied to the said forests and they were declared as protected forests. Moreover, not only were all the trees therein declared as reserved, on the plea of section 30 of the said Act, but at the same time “the quarrying of stone, the burning of lime or charcoal, or collection or subjection to any manufacturing process, or removal of any forest produce in any such forests and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forests” was prohibited, with immediate effect.¹⁹² In this way the rights and concessions of the right holders and concessionaires were further restricted.

On the other hand, the concerned landowners continued to regard the forests as their property (which also is endorsed by the fact that people established their own forest check posts in some areas later when they understood that the forests they considered their own property were being destroyed) but then accepted the Provincial Government’s claim at least at face value by accepting a portion of the sales proceeds. The fact that the relevant landowners or right-holders’ royalty on the sales proceeds is mentioned in the notification No. 10/16-SOTA-II/72-1521, dated 15th September 1972, quoted above, does however strengthen the people's claim, for a royalty is paid to the person(s), body or authority that is basically considered or acknowledged to be the real owner.

Besides, the North-West Frontier Province Management of Protected Forest Rules, 1975, issued as notification No. SOFT (FAD) V-168/71(iii), dated 24th December 1975, of the Department of Agriculture, Government of NWFP, twice mentions - in sections 4 and 6 - the people concerned as “owners” by stating that “free grant of trees for domestic needs may be made to the *owners* or right-holders . . .” and “for the grant

¹⁹⁰ Notification, No. 10/16-SOTA-II/72/1521, 15 September 1972, HTA&LGD, Govt. of NWFP, Extraordinary, Registered No. p. 111, Government Gazette.

¹⁹¹ See S.N. 198 of the Schedule, Column State Property, *ibid*.

¹⁹² Notification, No. SOFT (FAD) V-168/71 (ii), 22 December 1975, AD, Govt. of NWFP, in Khan, *A Collection of Forest Rules of the NWF Province*, pp. 132-33.

of trees to non-residents, the Tehsildar will first obtain the concurrence of the Jirga of the *owners* or right obtain holders of the respective village... [my italics].”¹⁹³

But when the West Pakistan Land Revenue Act, 1967 was extended to the then Swat District and the land settlement process was started, it was required of the settlement staff, under section 39 sub-section (1) of the said Act, to prepare a record of rights for each estate, unless otherwise specified in the said Chapter VI, which according to section 39 sub-section (2) was to include the following documents:

- a) Statements showing, so far as may be practicable:-
 - i. the persons who are land-owners, tenants or who are entitled to receive any of the rents, profits or produce of the estate or to occupy land therein;
 - ii. the nature and extent of the interests of those persons, and the conditions and liabilities attaching thereto; and
 - iii. the rent, land-revenue, rates, cesses or other payments, due from and to each of those persons and Government.
- b) a statement of customs respecting rights and liabilities in the estate;
- c) a map of the estate; and
- d) such other documents as the Board of Revenue may with the previous approval of Government prescribe.¹⁹⁴

In this scenario, we come across statements by the people concerned, in the *Wajib-ul-Arzs* prepared under the said section 39 sub-section (2), that the rights and restrictions etc. related to the forests and forestland of the State time continued even after the merger of the State.

Nevertheless, the Frontier Government issued different rules and regulations for the management of protected forests in the year 1975 (Notification No. SOFT(FAD)5-168/71(iii), dated 24th December 1975), in which *inter alia* the forests are written as property of the Provincial Government (protected forests) with the payment of 60% of the sales proceeds to the right-holders or the concerned landholders in the village, which they distribute according to *riwaj* of the relevant place.¹⁹⁵ It is however worthy of mention that the *Wajib-ul-Arzs* of *muzas* (estates) Sapal Bandai, Gul Bandai and Murghazar further states that, per notification No. 276-78/1(32)DC/A-II, dated 20th

¹⁹³ Notification, No. SOFT (FAD) V-168/71 (iii), 24 December 1975, AD, Govt. of NWFP, in Khan, A *Collection of Forest Rules of the NWF Province*, pp. 124-25. Also see in Zia Ullah Khan Niazi, *Manual of Forest Laws* (Lahore: Lahore Law Times Publications, 2005), p. 508.

¹⁹⁴ Mahmood, A *Comprehensive and Exhaustive Commentary on West Pakistan Land Revenue Act, 1967*, p. 112.

¹⁹⁵ For example see *Wajib-ul-Arzs* of the *Muzas*: Kukrai-Chitor, Islampur, Sapal Bandai, Gul Bandai, and Murghazar of the Murghazar Valley, and Muza Laikot, Swat Kohistan at *District Qanungu Office at Gulkada, Swat*.

February 1981, the forests have been declared protected forests instead of the property of the Provincial Government.¹⁹⁶

Such statements strengthen the Provincial Government's claim because the Government has made no agreement with the people that would have binding force on them in this respect. But by recording such statements by the people in the *Wajib-ul-Arzs*, the Revenue Department has bound them to abide by this. This is also evident from the following extract.

Entries in the *Wajib-ul-Arz* may be of two kinds. They may be statements of local custom or usage or they may be recitals of agreements. As statements of local custom or usage they are strong evidence of the existence of such custom or usage but they have only an evidentiary value. Agreements incorporated in the *Wajib-ul-Arz* are, however, binding but only on the parties to the agreements, and even in such cases it is open to a party to prove that in fact no such agreement was entered into though the task would be difficult. [PLD 1954 Lah. 356] *All entries in the Wajib-ul-Arz, though rebuttable are presumed to be correct unless the contrary is proved* [italics mine]. [AIR 1930 Lah. 159] However, entries in the *Wajib-ul-Arz* are generally not valid beyond the settlement for which they are made. [PLD 1950 Pb. (Rev) 1156]¹⁹⁷

Further provisions of Section 52 of the said Act are that:

Any entry made in the record-of-rights in accordance with the law for the time being in force, or in a periodical record in accordance with the provisions of this Chapter and the rules made thereunder, *shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted thereof*[my italics].¹⁹⁸

It has, however, been faithfully recorded that “the local people are not fully reconciled to the ownership of the forests by the Government,”¹⁹⁹ because in fact they still consider themselves to be the bona fide owners despite having on the face of it agreed to the Government’s claim and laws. The assertion that the local people still regard themselves as the rightful owners of the forests, is further supported by the fact that the Mians of the Lalku area of Matta Tahsil, i.e. the concerned landowners or the owners of

¹⁹⁶ See *Wajib-ul-Arzs* of the Muzas: Sapal Bandai, Gul Bandai, and Murghazar, *ibid*.

¹⁹⁷ Mahmood, *A Comprehensive and Exhaustive Commentary on West Pakistan Land Revenue Act, 1967*, p. 251.

¹⁹⁸ *Ibid.*, p. 245.

¹⁹⁹ Mohammad Raashid, *Resource Management Plan for the Matta Forest Range of Swat Forest Division (2000-2002 to 2014-15)*, Guided by Gary Archer, Robert Murtland and Ghazi Marjan (Forest Management Centre, NWFP Forest Department, and Inter Co operation, Govt. of Switzerland, 1999), p. 19.

the forests as they deem themselves, of their own initiative “barred the non-local users, coming from the downstream villages, from collecting medicinal plants and herbs.”²⁰⁰

An important aspect of the NWFP Forest Ordinance, 2002, which was also extended to the study area, is that it too had declared the forests of the study area as the Provincial Government property. Instead of using the term royalty of the sales proceeds, which give a clue to the ownership by the people, the word “seigniorage fee” has been used, which has been defined as under:

“seigniorage fee” means a reciprocal fee payable by Government to right holders for trees harvested for sale from reserved forests, of one or other of the kind, entered in the seigniorage (fee) list and similar fee payable by right holders to Government for trees harvested from guzara forests and protected wasteland for sale declared so under section 36 of this Ordinance and in areas wherever there are reserved forests.²⁰¹

This is a significant step and great change towards eradicating the idea that the people concerned own the forests. Besides, the concerned people have not only been clearly mentioned as right-holders in the aforementioned sub-section, but also under sub-section 34 of section 2 by stating that:

“right holder” means a person *who does not have proprietary rights over forest* [my italics] but has rights or privileges over reserved forests, protected forests, wasteland as per record of rights admitted at the time of settlement or subsequently admitted as right holder by Government.”²⁰²

In section 5(1) of the ‘North-West Frontier Province Protected Forest Management rules, 2005, the concerned people (or owners, as they claim and consider themselves), are mentioned as right-holders; but in section 2(2) they have been referred to as “concessionists”.²⁰³

There are also ownership disputes between the people of Swat and Dir in some forests of the present day Matta Forest Range of the Swat Forest Division.²⁰⁴

²⁰⁰ Talimand Khan, “Management & Resource Rights Regime of Natural Resources in Historical Perspective: A Case Study of Lalku Valley,” (UP, [2005]), p. 7.

²⁰¹ Section 2 (41), Notification, No. Legis: 1 (6)/99-II/4525, dated 10 June 2002, Law Department, Govt. of NWFP, The North-West Frontier Province Forest Ordinance, 2002 (NWFP Ordinance No. XIX of 2002), Extraordinary, Registered No. P. 111, Government Gazette, NWFP.

²⁰² Section 2 (34), *ibid.*

²⁰³ See Notification, No. SO(Tech)ED/V-105/2004/Vol:VII, dated Peshawar 23 April 2005, Environment Department, Govt. of NWFP.

²⁰⁴ See Raashid, *Resource Management Plan for the Matta Forest Range of Swat Forest Division (2000-2001 to 2014-15)*, p. 9.

3.3.2 Rights and Concessions

When the rule of the Wali came to an end, the existing rights and concessions, detailed in chapter 2 section 2.7, were retained under Regulation I of 1969. But with the passage of time, the Provincial Government gradually started to effect changes to this.

A step in this respect was, as already mentioned, the extension of The Forest Act, 1927 (Act XVI of 1927) to the area on 20th May 1974 under NWFP Regulation II of 1974²⁰⁵ which tried to bring about drastic changes in the rights and concessions of the concerned people. The Government of NWFP, therefore, notified on 20th December 1975 that:

In exercise of the powers conferred by section 29 of the Forest Act, 1927 (Act XVI of 1927), the Government of North West Frontier Province are pleased to:

- a) apply the provisions of Chapter IV of the said Act to all Forest-land in Chitral, Dir, Swat, Kalam and Malakand Protected Area; and
- b) declare all the said forest land as protected forests.²⁰⁶

It is necessary to reproduce here the said section 29 of the Forest Act of 1927, so as to make it easy to understand the factual position or the loophole. Section 29 of the Forest Act of 1927, states:

29. Protected forests—

(1) The Provincial Government may, by notification in the local official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but *which is the property of Government, or over which the Government has proprietary rights*, or to the whole or any part of the forest-land of which the Government is entitled.

(2) The forest-land and waste-lands comprised in any such notification shall be called a “protected forest”.

(3) *No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the Provincial Government thinks sufficient.* Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if, in the case of any forest-land [or] a waste-land, the Provincial Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government,

²⁰⁵ See No. Legis 1(9)/70, Gazette of N.W.F.P., Extraordinary, 20 May 1974, Provincially Administered Tribal Areas (Application of Laws) (Second) Regulation, 1974 (N.W.F.P. Regulation II of 1974), in Ali, *Laws Extended to the Tribal Areas with Jirga Laws*, pp. 244-49.

²⁰⁶ Notification, No. SOFT (FAD) V-168/71 (i), dated Peshawar the 20 December 1975, AD, Govt. of NWFP, in Khan, *A Collection of Forest Rules of the NWF Province*, p. 132.

the Local Government, may, pending such inquiry and record, declare such land to be a protected forest, *but so as not to abridge or affect any existing rights of individuals or communities* [my italics].²⁰⁷

The portions of sub-section (3) in italics highlight that before declaring a forestland or wasteland as a protected one, the Provincial Government must record the nature and rights of both the Government and private persons, otherwise the existing rights of individuals or communities remain unaffected. As the Provincial Government did not inquire and record the nature and extent of the rights and privileges of the Government and the people concerned before the aforesaid notification, their existing rights remained unchanged (under the last sentence of the second paragraph of sub-section 3).

However two days later another notification was issued which was an attempt to deprive the people concerned of a number of their rights guaranteed even by the aforesaid section 29. Nor did the new notification consider a previous ruling of the Superior Court to the effect that “rights recorded under section 29 cannot be interfered with at all except in closed forest or when rights are suspended on account of fire under section 33 (2). (PLD 1953 Lah. 329).”²⁰⁸ The said notification states:

Whereas by this Department Notification No. SOFT (FAD)V-168/71 (i) dated 20-12-1975 all forests in the Provincially Administered Tribal Areas of Chitral, Dir, Swat, Kalam and Malakand Protected Area have been declared as protected forests, under the provisions of section 29 of the Forest Act, 1927 (Act XVI of 1972);

Now, THEREFORE, in exercise of the powers conferred by section 30 of the said Act, the Government of the North West Frontier Province are pleased to:

- a) declare, with immediate effect, *all trees within the said protected forests* as reserved; and
- b) prohibit, with immediate effect, the quarrying of stone, the burning of lime or charcoal, or collection or subjection to any manufacturing process, or removal of any forest produce *in any such forests* and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forests [my underlining and italics].²⁰⁹

Before evaluating and commenting on the technical and legal aspects of this notification and its repercussions, it is appropriate to read the full text of the said section 30 of the Forest Act of 1927:

30. Power to issue notification reserving trees, etc.—The Provincial Government, may by notification in the official Gazette:-

²⁰⁷ Section 29 of the Forest Act of 1927 in Khan, *A Collection of Forest Rules of the NWF Province*, p. 18. Also see Niazi, *Manual of Forest Laws*, p. 278.

²⁰⁸ Niazi, *Manual of Forest Laws*, p. 278.

²⁰⁹ Notification, No. SOFT (FAD) V-168/71 (ii), dated Peshawar the 22 December 1975, AD, Govt. of NWFP, in Khan, *A Collection of Forest Rules of the NWF Province*, pp. 132-33.

- a) declare *any tree or class of trees* in a protected forest to be reserved from a date fixed by the notification
- b) declare that any portion of such forest specified in the notification shall be closed *for such term, not exceeding thirty years*, as the Provincial Government thinks fit, and that the rights of private persons, if any, over such portion shall be suspended during such term, *provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed;*
- c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing, or removal of, any forest-produce in *any such forest*, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest [my underlining and italics].²¹⁰

It is evident that this text set certain conditions on declaring trees as reserved or portion(s) of the forests as closed. For example sub-section 30 (b), which deals with closing the rights of the people altogether, states that “any portion of such forest specified in the notification” meaning thereby that not the entire or whole forest or forests should be closed.

Another restriction, if a portion of the forest is declared closed, is made in the phrase “for such term, not exceeding thirty years”. This means that there is also a time bar, i.e. the Government will specify in the notification the period for which “any portion of such forest specified in the notification” will remain closed. The said term or period will not exceed “thirty years.” And yet another major restriction laid down by the sub-section is the statement that “provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed.” This means that the related rights of the right-holders also have to be protected. The meeting of their bona fide needs, in a convenient manner, is to be ensured by at least sufficient trees or forests being left unreserved or unclosed sufficient to meet the needs of the people concerned. Hence, the spirit of the section is that the rights of the people concerned are not to be suspended.

However, it is clear from the Notification – No. SOFT (FAD) V-168/71 (ii), dated 22nd December 1975, Agriculture Department, Govt. of NWFP – that the Provincial Government has not honoured the said section 30 on whose authority it has proclaimed: “all trees within the said protected forests as reserved.” Although the Government had made provision for the bona fide needs of construction timber under the Management of Protected Forests Rules, 1975, dated 24th December 1975, the right of the bona fide needs of the fire or fuel wood was curtailed under the aforesaid notification out of a concern with exercising the powers conferred upon under the said section 30.

²¹⁰ Section 30 of the Forest Act of 1927 in Niazi, *Manual of Forest Laws*, pp. 278-79.

Therefore, the aforesaid notification of the Provincial Government was shown to be technically unsound and hence possessed no efficacy and worth.

Strangely enough, the framers and promulgators of the notification did not even care sufficiently to replace the words “any forest produce” and “in any such forests” of section 30(c) to the effect of “all or the following forest produce” and “in the said forests” respectively so as to make them suit the context of the notification. They have failed to modify it to make it clear which things mentioned in section 30(c) have been prohibited – i.e. whether it is the quarrying of stones or the burning of lime and charcoal, or collecting specific forest produce etc., or all of these at the same time. They have reproduced section 30(c) verbatim to the effect that to “prohibit, with immediate effect, the quarrying of stone, the burning of lime or charcoal, or collection or subjection to any manufacturing process, or removal of any forest produce in any such forests and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forests”²¹¹ with the only replacement being that of the word “forest” with “forests.”

They had, moreover, failed to apprehend the consequences and practical implications of declaring all the trees of all the forests of the area as reserved and also of prohibiting the quarrying of stone, the burning of lime or charcoal, the collection of or subjection to any manufacturing process, and the removal of the *forest produces* from the said *forests*, the breaking up and clearing for cultivation, for building, for herding cattle and for any other purpose, of any land of all the forests of the areas, mentioned in the notification, i.e. Chitral, Dir, Swat, Kalam and Malakand Protected Areas.

Section 2 of the Forest Act of 1927, “interpretation clause” defines “forest produce” as follows:

(4) “forest-produce” includes—

(a) the following whether found in, or brought from, a forest or not that is to say:—

timber, charcoal, caoutchouc, eatechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds (kuth), and myrabolams, and

(b) the following when found in, or brought from, a forest, that is to say:

(i) trees and leaves, flowers and fruits, and all other parts, or produce not hereinbefore mentioned, of trees;

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

²¹¹ Compare contents of both section 30 (c) of the Forest Act of 1927, and (b) of Notification, No. SOFT (FAD) V-168/71 (ii), dated Peshawar the 22 December 1975, AD, Govt. of NWFP, given above.

(iv) peat, surface soil, rock, and minerals (including lime-stone, laterites, mineral oils, and all products of mines of quarries).²¹²

Keeping all of this in mind, it becomes a question mark where the local people will go to meet their bona fide requirements and needs of the essential things mentioned and prohibited in the notification and also wood for fuel. How are they going to meet their requirements for forest produce mentioned in section 2 (4), more specifically for fuel wood and grasses, especially when a large number of the people concerned either live inside the forests or adjacent to them, and depend for the said things entirely on the forests.

It was this failure on the part of the Provincial Government and the Government's starting to exert its authority under the said notification that caused the clashes in Dir between the people concerned and Government forces. These not only caused loss of lives and property, but culminated in raising the concerned peoples' shares in the sales proceeds of the forests from 15% to 80% in Painsa Khel and Sultan Khel areas of Dir District and Buner area of Swat District and to 60% in the remaining areas of Dir and Swat districts.

Moreover, although the Government did not abrogate the said notification, it was in practice ineffective because, contrary to the confused contents and spirit of the notification, the concerned people still do everything that is prohibited in the forests concerned, while also receiving a high proportion of the sales proceeds.

In practice, the people concerned enjoy grass cutting, lopping of fodder trees, collection of dry wood for fuel and also mostly cutting green trees for fuel wood, grazing of domestic animals, receiving *qalang* from the Gujar and Shpunkhi nomads for their *bandas* situated in the forestland, and collecting medicinal plants, herbs, morels, honey and so forth. Besides, as stated above, they have also been given the right to take construction timber for their bona fide needs under Notification No. SOFT(FAD)V-168/71(iii), dated 24th December 1975, per procedures, which are detailed hereinafter in sub-section 3.3.3.

Hence, although the rights and concessions of the people in the forests were not recorded properly till the land settlement process started, the rights and concessions they held were known to each and every one and they not only enjoyed them in practice in the Swat State era but continued to enjoy them in the post-State period.

In the land settlement process, the rights and concessions of the people that were availed in the State era have been recorded in the *Wajib-ul-Arzs* in the areas where the settlement has been carried out. It has also been recorded that they availed themselves

²¹² Section 2 of "The Forest Act, 1927," in Niazi, *Manual of Forest Laws*, p. 267.

of and enjoyed the same rights after the merger as well and that the forests have been declared by the Government as protected.

As outlined, the pre-requisite for declaring a forest as protected is proper investigation and recording of the existing rights and privileges the people concerned will exercise and also make use of in the protected forests, but this was not done before declaring the forests of the study area as reserved. Therefore, under section 29 sub-section (3) of the Forest Act of 1927, the people were still legally entitled to avail themselves of and exercise their existing rights. All the rights enjoyed by the people were still legally their rights – unless they were suspended under and in accordance with the tenets and spirit of section 30 of the Forest Act of 1927.

Therefore, by declaring the forests as protected, the people's / right-holders' / concessionaires' previous status, position, rights and concessions have been fully recognised. This is also endorsed in the relevant Working Plans²¹³ in spite of their having been in somecontrast to the notification of 22nd December 1975.

The same is also the complexity and crux of the matter under the NWFP Forest Ordinance, 2002, for therein too all trees have been declared as reserved without taking account of the prerequisite steps for doing so that is required even under section 30 of the Ordinance and also that it contravenes the spirit of the said section 30, as is evident from the text of the said section given hereinafter in section 3.9.

3.3.3 Meeting Needs of the Locals

The previous governmental set-up changed drastically with the end of the Wali's rule. Hence despite preserving the previous rules of granting trees/timber to the local population to meet their bona fide needs, to all practical purposes the situation on the ground did not stay the same. The local people, therefore, started to moan after only a short span of time and within two years complaints came to the surface in different forms.

For example a Memorandum presented on 2nd June 1971 to Sahgeer Anwar, Joint Secretary, Government of Pakistan – who was on a visit to Swat in his capacity as Inquiry Officer in connection with a Departmental inquiry in respect of the Emerald Mines firing incident – by a delegation led by Dani Gul complained that “wood for

²¹³ For example see Bashir Ahmad, *Revised Working Plan for Ranolia-Dubair Forests of Kohistan Forest Division (1985-86 to 1999-2000)*, (Peshawar: N.W.F.P. Forestry Pre-Investment Centre, n.d.), p. 6; Raashid, *Resource Management Plan for the Matta Forest Range of Swat Forest Division (2000-2002 to 2014-15)*, pp. 8,19; Nazir Mohammad and Shamsul Wahab, *Working Plan for Kalam Forests of Upper Swat Forest Division (1987-88 to 2001-02)*, under the Guidance of Beat Stucki, Ali Akbar Khan and Christoph Duerr (Peshawar: NWFP Forest Department, n.d.), p. 9.

house construction is not available in the market: although, the former state gave full facility to those persons who wanted to construct houses.”²¹⁴

Similarly, an application of Awami Union (Union of the Shopkeepers of Mingawara) presented the same day to Sagheer Anwar, too, complained that previously timber for construction was available in abundance, but that for some time now, there is great difficulty to obtain timber even for personal constructions.²¹⁵ Sirajuddin Khan, who was a prominent critic of the existence of the State and the Wali’s rule and who writes under the name of Sirajuddin Swati, has also complained in this scenario that the local residents are facing insurmountable difficulties in getting construction timber to meet their construction needs.²¹⁶

After the merger, the procedure for granting trees to the people of both former Swat State areas and Kalam or the then Swat District to meet their needs remained the same for the time being. However, a number of modifications were made afterwards by Order of the Governor. This is also evident from the contents of the “Riwaj Nama Mehkama-e-Jangalat” (Customary Law Book of the Forest Department) given in *Riwaj Nama-e-Swat* (Customary Law Book of Swat).²¹⁷ It is worth noting that, beside other things, collective local responsibility was also maintained in the “Riwaj Nama Mehkama-e-Jangalat.” The same rules, however, were somewhat further modified in 1975 – after the extension of the Forest Act of 1927 and the declaration of all forestland as protected forests and all the trees therein as reserved. These new rules were titled as “Rules Regarding Management of Protected Forests in Dir, Swat, Kalam and Chitral,” and are as follows (below only the portions related to the then Swat District, i.e. both the former Swat State and Kalam areas, are reproduced either verbatim or in modified form so as to make them conform to the study area only because the same Rules were also meant for Dir, Chitral and the Malakand Protected Area).

1. No trees shall be felled or removed from the forests, to which these rules are applicable, except with the permission in writing of the Conservator of Forests, Malakand, or the Divisional Forest Officers having jurisdictions in the forests.
2. Free grant of trees for domestic needs may be made to the owners or right holder and to other local inhabitants entitled to this privilege subject to silvicultural availability of trees and upto the limit given in the schedule appended to these rules.
3. Every request for free grant of trees shall be made to Range Officer, having jurisdiction in the area, on white paper.

²¹⁴ “Memorandum presented to Sagheer Anwar Esquire, Joint Secretary, Government of Pakistan: Presented by Swat Delegation lead by Dani Gul,” *GSNWFP*, B.N. 5, S.N. 38, F.N. 6(205)/71.

²¹⁵ See Application of Awami Union, Mingawara, Swat State to Sagheer Anwar (Urdu), *ibid*.

²¹⁶ Sirajuddin Swati, *Swat Haal kay Aayena Mayn* (Urdu) (Mingawara, Swat: By the Author, n.d.), pp. 13-14.

²¹⁷ For details see “Riwaj Nama Mehkama-e-Jangalat” in Khan, *Riwaj Nama-e-Swat*, pp. 411-34.

4. The entitlement to the free grant of trees shall be verified by the Tahsildar concerned. For the grant of trees to non-residents, the Tahsildar will first obtain the concurrence of the Jirga of the owners or right obtain holders of the respective village and record a certificate to this effect on the application. *After verification of the entitlement, the application will be forwarded to the Range Officer concerned, who will verify the needs and record the timber requirements either personally or through the Block Officer. At least 20% of the verification made by the Block Officer shall be checked by the Range Officer himself* [my underlining and italics].
5. The verification made in respect of grant of free trees needed for construction and re-construction of houses must state that the foundation of houses have been built upto plinth area level. In the absence of such certificate no application shall be considered.
6. 1) The Range Officer shall enter all applications for free grant of trees received by him in a register with the prescribed columns. 2) The register will be put up by the Range Officer once a month, preferably during the first week when the Range Officer visits the office of the Divisional Forest Officer.
3) After the orders for issue of timber have been made by the Divisional Forest Officer, the Range Officer will start a second register having the prescribed columns.
7. The trees will be granted in the diameter range of 24''-30''. The Standing Deodar trees shall not be granted for domestic use, except in Kalam and Upper Indus-Kohistan. Wind-fallen trees will be marked strictly according to the silvicultural availability. No trees shall be marked within 300 feet of the outer boundaries of the forests.
8. Trees will be marked by the Range Officer himself or through Block Officer within two months from the receipt of the orders. The Range Officer will be responsible for the correctness of the marking whether he does it himself or through the Block Officer. The trees will be cut within two months of the date of marking and will be utilized for the purposes stated and for no other within six months from the date of cutting.
9. The outrun from the trees marked will only be removed after it has been branded with the right-holders hammer and its transport allowed through a Rahdari to be issued by the Range Officer concerned.
10. Timber granted for domestic needs shall neither be sold nor given free, nor taken out of the limits of the village. *The Range officer will verify the utilization of timber in a register to be maintained for the purpose* [my italics].
11. Neither the person to whom trees have been granted for construction of a house in any year nor a member of his family shall be entitled to the grant in the following year unless proved to the satisfaction of the Divisional Forest Officer concerned that the timber is required for the construction of a separate house.
12. Trees of central quota specified in the Schedule shall be sanctioned by the Conservator of Forests, Malakand, and the trees of local quota specified in the said Schedule shall be sanctioned by the Divisional Forest Officer of the area concerned. The procedure followed for the grant of trees from local area [from local quota?] shall also be followed for the central quota grants. For this purpose two separate registers

will be maintained by the Divisional Forest Officer. The form of both shall be as prescribed for local quota.

13. *Every person to whom the trees have been granted under these rules shall plant five trees in place or places designated by the Forest Officer during the plantation seasons and look after them for such time as may directed by the forests authorities [my italics].*

14. Trees shall be granted on the given concessional rates, in Madyan, Bahrain, Fatehpur, Matta, Kabal, Babuzai, Charbagh, Aplurai, Lilawnai, Kanra, Puran and Chakisar Tahsils and Buner Sub-Division of Swat District for the domestic requirements of the local inhabitants who either do not have the forests or the required timber trees therein; and for the construction of commercial buildings by the local inhabitants, such as shops, hotels and residential accommodations meant for rent. The rates, however, may be reviewed and revised by Chief Conservator of Forests, NWFP, from time to time.

15. Conservator of Forests may grant on concessional rates, upto a maximum of 500 trees annually. The trees shall not be marked unless price is realized in full. Trees over 28" dbh shall not be marked for grant of concessional rates. All other formalities, procedures and indications shall be the same as are prescribed for the grant of timber for domestic use to right holders.

16. Supply of timber will be permitted to persons residing in Swat District who are neither entitled to free grant of timber nor to the grant on concessional rates. This will be done through a special contract in the following manner.

- i. On the recommendation of Conservator, the Chief Conservator of Forests will decide the volume of the special contracts to be given for this purpose. The contractor to whom such a contract is given will be required to maintain a depot and issue timber from it on the rates specified by the Chief Conservator of Forests to the persons eligible on the authorization of the Divisional Forest Officer after due verification of the needs is carried out as prescribed in rule 5 of these rules for the free grant of timber. All other formalities, procedure and restriction shall be the same as prescribed in the said rule. The Chief Conservator of Forests will fix the sizes into which such timber will be converted and will specify conditions for the operations of such contracts from time to time.
- ii. Special contracts will be granted subject to the availability of balance in the volume fixed for local use in the sanctioned working plans after the demands met with for free grants and on concessional rates.

17. 1) Regular commercial sale will be conducted in the forests in accordance with the sanctioned working plans. Fifteen percent of the sale proceeds from commercial sales in Swat and Kalam and fifteen per cent of the sale proceeds on concessional rates and qaumi contracts in Swat will be distributed amongst the right holders.

2) The Divisional Forest Officer will issue a cheque in the name of the Deputy Commissioner for the amount of share of the local inhabitants out of the sale proceeds. The amount will be distributed by the Deputy Commissioner or his representative amongst the right holders, and the acquittal roll will be forwarded to

the Conservator of Forests on each occasion the payment is made. The Conservator of Forests will maintain the accounts for audit purposes.

18. Any breach of these rules shall be punishable with imprisonment or with a fine or with both as provided in section 33 of the Forest Act, 1927.²¹⁸

It is evident from the aforesaid that in spite of some changes and modifications, most of the rules and regulations from the Wali period were retained but the procedures were made more complicated and time-consuming. Instead of making things easier for people, they created manifold practical difficulties for them. The process became lengthy with the involvement of file work and red tape. Some of the rules - in italics and underlined in the text above - are, moreover, either difficult, complicated or impracticable. The local population, therefore, either resorted to illicit fellings if they were inside or near the forests, or started purchasing the illicitly extracted and smuggled timber so as to avoid the lengthy process and the difficulties involved in making rounds of various offices, and to save time.

The same is the reality on the ground even to this day and the overwhelming majority of people are meeting their bona fide needs by getting timber on their doorstep by illegal means or by smuggling because of departmental red tape, the lengthy process and even higher costs than for smuggled wood. Moreover, the quotas allocated in the said rules after the merger remained the same in spite of the manifold increase in population and construction work, both for residential and commercial purposes. This fact on its own is sufficient to gauge what remained the reality on the ground, despite the Forest Department authorities' denial of illicit cuttings and smuggling of extracted timber.

The same rules remained in vogue till April 2005, when the Provincial Government, "in exercise of the powers conferred by section 115 of the North-West Frontier Province Forest Ordinance, 2002 (NWFP Ordinance No. XIX of 2002) read with section 34 thereof" promulgated, on 23rd April 2005, "in supersession of all the previous rules on the subject," modified the rules, i.e. the "North West Frontier Province Protected Forest Management Rules, 2005."²¹⁹ As these new rules are for the entire Province, only the sections relevant to the study area are reproduced, either verbatim or with modifications so that the extracts relate to the study area only.

²¹⁸ Notification, No. SOFT(FAD)V-168/71(iii), dated Peshawar the 24 December 1975, AD, Govt. of NWFP, in Khan, *A collection of Forest Rules of the NWF Province*, pp. 124-31. Also see *PLD*, Vol. 28 (1976), NWFP Statutes, pp. 41-44.

²¹⁹ "North-West Frontier Province Protected Forest Management Rules, 2005," Notification, No. SO(Tech)ED/V-105/2004/Vol:VII, 23 April 2005, Environment Department, Govt. of NWFP.

1. Commercial sales.---

(1) Commercial harvesting of timber and extraction of forest produce from the protected forests shall be regulated in accordance with the approved forest management plan.

(2) After deducting legitimate expenditure incurred by the Department, eighty per cent of the net sale proceeds of the timber and other forest produce in relation to the protected forests of Buner and Right Bank of River Indus of the Indus Kohistan, and sixty per cent of the net sale proceed of timber and other forest produce in relation to the rest of the protected forests of the study area, i.e. Shangla and Swat Districts including Kalam, shall be payable to the concessionists and the balance amount shall be credited to the Revenue Account of Government.

(3) The Divisional Forest Officer will issue a cheque in the name of the District Revenue Officer for the amount of share of the concessionists out of the sale proceeds. The amount will be distributed by the District Revenue Officer amongst the concessionists. No payment through proxys or holders of power of attorney shall be permissible. The acquittance role duly verified by the District Revenue Officer shall be forwarded to the Conservator of Forests on each occasion the payment is made. The acquittance rolls shall be maintained for audit purposes.

2. Grant of trees or timber in the Study Area.--

(1) In case of protected forests in the Study Area (i.e. present day Swat, Buner and Shangla Districts, including Kalam, and the Right Bank Indus Kohistan area), grant of trees or timber to the right holders and to other local inhabitants entitled to this privilege shall be subject to the following conditions:

(i) removal of trees shall be subject to its silvicultural availability and up to the limit specified in the approved Working Plan concerned;

(ii) no trees shall be marked within 300 feet of the outer boundaries of the forests;

(iii) no green trees shall be marked, if dry and fallen trees are available;

(iv) marking of such trees shall be done by the Forest Officer not below the rank of Forest Ranger;

(v) payment of Development Surcharge as may, for the time being, be levied in pursuance of section 104 of the North-West Frontier Province Forest Ordinance (N.-W.F.P. Ord. No. XIX of 2002);

(vi) standing deodar trees shall not be granted for domestic use except in Kalam and Upper Indus Kohistan;

(vii) such requirements will preferably be met from the converted timber from Central Depots, in places where such depots have been established.

(2) The timber granted under sub-rule (1) shall be used for the specific purpose for which it is granted. It shall not be moved outside the specific local area for which it is granted. In case of violation of the rule, the timber shall stand confiscated and if utilized, price of the timber along with compensation thereof, if provided by any rule for time being in force, shall be recovered from the permit holder/offender.

3. Procedure for grant of trees or timber.---The following procedure shall be followed for grant of tree or timber from Protected Forests:

(a) every request for grant of timber shall be made to Range Officer, having jurisdiction in the area;

(b) the entitlement to the grant of trees or timber shall be verified by the Tehsildar concerned. *For grant of trees to non-residents, the Tehsildar shall first obtain the concurrence of the Chairman of Joint Forest Management Committee of the respective village or the Jirga where there is no Joint Forest Management Committee and shall record certificate to this effect on the application* [my italics and underlining];

(c) after verification of the entitlement the application shall be forwarded to the Range Forest Officer concerned, who will verify the needs and record the timber requirements;

(d) verification made in respect of free grant of trees or timber needed for construction or re-construction of house must certify interalia that the foundation of house has been built upto plinth level. In the absence of such certificate no application shall be entertained;

(e) the Range Forest Officer shall also give a certificate regarding silvicultural availability of trees, after visiting the forest;

(f) the Range Forest Officer shall enter all applications for free grant of trees, received by him, in a register in the manner prescribed in the rules.

(g) the register shall be put up to the Divisional Forest Officer by the Range Forest Officer once a month, preferably during the first week when the Range Forest Officer visits the office of the Divisional Forest Officer;

(h) the trees shall be granted in the diameter range as prescribed in the Forest Management Plan;

i) trees shall be marked by the Range Forest Officer himself within two months from the receipt of the orders. The trees shall be cut within two months of the date of marking and shall be utilized for the purposes stated and for no other purpose within six months from the date of cutting, failing which the permit shall be cancelled and the timber shall be confiscated or if utilized, price of timber along with compensation thereof, if provided by any rule for the time being in force, shall be recovered from permit holder/offender;

(j) out-turn from the trees marked shall only be removed after it has been branded with the specified hammer mark and its transport will be authorized through a Rahdari to be issued by the Range Forest Officer concerned;

(k) timber granted for domestic needs shall neither be sold nor given free to any body else, nor shall be taken out of the specific local area for which it has been granted. The Range Forest Officer shall verify the utilization of timber in a register to be maintained for the purpose. In-case of violation the timber shall stand confiscated or utilized, price of the timber along with compensation thereof, if provided by any rule for the time being in force, shall be recovered from the permit holder/offender;

(l) neither the person to whom trees have been granted for construction or reconstruction of house in any year, nor a member of his family, shall be entitled to the grant in the following ten years, unless proved to the satisfaction of the Divisional Forest Officer concerned that the timber is required for the construction of a separate house or reconstruction of house due to natural-calamity;

(m) in case of Swat and Kalam, the Conservator of Forests, Malakand, may sanction trees of central quota and the Divisional Forest Officer of the area concerned may sanction the trees of local quota as prescribed in the schedule appended to these rules. The procedure prescribed for the grant of trees from local quota shall also be followed for the central quota grants. For the purpose, the Divisional Forest officer will maintain two separate registers.

4. Concessional grants---

(1) Trees shall be granted on concessional rates in Madyan, Bahrain, Fatehpur, Matta, Kabal, Babozai, and Charbagh [Tahsils] of Swat District, Alpurai, Lilaunrai, Kanra, Puran, and Chakisar Tahsils of Shangla District and Buner District in the following cases;

(a) For the domestic requirements of the local inhabitants, who either do not have the forests or the required timber/trees therein; and

(b) For the construction of commercial building by the local inhabitants, such as shops, hotels and residential accommodations meant for rent within the village.

(2) Concessional rates shall be fixed and reviewed from time to time by the Government in accordance with the stumpage value of the trees in that area.

(3) Conservator of Forests concerned may grant on concessional rates, up to maximum of 500 trees annually. The trees shall not be marked unless price is realized in full. All other formalities, procedure and restrictions shall be the same as are prescribed for the grant of timber for domestic use to right holders.

(4) Sale proceeds on concessional rates shall be distributed among the concessionists and the Government as per procedure laid down in rule 2 (2), i.e. rule 1 (2) above.

5. Central timber depots.---The Central Timber Depots may, on the recommendation of Chief Conservator of Forests, be established with the approval of Government and registered by Divisional Forest officer concerned. In these depots, the timber obtained from conversion of dry and fallen trees as well as the confiscated timber shall be stored

for subsequent distribution as concessional grants or against local or central quota. The timber available after meeting the requirements under concessional grants and central quota will be disposed of through open auction.

6. Looping and pruning.---Lopping of trees shall be strictly prohibited however, pruning will be permitted to be executed in a scientific manner under the supervision and guidance of the Forest Officer. The material thus obtained shall be utilized by the locals who have participated in the pruning operations.

7. Duties and powers of Forest Officers.--- Duties and powers of the Forest Officers in relation to the affairs of the protected forests not provided for specifically in these rule[s] shall be the same as in case of the reserve forests.

8. Procedure.---Where any difficulty is being felt in the smooth functioning of these rules, the Chief Conservator of Forests may issue such instructions and directions, not inconsistent with these rules, as deem necessary.²²⁰

Barikot Tahsil of Swat District has not been mentioned in rule 7 (1), i.e. rule 4 (1) above. This has, however, been given in the schedule attached, i.e. the list of Tahsils, on serial No. 11, and the number of trees allocated for each area, both under central and local quota, has also been given.

It is clear that most of the 1975 rules have been retained in these 2005 rules, albeit with some modifications and additions. Amazingly, the number of trees allocated to meet the local needs of the study area under the title “Annual quota of trees for domestic needs of the local population in Swat, Alpuri, Buner and Right Bank of Kohistan District,” have been kept the same for each area as they were under the 1975 rules, despite thirty years having gone by during which not only has the population increased many times but construction work, both for residential and commercial purposes, has also increased at an even faster rate than the population. This is testimony to how effective these rules will prove in the present-day situation on the ground.

3.4 Consequences of the Merger on the Forests

As outlined in the earlier Working Paper²²¹ the somewhat planned exploitation of forests started during the Swat State era in Miangul Abdul Wadud’s reign. The Ruler subjected at first only certain and then all kinds of forest trees to the control of the State, if not its ownership, with the payment of a fixed sum per tree at first and then 10% of the sales proceeds from the trees to the respective landowner (or local right-holders as they were later termed). He did not, moreover, interfere in the grazing rights and *bandajat* etc. and the landowners exercised their other relevant property rights in the forests. The same remained true during Miangul Jahanzeb’s reign with another

²²⁰ Ibid.

²²¹ See Sultan-i-Rome, *Forestry in the Princely State of Swat and Kalam*, chap. 5.

change in favour of the people concerned in the last days of the State, namely increasing the share of the sales proceeds from 10 to 15%. After the end of the Wali's rule, the Provincial Government retained the same rules but the people still considered and claimed the forests as their property and ownership.

An interesting piece of evidence of the fact that people considered and claimed the forests as their property is that they exercised their ownership right and powers to sell their respective shares of the forests to purchasers both during the Swat State and in the post-State period.

Although, *inter alia*, the forests were used for favouritism and political gains by the Wali Sahib (see section 2.7),²²² there was nevertheless a sort of check and control, at least over the common people (see sub-section 2.5.2). When the Wali's rule came to an end, there were no further checks and control over the common people. This unbounded freedom was not only generally abused by the masses but also by the contractors. Ruthless cutting of the forests was started by the contractors in collaboration with officers and staff of the Forest Department,²²³ to squeeze out more wealth. The situation has been aptly described by Sirajuddin Khan when he wrote, at the time:

‘...but the forest contractors are at liberty. There is no restriction on or accountability of them. The destruction of the forests at the contractors' hands are going-on with such a speed and ruthlessness as some country of the enemy have been occupied for some time and where destruction of each and every valuable thing is required from military point of view' [my translation].²²⁴

The situation and speed with which the deforestation started and was going on after the merger of the State can also be comprehended from this account of Abdul Khaliq Baluch – Range Officer at Pakistan Forest Institute, Peshawar – that in 1968, when the place was visited for research study purpose, trees were standing down to the bank of the stream in Shawar (Matta Tahsil area). Yet when the place was visited again in 1973, for study purposes after the required five-year period, the forests had been cleared up to the top of the nearby hill. And in 1973, an experimental layout was done in Miandam, but when the site was visited again after five years for study purposes, all the trees had already been felled. There was no sign of forest and the place was under potatoes. Strange enough the Forest Department personnel claimed that there was no

²²² Also see Swati, *Sarguzasht-e-Swat*, pp. 37-39.

²²³ Deduced from the interviews conducted by the author, and also from the common talks both in public and private.

²²⁴ Swati, *Swat Haal kay Aayena Mayn*, p. 14.

forest at the said site at all.²²⁵ The same was also endorsed by Mian Muqarab Shah, Range Officer at the Pakistan Forest Institute, Peshawar.²²⁶

In such a situation, Hayat Muhammad Khan Sherpao, the then Governor of the Province, responding to the complaint of one Inzar (commonly known as Inzar Tiku Wala and Inzar Tiku Mama),²²⁷ that the people faced a shortage of and difficulty in getting wood to meet their bona fide needs, announced from the stage at a public meeting (*jalsa*) held at the Grassy Grounds, Mingawara/Gulkada, Swat in 1973 that ‘the hills belong to you people. You are free. Go, cut and bring the wood to meet your needs’.²²⁸ The same was also announced by Zulfiqar Ali Bhutto, Prime Minister of Pakistan, at the same public meeting.²²⁹ These announcements too had their effects and impact because the common people no longer felt the same hesitation - through fear of the Government and the law - about cutting down the trees.

The declaration of the forests as Provincial Government’s property subject to the payment of 15% royalty on the sales proceeds, the extension of the Forest Act of 1927 and the subsequent notifications brought no practical check and control. The situation on the ground went from bad to worse. This was mainly because, as during the Swat State period, the physical boundaries of the forest and non-forest land were not marked – but, unlike the State period, the implementation of rules, regulations and restrictions over the common people was not assured. The Government failed miserably to protect the forests which it declared its property.

Although the Government increased the right-holders’ royalty on the sales proceeds from 15 to 60% in other areas of the District including Kalam and to 80% in Buner forests, the people, both landowners and non-landowners, continued to cut down trees and clear forests. The landowners did this to clear the forestland for conversion into agricultural land, as has been the practice from ancient times, and at the same time also to earn money out of it. By clearing the forests or converting the forestland into agricultural land the cleared land would no longer remain forest and to that effect would not remain the property of the Provincial Government. The situation thus became analogous to the Urdu proverb *na rahay baans na bajaygi baansri* meaning that when there is no more bamboo left, there will be no more lute-playing. Hence, when there is no more forest left, the question of Government ownership will itself die

²²⁵ Abdul Khaliq Baluch (Range Officer, PFI), IA, Verbal, Peshawar, 7 January 2004.

²²⁶ Mian Muqarab Shah (Range Officer, PFI), IA, Verbal, Peshawar, 7 January 2004.

²²⁷ Inzar Tiku Wala of Mingawara, Swat, was in forefront of the anti-Wali underground movement Malki Rurwali during the Swat State period; and a leading figure in the Pakistan Peoples Party circle in Swat at the end of the Wali’s rule. For the underground movement Malki Rurwali see Sultan-i-Rome, “Swat State under the Walis (1917-69),” sub-section 9.2.4.3.

²²⁸ Saifullah Khan, IA, Verbal, Peshawar, 20 February 2004, and Mingawara, 7 January 2006.

²²⁹ Amir Muhammad (Range Officer, Forest Department), IA, Verbal, Mingawara, Swat, 14 February 2006.

away and the deforested land will remain the undisputed personal property of the landowners concerned.

Moreover, instead of waiting for the Government to harvest the forests in the due course of time and receiving a share of the sales proceeds – and that too after bureaucratic procedures and paperwork – they preferred to cut down the trees to earn immediately and at the same time get the whole amount without paperwork and waiting. Whereas the non-landowners or non-right-holders received nothing from the harvesting of the forests by the Government, they deemed it appropriate to benefit from the lawlessness by felling as many trees as they could.

The land ownership disputes and the tussles between tenant-owners also contributed greatly to unauthorised fellings by tenants who resided on the spot – they had nothing to lose personally by illicit fellings but did stand to earn extra money and immediate monetary gains; to offend the traditional proprietors and to assert their freedom from the previous bondage and obligations. At the same time the contractors and such people as are now called "forest mafia", in collaboration with officers and staff of the Forest Department (which was an open secret and the talk of the day), ruthlessly cut down the trees irrespective of their maturity etc.

The lengthy legal procedures and complicated proceedings in cases of filing suits by the Forest Department for illicit and unauthorised cutting in the forests, and the non-implementation of the rules and regulations also played and still play their due role.

The change in the social and political system which came abruptly after the merger of the State, the high growth rate of the population and the influx of money from abroad stimulated construction work both for residential and commercial purposes. This resulted in a huge increase in the use of, and demand for, timber and also firewood; the new fashion of using Deodar and Kail wood as tiles on the walls of both residential and commercial buildings has its own effect on the process of deforestation.

The Forest Department personnel also had some handicaps which hampered even those of them who are honest and who want to perform their duty with a professional conscience. These handicaps included social pressure and political interference, as well as the complicated and lengthy court procedures, which mostly ended in the acquittal of the culprits and consequently in shame and humiliation for the Forest Department's personnel before the culprits. The most significant handicap was the insecurity at the hands of the smugglers and those doing illicit forest cuttings. The significant first event of this nature was the murder of Abdul Latif (of Saidu Sharif), Tahsildar Babuzi/Forest Magistrate on 15th July 1975 in the jurisdiction of Matta Tahsil of Swat District at the hands of smugglers as he pursued them.

Another similar case was the shooting at Forest Department personnel near the village of Ningwalai in Kabal Tahsil area of Swat District in 1993, as they pursued the

smugglers who were smuggling timber down Swat River. This resulted in the murder of a Forest Guard, namely Shirin Zada. In another attempt to pursue smugglers who were also smuggling timber down the Swat River, a Forester Abdul Bashir lost his life in 1998 near the village of Ghaligay in Barikot Tahsil area of Swat District. Similarly, Taj Muambar, Forest Guard, lost his life on 7th June 1999 while performing his duty at Wainai Check Post, Matta Tahsil of Swat District. Two Forest Guards, namely Muhammad Pir Jan and Abd-ur-Rauf alias Qazi, lost their lives on 14th December 2000 in Bin Shah, Puran area of Shangla District, at the hands of *dandasa* (inner-bark of walnut, *Juglans regia*) smugglers. And yet another example is the indiscriminate arm firing in the Rajkan forest, Chagharzai area of Buner District, on 24th March 2003, at the Forest Department staff and civil society members who were raiding those busy with illicit fellings in the forest; this resulted in the loss of ten human lives including a Forester, namely Parvaish Khan, at the hands of the culprits.²³⁰

It is worth mentioning that the loss of lives of forest personnel at the hands of smugglers/forest mafia are far greater in the study area especially in Swat, compared to other areas of the Province. According to the information provided by Muhammad Zeb Khan only four persons of the Forest Department lost their lives while performing their duties in other parts of the Province. They are Muhammad Miskin, murdered on 18th November 2001 while performing his duty in Donga forest of Ugi Tahsil of Mansehra District; Abdul Aziz, murdered on Eid night, 4th February 2003, in Mankiyal of Haripur District; Muhammad Sudur Khan, Forest Guard, murdered in December 2003 while performing his duty in the left bank area of Lower Indus Kohistan of the Kohistan District, at the time of the visit of the Secretary, Forest Department, and Chief Conservator Forests of the Province; Muhammad Naeem, Forester, died on 7th September 2004 while trying to save a child from a falling tree at the time of official felling, though he saved the child but was himself caught under the tree and lost his life.²³¹

It is evident from the aforesaid that out of the persons who lost their lives while performing their duties, seven lost their lives in the study area and only three in the rest of the Province. And among the seven in the study area, four lost their lives in Swat, two in Shangla and one in Buner.

Similarly, there is no protection for witnesses due to which no one is ready to become a witness. Moreover, the witness suffers by having to come from far-flung areas to the courts to record his testimony. Due to the judicial system the witness is generally not recorded at first attendance in court and hence the witness has to come time and again for the said purpose. Thus the insecurity, waste of time, hardship and monetary burden make people reluctant to become witnesses. Whereas in the State days, instead of

²³⁰ Muhammad Zeb Khan Advocate (Forester, Lower Dir Forest Division, and Central President, Forest Guards, Foresters and Deputy Rangers Association, NWFP), IA, Telephonic, 13 April 2006.

²³¹ Ibid.

facing such difficulties and insecurity, the informer not only received reward by receiving a share of the fine but also had his security guaranteed.

The Pak-Swiss Kalam Integrated Development Project (KIDP) also, in a way, contributed to the depletion of the forests' natural resources due to promoting scientific methods for, introducing and promoting off-season vegetables like turnips, fresh beans, cabbages, cauliflower and new varieties of potatoes. As these vegetables and potatoes proved more productive and cash-generating compared to the maize crop previously cultivated in the area which was both cheap and less productive, this gave impetus to the cutting down of trees and clearing forests to convert forestland into agricultural land and thus get more space for sowing and producing the off-season vegetables and potatoes. Moreover, they also earned and still earn extra from the timber extracted by felling trees to clear the land for agricultural purposes – for them two birds are killed with one stone. The role of the introduction of the off-session vegetables and the new varieties of potatoes in the deforestation is also noted by Nazir Mohammad and Shamsul Wahab. They state that encroachment upon forest areas “is still in progress in some areas by converting forest potential areas for potato cultivation.”²³²

Forest and other governmental departments not only remained involved in the illicit fellings of trees in the forests, they also collaborated in smuggling the timber thus extracted.²³³ It has been rightly recorded about the present day Matta Forest Range of Swat Forest Division that “illegal cutting by the community” is done or going on “with the knowledge of Forest Department staff responsible for the area,”²³⁴ which is practically the situation in all the areas covered by this study. It was in such a context that both Abdul Khaliq Baluch and Mian Muqarab Shah of the Pakistan Forest Institute, Peshawar, went to the extent of commenting that the forests would be saved by removing the Forest staff,²³⁵ and Saifullah Khan remarks that were the Forest Department to be given charge of the Population Welfare Department, the population would be controlled as, under their supervision, the forests faded away.²³⁶

Also, the value of the fines fixed by the Forest Act of 1927 devalued greatly with the passage of time, whereas the price of timber rose manifold. Therefore the fines imposed by the officers or courts (if any at all), after the extension of the Act to the area, remained so meagre and valueless that the offenders lost nothing.

²³² Muhammad and Shamsul Wahab, *Working Plan for Kalam Kohistan Forests of Upper Swat Forest Division (1987-88 to 2001-02)*, p. 18.

²³³ Deduced from the interviews conducted by the author. It also remained talk of the day.

²³⁴ Raashid, *Resource Management Plan for the Matta Forest Range of Swat Forest Division (2000-2002 to 2014-15)*, p. 25.

²³⁵ Abdul Khaliq Baluch, IA, Verbal, Peshawar, 7 January 2004; Mian Muqarab Shah, IA, Verbal, Peshawar, 7 January 2004.

²³⁶ Saifullah Khan, IA, Verbal, Mingawara, Swat, 7 January 2006.

The Government failed miserably to implement its laws, rules and regulations and to protect the lands and forests it had declared its own property. Ghani-yur-Rahman, formerly Forest Officer Swat State and later Chief-Conservator Forests, NWFP, put it accurately when he stated that the situation had changed on paper from bad to good after the merger of the State, but in practice it went from bad to worse.²³⁷

Although some steps have been taken through the recent Institutional Reforms Programme, e.g. steps for enhancing the capacity of Forest Department staff, and the establishment of Village Development Committees and Women's Organisations in some areas, the outcome is not encouraging due to the inefficient and ineffective management system and the improper or non-implementation of rules and regulations. This is also due to not actually providing timber to the local non-owner population to meet their bona fide needs; consequently, at least in the non-forest or the non-right holders areas, they mainly meet their needs by illegal means.

3.5 Method of Exploitation

The same method of exploitation of the forests was retained as was in vogue during the State period. Although the procedures of the Working Plans were followed in the marking of trees meant for felling, the contractors granted felling contracts for the standing trees in forests generally used the same method of felling the trees by axe and converting them into scantling and sleepers or logs *in situ*. In March 1974, however, the traditional manner of contracts for felling standing trees was done away with and departmental exploitation of the forests was started instead,²³⁸ under the Forest Development Corporation.

This, however, was applicable only to the fellings done under the Working Plans. On the ground, the same practice of felling the trees by axe and *in situ* conversion into scantling and sleepers or logs continued due to the illicit fellings that were carried out for a variety of reasons detailed in section 3.4 above.

3.6 Demarcation

As in the Swat State period, in the post-State period the forests still remained undemarcated through masonry pillars, and this in spite of the Revenue Department having carried out the land settlement. Hence, encroachment upon the forestland and its conversion into non-forestland for agricultural, construction and other purposes

²³⁷ Ghani-yur-Rahman, IA, Verbal, Malukabad, Mingawara, Swat, 11 December 2005.

²³⁸ Ahmad, *Revised Working Plan for Ranolia-Dubair Forests of Kohistan Forest Division (1985-86 to 1999-2000)*, p. 18.

continued and the forest boundaries receded upwards. This is also endorsed in the Working Plans prepared in the post-State period.²³⁹ Though in some parts stone marks were made to demarcate forest and non-forestland after the preparation of the Working Plans to enter into effect from the years 1964/1965, they were not cemented in and were hence removed by the people with the passage of time.

The work of demarcating of forest and non-forestland by erecting masonry pillars was however taken in hand in 2001-2002 in Buner and Shangla districts and some Tahsils of the Swat District. The demarcation is done on the basis of the land settlement record and not on the basis of the Working Plans' maps prepared in the 1960s. The demarcation is planned to be carried out in two phases.

- In Phase I, it is to be done in Buner and Shangla districts and the Barikot, Babuzi, Charbagh and Kabal Tahsils of Swat District and is expected to be completed by 2007-2008.
- In Phase II, it is intended to be carried out in Matta, Khwaza Khela, Bahrain and Kalam Tahsils areas of the Swat District after the completion of the work of Phase I.²⁴⁰

The demarcation process is not, however, proceeding smoothly and in the required manner owing to a number of problems: opposition by the people and disputes between the Forest Department and the landowners concerned over the issue of where the boundary is to be marked on the ground. Besides, according to Haider Ali Khan, the main problem is the wrong settlement record, i.e. forests entered in people's names as agricultural land and the agricultural land in the name of the Government as forestland, and the *qabza* (occupation by non-owners). This kind of dispute is more common in Swat than Shangla and Buner districts for settlement reasons.²⁴¹

3.7 The Royalty

The total forest area in the then Swat subdivision, i.e. present day Swat District including Kalam, at the time of the land settlement was recorded as 346,842 acres which is equal to 542 square miles; that of the Buner subdivision and Shangla area of the Shangla subdivision, i.e. present day Buner and Shangla Districts, was respectively

²³⁹ For example see Mohammad, *Working Plan for Upper Indus Kohistan Forests of Swat District (1972-73 — 1981-82)*, Malakand Forest Division, p. 3; Ahmad, *Revised Working Plan for Ranolia-Dubair Forests of Kohistan Forest Division (1985-86 to 1999-2000)*, pp. 12,14; Raashid, *Resource Management Plan for the Matta Forest Range of Swat Forest Division (2000-2001 to 2014-15)*, p. 9.

²⁴⁰ Haider Ali Khan (Conservator of Forests, Malakand Forest Circle), IA, Verbal, Gulkada, Swat, 20 February 2006.

²⁴¹ Ibid.

recorded as 98,497 acres, which is equal to 154 square miles, and 346,842 acres, which is equal to 124 square miles.²⁴² The Indus Kohistan portion of the then District Swat was not recorded because no land settlement happened in that area. In the land settlement, the forest was recorded as being the property of the Forest Department and of the Provincial Government. However, the *patwaris* had done favours and disfavours in recording the forests and the hill lands or non-forest highlands under the name of people or the government, which as mentioned above became a problem in the demarcation of the forest and non-forest land.

Regarding royalty, the same rules as discussed in chapter 2 still prevail in the post-State period. There are, however, individual(s) vs. individual(s) disputes and claims, which are contested in the civil courts. Moreover, by law females are now also entitled to a share of the royalty if they take this to the civil courts.

3.8 Procedural Mess

The implementation mechanism worked better in the State period and this is visible in the clearly contrasting situations on the ground of the former State and the post-State periods. The forests became the foremost victim in the changed political, social, economical and administrative environment with and after the merger of the State. The forest management and conservation system was not altogether fool-proof during the Swat State period but it did prove better than the post-State period.

In the post- State situation, details have already been given in sections 3.2 and 3.3 above about how the rules and regulations of the State era were gradually changed and adjusted to the new situation. The Principles of Policy have also been outlined in Chapter 2 of the Constitution of 1973. Article 29 (1) of the Constitution of 1973 states:

The Principles set out in this Chapter shall be known as the Principles of Policy, and it is the responsibility of each organ and authority of the State [Pakistan], and each person performing functions on behalf of an organ or authority of the State, to act in accordance with those Principles in so far as they relate to the functions of the organ or authority.²⁴³

Pakistan being a Federation under the Constitution of 1973, the Constitution also states the procedures of legislation. The land and the forests have been made Provincial

²⁴² OSD, SS, Gulkada, to Secy, BoR, NWFP, No. 2101/SOS-103/4, 29 December 1986, in "Settlement Report Swat District", *DQOGS*.

²⁴³ *The Constitution of the Islamic Republic of Pakistan 1973: Commentary by Emmanuel Zaffar*, Vol. 1 (Lahore: Irfan Law Book House, 1992-93), p. 288.

subjects under article 142 (c),²⁴⁴ but there too the general policy framework is made at Central level. It is only the detailed legislation and arrangements for implementation that are done at Provincial level.

This state of affairs has created a sort of diarchy, which is evident from the fact that although the forests are a Provincial Subject, it is the Federal Government that has banned the marking of trees for felling in the forests since 1993 after floods wreaked great damage in the Punjab. The ban was lifted in 2001 for one year only on an experimental basis, and has been re-imposed since. Although the Provincial Government strives for it to be lifted, it has so far not succeeded. However, harvesting of dry and windfall trees through the Forest Development Corporation has been allowed since October 2003.

Besides, Provincially Administered Tribal Areas (PATA) were created under article 260 (a) (b) of the Interim Constitution of 1972, and Swat District including Kalam was made its part.²⁴⁵ The status of being the Provincially Administered Tribal Areas has been retained under article 246 (b) (i) of the Constitution of 1973²⁴⁶ and the procedures for extending a law to PATA has also been detailed under article 247.²⁴⁷ All this creates hurdles because the laws do not apply automatically to the PATA area with the law's promulgation and extension under the special procedures not only takes a long time but sometimes also creates anxiety.

For example the NWFP Forestry Commission Act, 1999,²⁴⁸ and the NWFP Forest Ordinance, 2002²⁴⁹ were promulgated in the Province in 1999 and 2002 respectively but it took almost five and two years respectively to extend them to PATA²⁵⁰ and therefore also to the study area, on 24th July 2004.

Besides, the plan under the devolution plan was to devolve the powers and functions of the Government to local level. For this purpose, the Local Governments were introduced in 2001, under the Local Governments Ordinance, 2001 (NWFP Ordinance

²⁴⁴ See *ibid.*, p. 482; and also "Fourth Schedule, [Article 70(4)], Legislative Lists]" in *ibid.*, Vol. 2, pp. 1672-77.

²⁴⁵ See *The Interim Constitution of the Islamic Republic of Pakistan* in Mahmood, *Constitutional Foundations of Pakistan*, p. 720; also *The Interim Constitution of the Islamic Republic of Pakistan* [1972] in *PLD*, Vol. 24 (1972), Central Statutes, p. 579.

²⁴⁶ See *The Constitution of the Islamic Republic of Pakistan 1973: Commentary by Emmanuel Zaffar*, Vol. 2., p. 1562.

²⁴⁷ See *Ibid.*, pp. 1564-65.

²⁴⁸ For the North-West Frontier Province Forestry Commission Act, 1999, Act XV of 1999, see *PLD*, Vol. 52 (2000), N.-W.F.P. Statutes, pp. 144-49.

²⁴⁹ For the North-West Frontier Province Forest Ordinance, 2002, see Notification, No. Legis: 1 (6)/99-II/4525, 10 June 2002, Law Department, Govt. of NWFP, The North-West Frontier Province Forest Ordinance, 2002 (NWFP Ordinance No. XIX of 2002), Extraordinary, Registered No. P. 111, Government Gazette, NWFP.

²⁵⁰ Notification, No. SO(Judicial)HD1-34/04, 24 July 2004, HTAD, Govt. of NWFP.

No. XIV of 2001). It was another anomaly of the procedural mess that the said Local Governments Ordinance, 2001 was not specially extended under a Regulation by the Governor to PATA, and the election process was started due to which some aggrieved persons challenged the legal status of the election and the devolution plan in respect of PATA in the Peshawar High Court. It was once the Court had served notice to the Government that the said Ordinance of 2001 was extended to PATA very quickly and retroactively.

Under paragraph 4 of the said Ordinance, the local governments are required to work within the Provincial framework:

- (1) The local governments established under this Ordinance shall function within the Provincial framework and adhere to the Federal and Provincial laws.
- (2) In performance of their functions the local governments shall not impede or prejudice the exercise of the executive authority of the Government.²⁵¹

Under paragraph 195, under the heading “General powers of local governments,” it has been stated that:

- (1) Notwithstanding any specific provisions, every local government, the Village Council and Neighbourhood Council shall perform functions conferred by or under this Ordinance and in performance of such functions shall exercise such powers which are [necessary and appropriate] thereto.
- (2) Until different provisions, rules or bye-laws are made, the respective local governments shall exercise such powers as are specified in the Sixth Schedule.²⁵²

Paragraph 18 of the said “Sixth Schedule” states that:

Forests.—A concerned local government may, in the manner prescribed, frame and enforce plans providing for the improvement, development and exploitation of forests and maintain, plan and work forests in accordance with such plans.²⁵³

²⁵¹ *The North-West Frontier Province Local Government Ordinance, 2001 (N.W.F.P. Ordinance No. XIV of 2001), Updated as on June 01, 2003 by NWFP-EIROP (Incorporating all 15 Amendments)* (Printed & Disseminated by Local Government & Rural Development Department, Government of NWFP, with the Assistance of NWFP-Essential Institutional Reforms Operationalisation Programme, n.d.), p. 5.

In the “Definitions” under Paragraph 2 of the Ordinance

(xvi) ‘local governments’ includes-

- (a) a District Government or a City District Government and Zilla Council;
- (b) a Tehsil Municipal Administration and Tehsil Council;
- (c) a Town Municipal Administration and Town Council; and
- (d) a Union Administration and Union Council (ibid., pp. 2-3).

Whereas:

‘Government’ means the Government of the North-West Frontier Province’ (ibid., p. 2).

²⁵² Ibid., p. 93.

Whereas, paragraph 192 of the Ordinance states on the subject of making “bye-laws” that:

(1) A Zilla Council, Tehsil Council, Town Council and Union Council may, in their ambit of responsibilities, make bye-laws to carry out the purpose of this Ordinance.

(2) In particular and without prejudice to the generality of the fore-going power, such bye-laws may provide for all or any of the matters specified in Part II of the Fifth Schedule: Provided that the Government may make model Bye-laws on any, some or all of relevant subjects for the sake of uniformity.²⁵⁴

Part II of the said ‘Fifth Schedule’ not only contains “26. Forests and Plantation” but also line subjects like “.... 3. Zoning, master planning, and buildings, 7. Local government (Agricultural Development), 10. Registration of sale and control of cattle and animals, 25. Prevention of air, water, noise, and soil pollution, 35. Excavation of earth, stone or any other material, 41. Pollution of air, water or soil,”²⁵⁵

The line departments like Agriculture, Livestock, On-Farm Water Management, Soil Conservation, Soil Fertility, Fisheries, Farm-forestry, Environment, Land Revenue, Estate, Housing, Urban and Physical Planning and Public Health Engineering, Local Government & Rural Development, District Roads and Buildings, and Planning and Development are decentralised under Paragraph 14 with the heading “Decentralized Offices and grouping of offices” to the effect that:

(1) On the commencement of this Ordinance, the administrative and financial authority for the management of the offices of the Government specified in Part-A of the First Schedule set up in a district shall stand decentralized to the District Government of that district.²⁵⁶

However, the Forest Department has not been decentralised and the powers in this respect have not been devolved to the local governments, in spite of their authorisation, under Paragraph 192, to make bye-laws for the forests and, under paragraph 18, to “*frame and enforce plans* providing for the improvement, development and *exploitation of forests* and maintain, plan and *work forests in accordance with such plans* [my italics and underlining].” This situation creates a mess because functions have been vested in the local governments but they have no authority or control over the department responsible for the management and affairs of the said subject. Besides, one anomaly is whether or how the forests are to be worked under different plans prepared by the Provincial and a variety of Local Governments.

²⁵³ Ibid., p. 120.

²⁵⁴ Ibid., p. 92.

²⁵⁵ Ibid., pp. 114-15.

²⁵⁶ Ibid., p. 9.

3.9 Present Legal Status

The question of the present legal status of the forests has many dimensions which are to be evaluated from three perspectives: people vs. government or government vs. people, people vs. people, and government alone.

3.9.1 People vs. Government or Government vs. People Perspective

To make the present legal situation clear from the people vs. government or government vs. people perspective, it should be mentioned that the Working Plans were first carried out in the proper manner in the Swat State areas and Kalam in the 1960s, and for some areas also in 1925, 1928 and 1931, though not in the formal manner (but there was no forest settlement). Despite there not having been any forest or land settlement, on the one hand the population was lower and, on the other hand, there was a dictatorial form of government which implemented rules and regulations to a greater extent, due to which people in general did not dare encroach onto forestland on a mass scale.

It has been detailed in section 3.4 above that the felling of trees and mass encroachment onto forestland started after the merger of the State. The forests, therefore, started to disappear due to which a vast area of forest was cleared before the completion of the land settlement process in the 1980s. But when the Revenue Department of the Provincial Government started the settlement of the land, in some cases, due to the non-cooperation of some owners, the settlement authorities recorded the legal land of a particular owner as protected forest, but in the vicinity another owners' property was entered in their own name. Thus, in this respect, revenue records do not tally with the Working Plans and compartment history files.²⁵⁷

This creates complexities in the legal status of the lands subjected to such type of entries because although the said entries do not tally with the Working Plans and compartment history files, they are strengthened by section 52 of the West Pakistan Land Revenue Act, 1967, which states that:

Any entry made in the record-of-rights in accordance with the law for the time being in force, or in a periodical record in accordance with the provisions of this Chapter and

²⁵⁷ Compartment history file is the file in which the compartment name, boundaries, total area, cultivated or uncultivated, wasteland, streams and kind of trees etc. are recorded annually. In other words, compartment history file is the file in which all the details about the compartment are recorded as per the rules. For a full description of history file or compartment history file, see Chapter VIII, Sections 91 to 95, Annual Reports and Returns, Vol. III, (Relating to office business, working plans, Annual Reports and Returns), in Niazi, *Manual of Forest Laws*, pp. 676-78.

the rules made thereunder, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted thereof.²⁵⁸

Hence, those who consider themselves unhappy about such settlement entries had to approach the civil courts to correct the entries. This is specified under section 53 of the said Revenue Act, 1967, which states that “if any person considers himself aggrieved by an entry in a ‘Record-of-Rights’ or in a periodical record as to any right of which he is in possession, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 (Act I of 1877).”²⁵⁹ Although section 53 has provided a measure of relief for the aggrieved, the present legal system makes the settlement of the issue lengthy, time-consuming and costly - this type of legal complications still exists.

Under section 29 of both the Forest Act of 1927 and NWFP Forest Ordinance of 2002, the Provincial Government shall not declare any forestland or wasteland as protected forest unless the nature and extent of the rights of the Government and private persons in and over such land have been properly inquired into and recorded in a survey or settlement or any other appropriate manner. In cases where the Government does not fulfil the aforesaid condition, the declaration of any forestland or wasteland shall not abridge or affect any of the existing rights of individuals or communities, meaning that the existing rights of the owners and right-holders remain unchanged.²⁶⁰

Moreover, by declaring the forestland as protected and only the trees as reserved, the Provincial Government accepts to a certain extent the people’s ownership of the forestland, with the restrictions imposed in clause 2, because, according to Ghani-yur-Rahman, only reserve forests purely are owned by the Government and the protected ones fall in-between.²⁶¹

3.9.2 People vs. People Perspective

The *inter se* cases (i.e. cases pending in the courts) between the local owners or right-holders are not harmful to the Government or to the forest because the successful party will be substituted or entered into the revenue record and will be entitled to receive the share of the sales proceeds.

However, the disputes between right-holders and tenants are harmful to the forests because these disputes result in illicit fellings and hence deforestation and to that effect they are also harmful to the Government.

²⁵⁸ Mahmood, *A Comprehensive and Exhaustive Commentary on West Pakistan Land Revenue Act, 1967*, p. 245.

²⁵⁹ *Ibid.*, p. 262.

²⁶⁰ See section 29 of the Forest Act of 1927, and section 29 of the NWFP Forest Ordinance of 2002.

²⁶¹ Ghani-yur-Rahman, IA, Verbal, Malukabad, Mingawara, Swat, 11 December 2005.

Legally speaking, at present, the entries made in the settlement record are final under section 52 of the West Pakistan Land Revenue Act, 1967, if there are no objections and legal proceedings to this effect against those entries made under section 53 of the said Act. Furthermore, a person who is not in possession can approach the court in respect of any entry in the record of rights but not more than six years after the completion of the settlement process.²⁶² There is, however, one exception: if a person is in possession of a land or forest etc. he can institute a civil case in respect of wrong entry at any time when it comes into his knowledge or, in other words, there is no time bar for filing a suit in such cases.²⁶³

3.9.3 Solely Government Perspective

The North-West Frontier Province Forest Ordinance, 2002 (NWFP Ordinance No. XIX of 2002), which was published on 11th June 2002 and came “into force at once”, was only extended to the study area two years later on 24th July 2004.²⁶⁴ Although the Ordinance has repealed the Forest Act of 1927 in its application to the NWFP under section 120 sub-section (1), it has at the same time retained the application of the Forest Act of 1927 and has given protection to the actions made and steps taken thereunder. To that effect the same applies to the study area, under section 120 sub-section (2) and also under section 2 “definitions” (30), wherein it has been stated that “‘protected forests’ means all forests existing as such on the commencement of this ordinance and other forest that may be declared as protected forest under section 29.”²⁶⁵

But before commenting on the situation under the NWFP Forest Ordinance, 2002, the full text of section 29 ought to be reproduced to give the reader a proper understanding of the situation:

29. Power to declare protected forests. ---

(1) Government [the Government of NWFP] may, by notification in the Official Gazette, declare any forest land or wasteland which is not included in a reserved forest, but which is the property of Government or over which Government has proprietary rights, or to the whole or any part of the forest produce of which Government is entitled, a protected forest.

²⁶² See Article 120 of “The First Schedule” in M. Mahmood, *A Comprehensive and Exhaustive Commentary on The Limitation Act, (IX of 1908), Amendments and Case Law Up-to-Date*, 4th edition (Lahore: Pakistan Law Times Publications, 2003), p. 657.

²⁶³ See *PLJ*, Vol. 13 (1985), Lahore, pp. 340-43; *ibid.*, Peshawar, pp. 12-14; *Civil Law Cases*, Vol. 27 (2005), Part-12, p. 1387.

²⁶⁴ Notification, No. SO(Judicial)HD1-34/04, 24 July 2004, HTAD, Govt. of NWFP.

²⁶⁵ Notification, No. Legis: 1 (6)/99-II/4525, 10 June 2002, Law Department, Govt. of NWFP, The North-West Frontier Province Forest Ordinance, 2002 (NWFP Ordinance No. XIX of 2002), Extraordinary, Registered No. P. 111, Government Gazette, NWFP.

(2) The situation and limits of such land or forest shall be specified in the notification, as nearly as possible, *by roads, rivers, ridges or other well-known or readily intelligible boundaries.*

(3) The management of the forest or wasteland comprised in the notification issued under sub-section (1) shall vest in the Forest Officers.

(4) No notification under sub-section (1) shall be made unless the nature and extent of rights of Government and of private persons, in or over the forest or wasteland comprised therein, have been inquired into and recorded at a survey or settlement, or in such other manner as Government may consider appropriate. Every such record shall be presumed to be correct unless the contrary is proved; and that rights recorded under this section cannot be interfered with at all, except in a closed forest or when rights are suspended on account of fire, excessive damages to forest or on account of any act prohibited under section 33;

Provided that if, in the case of any forest or wasteland, Government considers that such inquiry and record will occupy such length of time as in the meantime to endanger the rights of Government, it may, pending such inquiry and record, declare such land to be a protected forest, *but so as not to abridge or affect any existing rights of individuals or communities.*

(5) Government may, in the interest of forest conservancy, conduct proper enquiry into the nature and extent of rights of Government and of private persons in or over protected forest, as soon as possible, after issuance of notification under sub-section (1) or declaration under the proviso to sub-section (4) and constitute any such forest or land, a protected forest, *in accordance with the procedure laid down in respect of reserved forests as contained in sections 5 to section 21 of this Ordinance* [my italics].²⁶⁶

Notwithstanding the fact that it preserved the status of the study area's forests as protected under section 2 sub-section (30) and section 120 sub-section (2) of the NWFP Forest Ordinance, 2002, section 29 sub-section (2) sets out some conditions for doing so, stating that "the situation and limits of such land or forest shall be specified in the notification as nearly as possible, by roads, rivers, ridges or other well-known or readily intelligible boundaries." This has not been done in respect of the forests within the study area neither in the Notification, i.e. No. SOFT (FAD) V-168/71 (i) dated 20th December 1975,²⁶⁷ nor in the NWFP Forest Ordinance, 2002, which endorses the said notification.

Besides, section 120 sub-section (2) of the NWFP Forest Ordinance, 2002 itself, while giving fresh enactment to "any appointment made, order passed, notifications issued, rules made, contracts entered into, proceedings commenced, rights acquired, liabilities incurred, penalties, rates, fees or charges levied, forfeitures made, things done or

²⁶⁶ Section 29, *ibid.*

²⁶⁷ See Notification, No. SOFT (FAD) V-168/71 (i) 20 December 1975, AD, NWFP, Gazette of NWFP, in Ali, *Laws Extended to the Tribal Areas with Jirga Laws*, p. 260.

actions taken” under the repealed Forest Act of 1927, clearly states “so far as they are not inconsistent with the provisions of this Ordinance.” That is why the legal position of the forests in the study area no longer have protected status because they have so far not met or abided by the conditions laid down in sub-section (2) and also in sub-section (5) of section 29 of the NWFP Forest Ordinance, 2002. Moreover, the NWFP Forest Ordinance, 2002 has also given protection to the existing rights of both individuals and communities, under sub-sections 4 and 5 of section 29.

To deal with the present legal status of the forests of the study area from the aspect of section 30 of the NWFP Forest Ordinance, 2002, applicable also to the forests of the study area, the text of the section should be reproduced in full so as to make it easier to understand the situation. The section reads as below:

30. Power to reserve trees, close forests and prohibit certain acts.---

(1) Government may by notification,-

(a) *declare any trees or class of trees or brushwood listed in Schedule-I or any other forest produce in a protected forest to be reserved from a date fixed by notification;*

(b) *declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as Government considers fit and that the rights of private person, or village community, if any, over such portion shall be suspended during such term;*

Provided that when any such portion of the forest is closed, it shall be ensured that the remainder of such forests is sufficient and is reasonably convenient for the due exercise of the rights suspended in the portion so closed; or

(c) prohibit, from a date fixed as aforesaid, the quarrying of stones, or the burning of lime or charcoal, or their collection or subjection to any manufacturing process, or removal of any timber or forest produce in any such forests, and the breaking up or clearing of land for cultivation, or for construction of any building, or enclosure, or for herding cattle or the extension of any kind of encroachment over such land for any other purpose, or pasturing of cattle, or any other act or acts mentioned in sub-section (1) and sub-section (2) of section 33, in any such forest.

(2) *All the trees on Government lands resumed by Government, or declared protected under this Ordinance, or any of the laws repealed by this Ordinance shall be deemed to be reserved under this section with effect from the commencement of this Ordinance* [my italics and underlining].²⁶⁸

In this scenario, the present legal status of the forests of the area, under the said section 30 of the NWFP Forest Ordinance, 2002, is that protection has been provided under section 120 sub-section (2) and section 30 sub-section (2), to notification No. SOFT

²⁶⁸ Section 30, Notification, No. Legis: 1 (6)/99-II/4525, 10 June 2002, Law Department, Govt. of NWFP, The North-West Frontier Province Forest Ordinance, 2002 (NWFP Ordinance No. XIX of 2002), Extraordinary, Registered No. P. 111, Government Gazette, NWFP.

(FAD) V-168/71 (ii), dated 22nd December 1975²⁶⁹ and the actions and steps taken thereunder under section 30 of the Forest Act of 1927. Section 30 sub-section (2) has, moreover, renewed the status by stating that “all the trees ... shall be deemed to be reserved under this section with effect from the commencement of this Ordinance,” but as detailed in section 3.3.2 above about the status under the Forest Act of 1927, the same kind of anomalies still remain in the application and operation of section 30 of the NWFP Forest Ordinance, 2002, because the conditions required under articles (a) and (b) of sub-section (1) of the Ordinance have not been fulfilled. For example: article (a) states that “any trees or class of trees or brushwood *listed in Schedule-I* can be declared as reserved by the Government [*italics mine*]” but notification No. SOFT (FAD) V-168/71 (ii) dated 22nd December 1975 (Agriculture Department, Govt. of NWFP) and section 30 sub-section (2) of the NWFP Forest Ordinance, 2002, have declared “all the trees” in all the forests of the study area as reserved. This is not in conformity with the tenets, purport and spirit of sub-section (1) article (a).

Besides, the present legal status of the restrictions imposed under sub-section (b) of the notification No. SOFT (FAD) V-168/71 (ii), dated 22nd December 1975, (Agriculture Department, Govt. of NWFP) is that although the said restrictions have not been reimplemented in the NWFP Forest Ordinance, 2002, protection has been provided to them under sub-section (2) of section 120 of the Ordinance. But the loopholes therein have already been evaluated in sub-section 3.3.2 above due to which the said notification and the consequent restrictions lose their value and their legal basis.

²⁶⁹ See Notification, No. SOFT (FAD) V-168/71 (ii) 22 December 1975, AD, NWFP, Gazette of NWFP, in Ali, *Laws Extended to the Tribal Areas with Jirga Laws*, p. 260.

4 Kalam Area (1947-2005)

Bordered by the three Princely states of Swat, Dir and Chitral, the Gawri or Kalam tract of Kalam, Utror and Ushu areas – commonly referred to in the official records as Kalam – remained a bone of contention between the rulers of the three states, each one of whom had his own grounds for laying claim to the area. The colonial authorities of British India, however, compelled them to refrain from interference in and occupation of the area whenever they tried to do so. The colonial authorities had ambitions to control the area themselves – but to no avail.²⁷⁰

4.1 Occupation by Swat State

The colonial authorities stopped the ruler of Swat State on a number of occasions from interfering in and incorporating Kalam into his State, but he continued his efforts.²⁷¹ In 1947 some British Officials hinted to the then heir apparent and Commander-in-Chief of Swat State that by midnight of August 14–15 there would be no British rule so they could occupy Kalam. This was done and Kalam was incorporated into Swat State in August 1947.²⁷²

The Nawab of Dir resented the occupation and pleaded against it with the Pakistani authorities.²⁷³ Although the Mehtar of Chitral too was not happy, he entered into an agreement with the Swati ruler to renounce his claim over the tract in exchange for a payment of Rs. 50,000/-. The Government of Pakistan, however, neither recognised the said agreement nor the occupation and deemed it in contravention of the Agreement of 1926 made by the ruler of Swat State with the Government of India, of the Agreement of 1928 made between the combined *jargas* of the tract and the Government of India, and the Stand Still Agreement signed with the Government of Pakistan by the Swati ruler.²⁷⁴

The plea of the Swat State ruler for the justification of the occupation by the State was that Kalam was not only occupied peacefully “before the establishment of Pakistan” but also “at the express request of the Kalam people” and without a shot being fired.²⁷⁵

²⁷⁰ For some detail, see Sultan-i-Rome, *Forestry in the Princely State of Swat and Kalam*, chap. 6.

²⁷¹ See “Kalam Affairs. Precise” by Abdur Rashid, PS to Governor, NWFP, TARC, S.N. 58/Swat, F.N. 21-S/48.

²⁷² Fredrik Barth, *The Last Wali of Swat: An Autobiography as Told to Fredrik Barth*, reprint (Bangkok: White Orchid Press, 1995), p. 102.

²⁷³ “Administrative Report on Dir, Swat and Malakand for the year 1947-48 (from 1st April 1947 to 31st March 1948)”, COP, B.N. 89, S.N. 2390. Also see TARC, S.N. 58/Swat, F.N. 21-S/48.

²⁷⁴ For details see TARC, S.N. 58/Swat, F.N. 21-S/48.

²⁷⁵ PA, DSC, to CS to Govt. NWFP, No. 198/C, 27 April 1948, *ibid*.

4.2 Forests' Perspective of the Occupation

Leaving aside the legal status of the occupation of the Kalam area by the ruler of Swat State, the occupation proved a landmark from the viewpoint of the forests of the area. Hitherto the forests of the tract were owned by the people and exploited irregularly without proper planning and management structure, but with the occupation the forests were not only brought under Swat State's control but were also subjected to the rules of the State and to the payment of only a portion, i.e. 10%, of the sales proceeds to the respective owners.

This was a drastic change because previously the colonial authorities, though endeavouring to control, manage, properly exploit and conserve the forests, neither claimed the ownership nor did they receive any share of the sales proceeds. They tried to meet the costs incurred in this respect only through tolls on exported timber. The ownership remained in the hands of the traditional owners due to which they got the whole sum from the sale of the trees. But now the Gawris received only 10% of the sales proceeds, the remaining 90% going to the State exchequer, and the State also claimed ownership. Although politically motivated, an application by some Kalami Malaks to the Nawab of Dir illustrates their anxiety well. They stated that:

We submit that before this also Miangul of Swat [Miangul Abdul Wadud: ruler of Swat State] cut our trees and you were informed. Now the brother of Muqarrab Malik and his cousin have been sent by the Maliks of Kalam who say that Miangul has now cut 300 trees and that he has been cutting more. We therefore inform you that forest trees are our food and clothing (source of life). It would be useless for us to live in Kalam after they have been cut. All of us will come down to Dir and take ready-made food here as trees are our life and soul and when all of them are removed we would have no other remedy but to migrate from Kalam.²⁷⁶

The suggestion in an official report that "the unauthorised export of timber from Kalam or unworked forests of Usha [Ushu?] Valley by various agencies of the Swat State is to be discouraged in the interest of Forest Conservancy"²⁷⁷ also speaks of the situation on the ground. The Political Agent at Malakand, while informing Chief Secretary NWFP about his detailed meeting with the Wali Sahib held per instruction of the Government, writes beside other things, that though the Wali said that "in future he will not export any timber from Kalam" he, i.e. the Wali, "added that illicit export of timber from

²⁷⁶ Translation of an application dated 14 Jamadiul Awal 1367 H. (corresponding to 26 March 1948), thumb-impressed by 50 Malaks of Kalam, to the Nawab of Dir, *ibid.* For the original Persian text also see *ibid.*

²⁷⁷ *Progress Report on Forest Administration in the North-West Frontier Province (PRFANWFP) for the year ending 31st March 1950*, p. 23.

Kalam was over looked by Col: Packman and Col: Sharif in the past and that the same should be done once again.”²⁷⁸

The allegation of the exploitation of the forests of Kalam by the Swati ruler can be further supported by the account of the Conservator of Forests who went with the Governor of the Province and visited the forests in 1953. He states that “*whatever I saw was quite to the contrary to what was said about the Kalam forests. These forests are no longer virgin or un-worked as described, there may be some areas in the inner portions of the valleys yet un-touched [my italics].*” He had, moreover, given the number of trees on the record as having been cut in the Kalam forests in the years 1948 to 1950 as well as the names of the persons to whom the contracts were given.²⁷⁹ It is, however, certain that more than the stated number of trees were cut but they were not on the record.

The issue and controversy over the unauthorised - from a Pakistani viewpoint - occupation of Kalam by Swat State and the fellings in the Kalam forests under the contracts given by the State authorities sometimes also created an anomalous situation in respect of the timber extracted from Swat State areas because the concerned Pakistani officials did not allow this to be exported either.

4.3 Pakistan Government’s Apprehensions

The Government of Pakistan did not recognise the Swati ruler as the rightful owner of the forests of Kalam tract, which is evident from the following statement:

With regard to the unauthorised sale of the Wali of 600 green trees to his Sipah Salar there appears to be no alternative but to confiscate the timber in terms of the Government of Pakistan’s order and dispose of it by public auction or by sale to Government Departments at the prevailing market rates. ... The balance of the sale proceeds will have to be kept in suspense account for distribution *to the rightful owners of the trees*. If the Sipah Salar has made some payment to the Wali as price of these trees he shall have to be compensated by recovery from the Wali of the sale proceed thus received by him [my italics].²⁸⁰

²⁷⁸ Hidayatullah Khan, PA, DSC, to M. Ahmad, CS, NWFP, D.O. No. 3118, 16 April 1952, *TARC*, S.N. nil/Swat, F.N. 11/46-FRP, Vol. I, Subject: Unauthorised felling of trees from Kalam & Seri Forests.

²⁷⁹ See “Kalam Forests” by Conservator of Forests, NWFP, *TARC*, S.N. 58/Swat, F.N. 21-S/48.

²⁸⁰ DS to Local Administration in the DD to PA, Malakand, No. 9370/41/47-DD, 13 October 1955, *TARC*, S.N. 60/Swat, F.N. 11/46-F.K.P., Vol. II.

Not only were the aforesaid 600 green trees cut down and exploited in Kalam forests but 1500 dry and windfall trees were also exploited and worked out by Haji Muhammad Ismail of Mingawara during 1949 and 1950.²⁸¹

As the Government of Pakistan considered the exploitation of the Kalam forests by the State as unauthorised, it resorted to the tools and techniques that had already been used by the colonial authorities of India in such cases, namely not allowing the timber extracted from Kalam forests to be exported into Pakistani territory and also impounding them at Landakay on the border of Swat State and Malakand Protected Area.²⁸²

To avoid the ban on exports of timber extracted from the forests of the Kalam area and also its being impounded by the Pakistani authorities, the Swati authorities even resorted to machinations and adopted the strategy of “false hammer marks”, i.e. marking the timber extracted from Kalam with the hammer marks used for timber extracted from the forests of other parts of Swat State.²⁸³

In the meantime, Miangul Abdul Wadud abdicated in favour of his son and heir apparent Miangul Jahanzeb on 12th December 1949. In spite of the Wali writing that “I may reiterate once more that I will abide by the decision of the Government in respect to Kalam, though I will request the Government to consider all the facts before any decision is taken,”²⁸⁴ the dispute over the occupation of the area and the exploitation of the forests of Kalam by the State continued. Khwaja Shahabuddin, Governor NWFP, was not ready even to let the issue lie after the signing of the Supplementary Instrument of Accession by the Wali and the Kalam issue, as was suggested by Col. Rahim. After dealing in detail with the points of Col. Abdur Rahim Khan, the Governor concluded his despatch with the contention that:

Having known the Wali for the last 16 months and having studied the man, I beg to differ from you that it will be quite easy whenever we like to get his assent and signature to the Supplementary Instrument of Accession. I think Kalam is a big lever to

²⁸¹ Appendix- P, Copy of a Memorandum No. 860/G dated 29 October 1950 from DFO, Northern Forest Division, Nowshera, to PA, DSC, *TARC*, S.N. nil/Swat, F.N. 11/46-FRP, Vol. I, Subject: Unauthorised felling of trees from Kalam & Seri Forests.

²⁸² For details see *TARC*, S.N. 60/Swat, F.N. 11/46-F.R.P., Vol. II, Subject: Unauthorised felling of trees from Kalam & Serai Forests; and S.N. nil/Swat, F.N. 11/46-F.R.P., Vol. I, Subject: Unauthorised felling of trees from Kalam & Serai Forests.

²⁸³ Also see Khan Hidayatullah Khan, PA, DSC, to M. Ahmad, CS, NWFP, D.O. No. 1242-C/St-7, 24 May 1953, *TARC*, S.N. 58/Swat, F.N. 21-S/48.

²⁸⁴ D.O. No. J-135, Saidu Sharif, Swat State, 31 October 1950, *TARC*, S.N. nil/Swat, F.N. 11/46-F.R.P., Vol. I, Subject: Unauthorised felling of trees from Kalam & Seri Forests.

use, and we should not allow this opportunity to go out of our hand. Therefore, the two questions must be linked up.²⁸⁵

4.4 Control by Government of Pakistan

The Wali, Miangul Jahanzeb, tried his best to hold on to control of the area, especially in view of the forest wealth of the tract, if not as a ruler at least as an agent to the Government of Pakistan so as to exploit the source. This is evident from a note of Col. Rahim, which he wrote after his discussion with the Wali. Khwaja Shahabuddin, Governor NWFP, has summarised the points of Col. Rahim in the following words.

- (i) That the Wali should administer the Kalam forests as the agent of the Pakistan Government.
- (ii) That he should be entitled to take away a sum of rupees 5 lacs out of the income of the Kalam forests, to meet administrative expenditure and for the purpose of development of the area and uplift of the people.
- (iii) That, according to your [Col. Rahim] information, it is likely that the annual income from Kalam forests would be in the neighbourhood of rupees 40 to 50 lacs and that after deducting rupees 5 lacs mentioned in item No. (ii) above, the balance should be divided between the Wali and the Pakistan Government in the ratio of 50:50.
- (iv) That the Wali should be permitted to work the forests according to the plan prepared by his forest officers until such time as the Forest Department of the Government of Pakistan is in position to prepare its own plan.
- (v) That the Wali should be permitted to choose contractors for the export of timber from Kalam without check or hindrance.
- (vi) That the question of Wali's signing a Supplementary Instrument of Accession should not be linked up with the question of Kalam.²⁸⁶

The Governor, while showing his reservations about suggestions No. (ii), (iii), (v) and (vi), expressed his agreement with suggestions No. (i) and (iv) in the following words:

4. I am in agreement with the suggestion that in view of administrative difficulties and the likelihood of our being involved in heavy expenditure to maintain our administration in Kalam, if the Wali chooses to give us trouble, it is advisable to appoint him as the Pakistan Government's agent for the purpose of administering the Kalam forests. ...

²⁸⁵ K. Shahabuddin, Governor NWFP, to Abdur Rahim Khan, Secy to GP, MSFR, D.O. No. 48/GH, 18 March 1953, *TARC*, S.N. 58/Swat, F.N. 21-S/48.

²⁸⁶ *Ibid.*

7. I am in agreement with item No. (iv), e.g. the Wali should be permitted to work the forests according to the plan prepared by his forest officers until such time as the Forest Department of the Pakistan Government is in a position to prepare its own plan.²⁸⁷

Khan Hidayatullah Khan, Political Agent at Malakand, showed his disagreement with the proposals of both Col. Rahim and the Governor and pleaded strongly, among other things, for neither making terms with the Wali and appointing him as agent of the Government of Pakistan for Kalam Area, nor working the forests under him and his staff. He writes that the letter of Col. Rahim and the reply of the Governor “indicates that a decision to appoint the Wali as Pak [Pakistan] Agent has been well reached and only the terms to be offered to the Wali are now to be settled.” He furthermore contends, among other things, that the “Wali undoubtedly played the aggressor and has been in the wrongful possession of Kalam in violation of his agreements and repeated solemn assurances regarding non-interference with Kalam and the tribes living there”²⁸⁸; and that:

He exploited Kalam forests and went to the extent of smuggling timber under false hammer marks. ...

I doubt, if it will be safe to entrust Wali’s staff with such valuable forests in spite of the past unauthorised exploitation in contravention of agreements and assurances on the subject.

In view of the temporary possession and his new position Wali and his men are likely to exploit the forests ruthlessly which in its turn will have a most detrimental effect on rains and the canal which works the electric machines at JABBAN and DARGAI.²⁸⁹

That was why to the Political Agent, besides other things, “the correct and honourable course seems to be to ask the Wali to take his hands off the Kalam forests as was done in 1938.”²⁹⁰

But as also conceived by the Political Agent, namely Khan Hidayatullah Khan, in spite of his strong opposition,²⁹¹ the Government of Pakistan proceeded with the proposal. A meeting was at last held on 11th August 1953 at Kalam and was attended by the Wali, Miangul Jahanzeb, on the one side and on the other by Governor NWFP, Chief Secretary to Govt. NWFP, Political Agent at Malakand, and Political Secretary to Governor NWFP. Drafts of the “Supplementary Instrument of Accession,” “Agreement with the Wali regarding Privy Purse, Private Property and Rights and Privileges,” and

287 Ibid.

288 Khan Hidayatullah Khan, PA, DSC, Malakand, to M. Ahmad, CS, NWFP, “Kalam Affairs,” D.O. No. 1242-C/St-7, 24 May 1953, *ibid.*

289 Ibid.

290 Ibid.

291 For details of the viewpoint and arguments of Khan Hidayatullah Khan, PA, DSC, at Malakand, see *ibid.*

“Government of Swat (Interim Constitution) Act, 1953” were discussed.²⁹² As a consequence of the deliberations,²⁹³ not only were the ‘Supplementary Instrument of Accession, 1954,’ ‘Agreement regarding Privy Purse, Private Property and Rights and Privileges,’ and ‘Government of Swat (Interim Constitution) Act, 1954’ concluded and signed by the Wali on 12th February 1954,²⁹⁴ but so were the ‘Agreement Regarding Administration of Swat Kohistan (Tracts of Kalam, Ushu and Utrot [Utror],’ which was attested by Khwaja Shahabuddin, Governor NWFP, on behalf of the Government of Pakistan the same day.

The apprehension and anxiety of the Government of Pakistan over the occupation of Kalam by Swat State can also be gauged from their behaviour. The agreement regarding Kalam was signed on behalf of the Government of Pakistan by Governor NWFP on the same day, but he did not do the same for the Supplementary Instrument of Accession, which was signed by the Wali on the same day, 12th February 1954, but was signed by Governor General of Pakistan later on 19th February 1954.

Clause 4 of the ‘Agreement Regarding Administration of Swat Kohistan (Tracts of Kalam, Ushu and Utrot [Utror],’ was about the administration, exploitation and conservancy of the forests of the tract, which runs thus:

4. A plan shall be drawn up by the Administrator in consultation with the Inspector-General of Forests of the Government of Pakistan for the careful working of the forest wealth of Kalam and no unauthorised fellings shall be allowed.

The Local Administration shall issue orders from time to time to deal with cases of contravention of this clause by imposing punitive duties or by confiscating the timber.²⁹⁵

Under this agreement the Wali of Swat State recognised the Kohistan tract of Kalam, Ushu and Utror, occupied by the State on the night of 14-15 August 1947 as part of the Tribal Areas included in the Federation of Pakistan and renounced his claim to ownership of the area; and the Government of Pakistan, for its part, appointed the Wali as Agent of the Government of Pakistan, to be called Administrator, for the administration of the said area.

However, instead of honouring the Wali’s proposal of sharing the income of the Kalam forests fifty-fifty with him, after deducting an amount for administrative and

²⁹² See “Minutes of the meeting held at Kalam on 11th August, 1953 at 10-A.M. under the Chairmanship of H.E. Khwaja Shahabuddin, Governor of the North-West Frontier Province,” *ibid*.

²⁹³ For some detail see *TARC*, S.N. 58/Swat, F.N. 21-S/48.

²⁹⁴ See (i) *Supplementary Instrument of Accession*. (ii) *Agreement with the Wali of Swat Regarding the Privy Purse, Private Property and Rights and Privileges*. (iii) *Government of Swat (Interim Constitution) Act 1954* (n.p., n.d).

²⁹⁵ “Agreement Regarding Administration of Swat Kohistan (Tracts of Kalam, Ushu and Utrot [Utror],” *TARC*, S.N. 32/Swat, F.N. 33/2-F.R.P, Vol. II.

developmental work and for the trouble he would take in administering the area for Pakistan, the Governor's suggestion of fixing a liberal allowance for the Wali, as Government of Pakistan Agent, was honoured. That was why, for performing the functions and duties detailed in clauses 1 to 6 of the Agreement as Administrator of the area, the Government of Pakistan undertook, under clause 7, to pay him "an allowance of Rs. 24,000/- (rupees twenty four thousand) per annum payable in monthly installments of Rs. 2,000/- (rupees two thousand) each."²⁹⁶

With the conclusion of the "Agreement Regarding Administration of Swat Kohistan (Tracts of Kalam, Ushu and Utrot [Utror])", the issue of the unauthorised control and fellings of Kalam forests by the ruler of Swat State had been brought to an end from the Pakistan Government's point of view. Not only were the affairs of the said forests now to be conducted under clause 4 of the agreement already presented above, but the forest service of the Provincial Forest Department, and not of the Central Government, was also later established for the said tract.

Although the control of the forests of Kalam area was now devolved to the Central Government of Pakistan and the Wali as Administrator had to work under clause 4 of the agreement, as well as there being a working plan in progress, it was stated that:

The preparation of the working plan is bound up with the question of rights whether of full ownership or income from sale of timber for construction or bona fide domestic purposes or grazing etc. Naturally, of course, a description of these is contained in the Wajibularz which is prepared before the forest settlement takes place.²⁹⁷

This, however, brought no drastic change in the manner of conservation, protection and exploitation because the Administrator in practice still wielded all powers and control. Under clause 4 of the Agreement of 1954, only this much was required of the Administrator with regard to the forests of the area: to prepare a Working Plan "in consultation with the Inspector-General of Forests of the Government of Pakistan for careful working of the forest wealth of Kalam and no unauthorised fellings shall be allowed"²⁹⁸; and the role of Local Administration, i.e. Provincial Government, was only to "issue orders from time to time to deal with cases of contravention of this clause by imposing punitive duties or by confiscating the timber."²⁹⁹

It is, however, evident from chapter 2 of this study that the Administrator, the Wali of Swat State, was already doing as much with regard to the forests of the areas of the

²⁹⁶ Ibid.

²⁹⁷ "A Note on the Illegal Fellings from Kalam Forests", *TARC*, S.N. 60/Swat, F.N. 11/46-F.K.P., Vol. II, Subject: Unauthorised felling of trees from Kalam & Serai Forests.

²⁹⁸ "Agreement Regarding Administration of Swat Kohistan (Tracts of Kalam, Ushu and Utrot [Utror]," *TARC*, S.N. 32/Swat, F.N. 33/2-F.R.P, Vol. II.

²⁹⁹ Ibid.

State, since the Provincial Forest Department was associated with the preparation of the working plans. Besides, on the one hand the Administrator had his relationships, friendships and influence in the Pakistani official circles and, on the other hand, Ayub Khan, who came to power in Pakistan in 1958, had two daughters married to the Administrator's two sons. Thus, the Administrator's position became even stronger and he was on the whole given a practically free hand in running the affairs of both the State and Kalam in his own way and according to his own dictates and discretion.

The Administrator therefore enacted the same rules and regulations, i.e. the same rules were applicable in Kalam area as in Swat State areas; the same rule governed the grant of trees to the local population; and the Tahsildar of the area was not only an employee of the State but also held the same powers and responsibilities with regard to forests as in Swat State areas. Moreover, the Administrator himself dealt with cases of non-compliance with his rules and regulations and imposed punitive duties or levied fines. Therefore, the Agreement and its clause 4 brought no drastic change in the powers and responsibility of the Wali with regard to the control and management of the said forests.

Nevertheless, the Administrator was curious to exploit the forests of the tract for income generation, which, beside other things, is evident from the extracts from Khwaja Shahabuddin's, Governor NWFP, letter quoted above and also from a note by Qurban Ali, another Governor NWFP, in which he states that:

Recently the Ruler of Swat discussed with me the cutting of timber from Kalam forests for securing sufficient funds to run the administration of Kalam. He said that if the Central Government were not in a position immediately to grant funds, this was a source which we could tap.³⁰⁰

Much earlier even, in September 1950, the Wali expressed the view that "the only obstacle in our way to hasten" the economic amelioration of the people of Kalam "is the fact that we can not embark on vigorous schemes to develop and exploit the forest resources in the absence of official recognition by the Pakistan Government. This fact, I regret, has prevented us from developing the forest resources in the interest of those people."³⁰¹

The forests of the tract were now under the Wali, as Administrator for the area, but on the Forest Department side the forests were totally under the Provincial Forest

³⁰⁰ "Secret," Sd./- Qurban Ali, Governor NWFP, to CS (By Name), 24 March 1955, *TARC*, S.N. 58/Swat, F.N. 21-S/48, Subject: Annexation of Kalam by the Wali of Swat.

³⁰¹ Copy of D. O. No. 805/W-I, 4 September 1950, from M. A. H. Jahanzeb, Wali of Swat to His Excellency I. I. Chundrigar, Governor NWFP, *TARC*, S.N. nil/Swat, F.N. 11/46-F.R.P., Vol. I, Subject: Unauthorised felling of trees from Kalam & Seri Forests.

Department; and the State Forest Department had no role to play at all.³⁰² Although the forests were under the Wali, as Administrator, the revenue accrued from them went into the Kalam budget and not into that of Swat State exchequer because the area had its own Council of Advisors, budget and accounts. Nevertheless, the grant of trees to the local population was made, as in the Swat State areas, by the relevant Tahsildar, who was the employee or officer of the State but paid for out of the Kalam budget and exchequer; and only the Administrator could grant Deodar trees.

Being responsible for and having jurisdiction, control and authority over the forests of the tract, the Administrator also took measures for the exploitation and conservation of the forests of the Kalam tract. However, the anomaly of unauthorised cutting, fellings and improper exploitation of the said forests continued until the merger of Swat State in 1969, despite tight control and vigilance by the Administrator, and even more so in the last days of the State,³⁰³ through vested interests in their own ways (see sections 2.2 and 4.7).

4.5 Ownership

Ownership of the forests of the tract was vested solely in the people concerned before the occupation of the tract by Swat State in August 1947, and the whole sum accrued from the sale of the trees went to the people concerned and distributed among them per *riwaj* or the traditional law of the land.

With the occupation of the tract by the Swati ruler, the ownership of the forests was subjected to the same rule as had been introduced and in vogue in Swat State. But the Government of Pakistan did not recognise this and considered the concerned landowners to be “the rightful owners,” as is evident from a letter of the Deputy Secretary to the Local Administration in the Development Department to the Political Agent at Malakand, which deals with the issue of the fellings in the forests of the tract under contract with the Swat State; and in which the Political Agent has been directed that:

the balance of the sale proceeds will have to be kept in suspense account for distribution *to the rightful owners of the trees*. If the Sipah Salar has made some

³⁰² Ghani-yur-Rahman, IA, Verbal, Malukabad, Mingawara, Swat, 7 December 2005.

³⁰³ Deduced from the interviews conducted by the author, and the common talks both in public and private.

payment to the Wali as price of these trees he shall have to be compensated by recovery from the Wali of the sale proceeds thus received by him [my italics].³⁰⁴

The Agreement of 12th February 1954, entered into between the Government of Pakistan and the Wali, is silent about the ownership of the forests. Technically speaking, the forests were now not the property of Swat State because the area was no longer part and parcel of it, but the proprietorship was not transferred from Swat State to the Government of Pakistan or Provincial Government. In connection with a request for clarification from the Finance Department, Government of West Pakistan, the Political Agent, Dir, Swat and Chitral, made it clear that “the people of Kalam are de facto owners of the forest and for this reason no Forest Act has been applied to this tract.”³⁰⁵

It is crystal clear that the ownership of the forests did not remain with Swat State after the Agreement of 12th February 1954, so this assertion that “Forests in Kalam Kohistan belonged to State,”³⁰⁶ meaning Swat State, did not corroborate with the facts.

Nevertheless, the landowners concerned still received only 10%³⁰⁷ of the sales proceeds of the trees harvested under commercial sales and the remaining 90% went into the Kalam exchequer, which was “spent on the development of the area, cost of the administration and allowances to the tribal elders.”³⁰⁸

In this way, the situation here too became analogous to that of Swat State areas discussed in section 2.4, due to which the ownership or proprietorship become fifty-fifty.

In the post-July 1969 period, nevertheless, the people of Kalam have overtly “shown resistance to accept the ownership of Provincial Government over the Forest land.”³⁰⁹ And it was mainly due to their refusal to concede to Provincial Government’s claim of ownership of the forests that they boycotted the land settlement. G.M. Khattak too has noted the issue by stating that:

³⁰⁴ DS to Local Administration in DD to PA, Malakand, No. 9370/41/47-DD, 13 October 1955, *TARC*, S.N. 60/Swat, F.N. 11/46-F.K.P., Vol. II, Subject: Unauthorised felling of trees from Kalam & Serai Forests.

³⁰⁵ PA, DSC, to CRFR, WP, Peshawar, No. 3580-C/St/7, 17 December 1959, *TARC*, S.N. 70/Swat, F.N. 1160-S.F.R. I, Subject: Budget Estimates of Kalam.

³⁰⁶ Beat Stucki and Haider Ali Khan, *Working plan for Utror-Desan Forests (Compartment Utror –1 to 15) of Kalam Forest Division (1985-86 to 1998-99)* (Peshawar: NWFP, Forestry Pre- Investment Centre, n.d.), p. 6.

³⁰⁷ See PA, DSC, to CRFR, WP, Peshawar, No. 3580-C/St/7, 17 December 1959, *TARC*, S.N. 70/Swat, F.N. 1160-S.F.R. I, Subject: Budget Estimates of Kalam; and Explanations and Memorandums thereto in *ibid*.

³⁰⁸ *NWFP-RBA of the year 1953-54*, p. 13.

³⁰⁹ Stucki and Khan, *Working plan for Utror-Desan Forests (Compartment Utror –1 to 15) of Kalam Forest Division (1985-86 to 1998-99)*, p. 11.

The more politically conscious among the people also see the Forest Department's desire to plant up the forest openings as a bid to strengthen Government control over the forests, and to augment Government's claim to their ownership – *a claim which the local people contest, as they consider all land – cultivated, forest, grazing – situated in their tribal jurisdiction, to be their property* [my italics].³¹⁰

4.6 Rights and Concessions

The local population enjoyed the same rights and privileges as mentioned in section 2.7 with regard to the areas of Swat State.³¹¹ However, instead of going to the exchequer of Swat State or the Federal or Provincial Government, the 90% of the sales proceeds went to the Kalam exchequer and was spent, as stated above, under the Kalam budget on the administrative and developmental works of the Kalam Agency (i.e. the Gawri area or Kalam, Ushu and Utror).

In the post-Swat State period, the demand for an increase in the people's share of the sales proceeds, however, came to the surface, which is also evident from the following extract from a 'Special Situation Report–Swat District,' written by Arshad Farooq, DC Swat. After comparing some aspects of the Swat State and post-State set-up, and stating his inability to redress the grievances of the people, he wrote that:

In the new set up, some laws have been extended to Swat while in many domains 'Rewaj' continues. The question of Swat Militia, *the dispute regarding increased share in sale proceeds of Forest Wood to people of Kalam*, Swat Police, a repressive Ushar system, Motor Khana and a lot of other things remain to be settled finally. This kind of state of affairs provides an opportunity to all vested interests to speak for restoration of State and so-on [my italics].³¹²

4.7 Exploitation

It was basically due to the forest wealth that Kalam became a bone of contention among the three neighbouring States and a major cause of colonial government interference.³¹³ The new dominion of Pakistan also laid claim to the area and, as detailed earlier in this chapter, refused to recognise the legitimacy of the Swat State's

³¹⁰ G.M. Khattak, *Issues in Forestry: Kalam Integrated Development Project, Forestry Sector* (n.p., n.d.), p. 16.

³¹¹ Also see Stucki and Khan, *Working plan for Utror-Desan Forests (Compartment Utror –1 to 15) of Kalam Forest Division (1985-86 to 1998-99)*, pp. 6-7.

³¹² "Special Situation Report – Swat District," by Arshad Farooq, DC Swat, No. 906-16/S-55, 22 May 1972, *GSNWFP*, B.N. 10, S.N. 84, F.N. 12(21)/72-G.

³¹³ For details see Sultan-i-Rome, *Forestry in the Princely State of Swat and Kalam*, chap. 6.

occupation of the tract. The Pakistani authorities, among other things, also kept their eyes on the forest wealth of Kalam and this much is evident from writings and correspondence between the Pakistani authorities. It was with this purpose in view that Chaudhry Nazar Muhammad, DFO of the then Northern Forest Division, was sent in 1950 to inspect the Kalam forests.³¹⁴

Nazar Muhammad submitted his report to Secretary, Development Department, NWFP, wherein he estimated the removal of 1500 I and II class Deodar and Blue pine trees per annum for the next 15 years. This inspection was followed by an inspection by a Forest Officer deputed by the Central Government, who submitted his report to the Inspector-General of Forests, Government of Pakistan. But when the negotiations for a settlement with the Wali were going on regarding the Supplementary Instrument of Accession, Privy Purse of the Wali, Interim Constitution of Swat State and the Kalam Affairs, it was decided that negotiations about the said issues should be held during the Governor's visit of Swat and Kalam. The Governor suggested to Mushtaq Ahmad Gurmani, the then Minister of States and Frontier Regions, Government of Pakistan, that "if you agree I think we should include in our party the Inspector-General of Forests, Pakistan."³¹⁵

This speaks of how much importance was attached to the forests of Kalam. Consequently the Conservator of Forests, NWFP, visited the forests during the Governor's tour to Kalam and submitted his report on 17th August 1953. Beside other things, the Conservator stated that:

In my opinion exploitation of Kalam forests in the absence of regular Working Plan is not advisable, but if for certain reasons these forests had to be worked then not more than 1500 I and II-class Deodar and Blue pine trees may be removed under selection marking. This would fetch approximately Rs. 4,00,000/- per annum.³¹⁶

He further stated that:

According to the past and present policy of the Local Administration, the Kalam forests are to be managed and worked on scientific lines. For this purpose the detail examination of the forests and drawing up of a regular Working Plan is an essential factor. This work depends on the decision regarding the administration of Kalam area in future. I am un-aware of the existing legal position of the Kalam forests and how it is going to be determined in the future. *However, in the interest of conservancy and*

³¹⁴ For Nazar Muhammad's visit and report also see *TARC*, S.N. 31/Swat, F.N. 11/52-FRP, Subject: Survey of Kalam Forests.

³¹⁵ Khwaja Shahabuddin, Governor NWFP, to Mushtaq Ahmad Gurmani, MSFR, GP, D. O. No. 113-GH, 25 June 1953, *TARC*, S.N. 58/Swat, F.N. 21-S/48.

³¹⁶ "Kalam Forest," by Conservator of Forests, NWFP, *ibid*.

*sustained income from these forests I would strongly recommend the reservation of these forests as Government reserves [my underlining and italics].*³¹⁷

For the forests to be properly managed, the Conservator had suggested setting up of two Forest Ranges and at least two to three years to prepare the Working Plan.³¹⁸ However, as a consequence of the Conservator's report, the Inspector General of Forests, Pakistan, wrote in his report on 30th September 1953 that the "Conservator of Forests is against exploitation of Kalam forests in the absence of a regular plan, but if the working plan of the forests is considered essential, he would suggest [felling of] 1500 trees [per annum] as the very maximum."³¹⁹ The Political Secretary to Governor NWFP, however, informed Chief Secretary NWFP that the Governor "would like this case to be taken up after the settlement of Swat Interim Constitution and Supplementary Instrument of Accession."³²⁰

As the Pakistani authorities realised the need for a Working Plan for the exploitation of the forests to be prepared and all the issues were resolved at a time, namely the Supplementary Instrument of Accession, Interim Constitution of Swat State, Privy Purse of the Wali, and the Agreement about Kalam were concluded/entered into/signed the same day, the forest issue was therefore clearly included in the Agreement of 1954 as clause 4, of which the preparation of Working Plan was made an essential part and a prerequisite for the exploitation of the forests.

However, nothing concrete came out save that the Inspector General of Forests, Pakistan visited the forests from 3rd to 12th September 1955. His Inspection note states that:

The Kalam forests were inspected by some Forest Officers several years ago, but no body ever prescribed exactly what action was necessary to introduce scientific forestry in this area. Even this short tour of mine could at best be only a reconnaissance. What is required is the preparation of a regular working plan after a detailed survey of the forests, measurement of the trees and collection of other data required for such plan.³²¹

The Inspector General of Forests, Pakistan, did however deal precisely with almost all the aspects, i.e. area of the forests, management, exploitation, preparation of working plan, the staff required, the probable expenditure and so forth. Although he suggested for "immediate revenue" that "1000 exploitable trees of deodar and kail over 24" diameter be marked in Ghal and Gathal forests and a marking list be prepared on the

³¹⁷ Ibid.

³¹⁸ See *ibid.*

³¹⁹ PS to His Excellency [Governor NWFP], 7 October 1953, *ibid.*

³²⁰ Pol. Secy. [Political Secretary] to Ch. Secy. [Chief Secretary], 8 October 1953, *ibid.*

³²¹ "Inspection note on the Kalam Forests: 3rd – 12th September 1955," by Y. S. Ahmad, IGF, No. D. 2100-IGF/55, dated Karachi September 1955, *ibid.*

same lines as for the Government forests,” he also stated that “no impost duty will be levied on this timber by the Government of N.W.F.P.”³²² He further stated, among other things, that:

These forests should also be declared as reserved for which a preliminary notification under Section 4 of the Forest Act will first be issued and a Forest Settlement Officer will be appointed to enquire to the rights and privileges of the local people. After regular investigation, the forests will be finally declared as reserved forests and duly demarcated. This work should be carried on simultaneously with the preparation of the Working Plan...

As Government is the owner of these forests there should not be any serious difficulty in declaring these forests as reserved forests. These are some of the finest deodar forests of Pakistan and no effort should be spared in maintaining and improving them under scientific management. For preparation of a Working Plan the forest may be divided into two Working Circles: (A) The Timber Working Circle, to be worked under a system of Selection-cum-Improvement felling and (B) The Protection Working Circle too steep in configuration for systematic felling. All trees above 12" diameter in areas in the Timber Working Circle will have to be enumerated.

...The silvicultural system at least for the next 40 years, will continue to be Selection-cum-Improvement felling.³²³

Although nothing else concrete came out of the above-mentioned inspections and suggestions, as a result of the Agreement of 1954 the Forest Department became associated with these forests; and following the suggestion of Y.S. Ahmad, Inspector-General of Forests, Pakistan, the

first sale was organised during 1957-58. The marking was confined mostly to Battal Nullah catchment area.

Later on in 1964-65 exploitation was spread over to whole area and about 17000 trees were harvested from 1958 to 1967. In such state of affairs trees were marked according to their size irrespective of the silvicultural or management requirements of the crop [as was also in the case of the forests of the State areas]. However there were some improvements in the working during 1963 when a set of marking rules were drawn for the guidance of the marking officers and the exploitable dia of sound trees was raised to 28" D. B. H.³²⁴

In the records, felling in the forests of the tract from 1958 to 1967 has been given as 17,180 trees as against the prescribed 11,000 trees, the effect of which “was that most of the exploitable trees were removed without giving any regard to the silviculture

³²² Ibid.

³²³ Ibid.

³²⁴ Mohammad and Shamsul Wahab, *Working Plan for Kalam Forests of Upper Swat Forest Division (1987-88 To 2001-02)*, p. 30.

requirement and sustained yield.”³²⁵ This, however, has been termed, at the same time as, “in the interest of young advanced growth.”³²⁶

Unauthorised fellings however continued side by side and were besides the aforesaid felling of 17,180 trees. This can also be endorsed by this statement of the same source that in the Working Plan written by Abdus-Salam Khattak, intended for the period 1st July 1967 to 30th June 1982, “(ii) The rest of the forests area was protected to safeguard against *the indiscriminate felling by the cruel contractors*, fire and grazing [my italics].”³²⁷

Prior to the first sale organised during 1957-58, at the suggestion of Y.S. Ahmad, the Administrator continued working the Kalam forests according to his own plan and discretion. Moreover, the other recommendations of Y.S. Ahmad, e.g. the forest settlement, declaring the forests as reserved, working the forests according to the two Working Circles, have never been honoured.

Despite clause 4 of the 1954 Agreement, no regular Working Plan was prepared for the said forests due to which the forests were exploited in the manner mentioned above. It was after thirteen years of the Agreement that the first regular Working Plan was prepared by Abdus-Salam Khattak for a period of fifteen years, commencing from 1st July 1967 and ending on 30th June 1982, wherein two working circles were prescribed, i.e. Selection and Protection Working Circles. But the Government did not approve the plan. It has, however, been claimed that “attempts have been made, as far as possible, to abide by the annual yield and the sequence of felling prescribed by it.”³²⁸ Moreover, “the afforestation programme” prescribed by the said working plan has not been “followed and only the exploitation works were carried out.”³²⁹

Besides, as in the Swat State areas, there was no settlement and demarcation of forest and non-forest land due to which - despite not being permitted by the authority concerned - encroachment upon the forests and their clearing for agricultural purposes continued.³³⁰

The exploitation procedures remained the same as in the Swat State areas, with the difference that the State Forest Department has no role and stake in the Kalam area.

³²⁵ Ibid., pp. 30-31.

³²⁶ Ibid., p. 31.

³²⁷ Ibid., p. 34.

³²⁸ Ibid., p. 33.

³²⁹ Ibid.

³³⁰ Ibid., p. 18.

Standing trees were sold to the contractors and were marked by the PFD. The PFD supervised the fellings and was responsible for keeping a check on the contractors.³³¹

4.8 The Royalty

With its occupation by Swat State in 1947, the forests of the tract were subjected to the State rules and laws and the former owners of the forests were now paid a fixed share, at the rate of 10%, of the sales proceeds from the trees harvested for commercial purposes only. Moreover, the amount paid as a royalty on the sales proceeds was called *raqm-e-mundan* (stumps' amount) and record of its payment and that of the decisions of the disputes regarding them was also kept in the State registers.³³² The royalty or the people's share of the sales proceeds was paid only on the authorised fellings done by the contractors and for illicit fellings the right-holders received nothing at all.³³³ During the period under discussion, the rules that governed distribution of royalty differed somewhat from locality to locality or among the sub-branches which are as follows.

In Kalam area proper, the royalty was owned collectively, which was at first divided among the three *qaums* equally. Within each *qaum* it was divided equally on the ancestral (forefathers) basis and among the descendants of the forefathers on a per male basis.

In Ushu tract, the royalty was owned collectively and divided equally among the four *qaums*. Within the *qaum* it was divided equally on the ancestral (forefathers) basis; and among the descendants of the forefathers on a per male basis.

In Utror area, the royalty was owned and so distributed equally between the two main *qaums* and then within the sub-*qaums* on a per male basis but on the basis of *dawtar*, meaning only among the *dawtaris*.

However, some persons, from different sub-*qaums*, filed a petition against the age-old practice or *riwaj* with regard to the distribution of the royalty in the Utror area. The Court of the Civil Judge gave its verdict on 8th January 1997. Basing his verdict on his opinion which he had made after considering all the evidences and facts placed before

³³¹ Also see Stucki and Khan, *Working plan for Utror-Desan Forests (Compartment Utror –1 to 15) of Kalam Forest Division (1985-86 to 1998-99)*, pp. 41-42.

³³² For example see "Kitab No. 8: Front Cover: Kitab Indiraj Mukhtalif Khatam Shudah, Faisala Jat Az Safha No. 1 Ta Safha No. 347; Kitab Daftar Sher Bahadar Khan Mashir Sahib; Back Cover: Kitab Wazir-e-Mulk Sahib, Faisala Jat, Maurkha 28-9-60 Ta 8-8-70"; "Kitab No. 38: Kitab Wazir-e-Mulk, Mausula 3-9-68 Ta 23-11-70, Faisala No. 1 Sey 70 Tak, Taqsim Raqm-e-Mundan"; "Kitab No. 63: Register Bayanat, Az 5-9-64 Ta 3-7-68"; "Kitab 64: Iqrarnama Jat Babat-e-Mundan, Az 29-11-1963 Ta 22-6-1968"; "Kitab No. 65: Iqrarnama Jat, Az 15-7-67 Ta 10-11-70," passim, *DRRGS*.

³³³ Sirajuddin Swati, *Sarguzasht-e-Swat*, p. 53.

him, the Civil Judge acceded to the principle of distributing the royalty not on the basis of *qaums*, then sub-*qaums* and then within sub-*qaums* on a per male basis, in which case some get more per male and some less, but rather on a per male basis equally among all the right-holder males. The distribution of the concerned people's share of the sales proceeds following the Civil Judge's verdict is, in his opinion, not only more just but will also be in accordance with the requirements of "*insaf* [justice], *Adl-u-Ihsan* [equity and beneficence], fair play, equity *awar* [and] good conscious *awar* [and] Natural Justice."³³⁴ In this way the age-old *riwaj* of distributing the sales proceeds in Utror area was brought to an end and the amount was thenceforth distributed equally on a per male basis among all the right-holders in the area. The Civil Judge's verdict was retained by the Peshawar High Court but not as result of its findings after doing all the required proceedings and hearing arguments of the parties and giving its judgement on merit but by a compromise entered into by the concerned parties.³³⁵

Besides, this is even to this day a rule of the land that the ownership rights in the *dawtar* and *banda* may be sold, but the rights of *logay*, meaning the right to a share of sales proceeds under the *logay* rule, may not be sold.

4.9 Post-Merger Period

The situation of the forests of the Kalam area and of their control and management, exploitation, rights and concessions of the people and so forth remained the same in the post-Swat State period as has been detailed in chapter 3.

The same procedures of selling standing trees to contractors were followed as in other parts of the then Swat District. Though the contract system was then changed in 1974 and departmental fellings through the Forest Development Corporation (FDC) started instead, it was only in 1978-79 that FDC started the exploitation in Kalam area "as a result of an agreement with representatives of the forest right holders"³³⁶ – or in other words after the conclusion of an agreement with the people who laid claim to ownership.

Besides the Government surrendering to more say of the people or the people succeeding in asserting more power over forestry matters, "in 1981 the Government also conceded the principle that the price of timber on which the people's 60% share

³³⁴ See Unpublished Case, Civil Case No. 47/1, 1992-96, Malak Taza Gul and others vs. Malak Hazrat Faqir and others, 8 January 1997, Civil Judge/Alaqa Qazi No. 4, Swat.

³³⁵ See Unpublished Case, Malak Taza Gul and others vs. Malak Hazrat Faqir and others, RFA No. 7 of 1997, 8 July 1997, Peshawar High Court.

³³⁶ Stucki and Khan, *Working plan for Utror-Desan Forests (Compartment Utror -1 to 15) of Kalam Forest Division (1985-86 to 1998-99)*, p. 42.

would be assessed, would be determined in consultation with them” and “in return, the local people agreed to allow the exploitation of forests to continue.”³³⁷

4.10 Present Legal Status

The question of the constitutional and legal status of the forests of the tract cannot be settled easily because of the intricacies and technicalities involved. The crux of these difficulties can be seen and dealt with from the following three perspectives.

4.10.1 First Perspective

The forests of the tract of Kalam, Ushu and Utror have remained the property of the relevant landowning class since ancient times and the amount accrued from the sale of trees was distributed according to the *riwaj* of each part or that of the area of the tract or that of section and sub-section of the tribes.³³⁸

The Government of India, in its endeavour to conserve the forests of the tract and exploit them in accordance with their own prescription and under their supervision, compelled, in its own ways, the *jargas* of the tribes concerned to enter into terms with the colonial government following which the Agreement of 1928 was at last concluded by both sides.³³⁹

Under the Agreement, it became obligatory for the tribes concerned to remain friendly with the colonial government; not to allow agents of the rulers of the three neighbouring states to visit the tract without the permission of the colonial government; and not to work the forests for commercial purposes without obtaining the sanction of the colonial authorities. They would not only permit the colonial government’s officials to visit and inspect the forests and mark trees for harvesting in accordance with a proper plan but would also guarantee their safety and offer them no hindrance in their work.³⁴⁰ Whereas the colonial Government’s for its part undertook that:

The Government of India will use their influence to prevent all neighbouring Chiefs, who are recognised by and receive allowances from the Government from encroaching

³³⁷ Khattak, *Issues in Forestry*, p. 16; also see pp. 49-50.

³³⁸ See Sultan-i-Rome, *Forestry in the Princely State of Swat and Kalam*, chap. 5

³³⁹ For somewhat detail of why and how the Agreement was concluded and also its text see *ibid*, pp. 77-81.

³⁴⁰ See clauses 1 to 4 in *ibid.*, p. 81. Also see “Agreement Executed by Tribes of Swat Kohistan,” 7 April 1928, *TARC*, S.N. 59/Swat, F.N. 33/2-FRP, Vol. I, 1927-28; and Nazir Mohammad and Shamsul Wahab, *Working Plan for Kalam Forests of Upper Swat Forest Division (1987-88 To 2001-02)*, p. 112.

upon the independence of the tribes of the Gawri tract of Swat Kohistan either by force of arms or by intrigues with the factions among these tribes.³⁴¹

In this way the colonial government got the powers to control and regulate the external relations of the tribes of the tract and also the forests therein, but from its side undertook to preserve their independence.

The colonial government tried to control and exploit the forests of the tract under their on the spot supervision but at last met with failure.³⁴² The colonial government, however, prevented the neighbouring rulers from interfering in or encroaching upon the area and thus the tract remained independent from them until mid August 1947.

As the tract was occupied by Swat State on the night of 14th to 15th August 1947, the forests were also subjected to the rule of Swat State. This meant that its ownership was claimed by the State with the recognition of all other traditional rights and privileges of the people concerned, and also with the payment of 10% of the sales proceeds from the trees harvested for commercial purposes. The occupation, however, became a bone of contention between Swat State and the dominion of Pakistan, for the Pakistani authorities did not accept or recognise its legitimacy, nor the Swat State ownership of the forests due to which the timber extracted from the said forests was impounded at Landakay, as has been described earlier.³⁴³

All this culminated in the Agreement of 12th February 1954 under which the Swati ruler renounced his claim to and occupation of the tract and recognised the tract to be part of the Federation of Pakistan as Tribal Area; and the dominion of Pakistan appointed the Swati ruler as Administrator of the tract to administer the area or in other words to rule it on behalf of Pakistan subject to their general supervision. In this way the paramountcy over the area shifted at first from the people to Swat State in 1947, and then from Swat State to the dominion of Pakistan in 1954.

An interesting aspect is that the Swati ruler claimed that the area, in the words of the Political Agent at Malakand, “was peacefully occupied on the 14th August 1947 before the establishment of Pakistan at the express request of the Kalam people without firing a shot.”³⁴⁴ The Pakistani Government did not recognise this as being legitimate,³⁴⁵ but now itself entered into terms and agreement with the Swat ruler without, however, making the tribes concerned a party thereto. In this way the Pakistan authorities did not behave in the required manner in respect of Kalam although with regard to other Tribal

³⁴¹ Clause 5, *ibid.*

³⁴² See Sultan-i-Rome, *Forestry in the Princely State of Swat and Kalam*, chap. 5

³⁴³ For details see *TARC*, S.N. 60/Swat, F.N. 11/46-F.R.P., Vol. II, Subject: Unauthorised felling of trees from Kalam & Serai Forests; and S.N. nil/Swat, F.N. 11/46-F.R.P., Vol. I, Subject: Unauthorised felling of trees from Kalam & Serai Forests.

³⁴⁴ PA, DSC, to CS to Govt. NWFP, No. 198/C, 27 April 1948, *TARC*, S.N. 58/Swat, F.N. 21-S/48.

³⁴⁵ For details see *TARC*, S.N. 58/Swat, F.N. 21-S/48.

Areas and the Princely States they followed the required procedures. This means that at the end of the British rule and paramountcy in India – the treaties made by the colonial government with the Princely States and the independent tribes came to an end – the rulers of the Princely States executed Instruments of Accession to the dominion of Pakistan along the same lines as their agreements with the colonial government. The dominion of Pakistan also entered into fresh agreements along the same lines as previously with the tribes of the present day Federally Administered Tribal Areas (FATA). The same kind of fresh agreements would also have been required in the case of the tribes of Kalam, Ushu and Utror.

It was after concluding the Agreement with the Wali regarding the Administration of Kalam that the Pakistani authorities felt the need for such an agreement with the Kalam tribes. That was why the Political Agent at Malakand was addressed thus:

As you probably know, it had been decided that an Agreement from the tribes of Kalam, on the lines of the Agreements with tribes in the other Agencies, should be obtained through the Wali of Swat. *The need for such an agreement still exists*, and it would be greatly appreciated if you would pursue the matter with the Wali Sahib, and obtain the Agreement at an early date.

I enclose a *copy of the Model Agreement executed with almost all the tribes in the Frontier Regions* [my italics].³⁴⁶

In reply, the Political Agent informed:

The Wali has been asked a number of times to get the agreement from the Kalamis. He is of the opinion that after the Budget proposals regarding Kalam are sanctioned and the Government orders the marking of trees as suggested therein, the Political Agent accompanied by the Administrator should pay a visit to Kalam and get the agreement signed from the tribes. No development of this tract is possible unless the Budget proposals are sanctioned. *I agree with the Wali that unless we start development schemes in the valley we should not press them for the agreement*. They should know that by throwing in their lot with the Pakistan Government they are being benefited economically, socially and educationally. It is therefore requested that immediate steps should be taken to get the Budget sanctioned. The agreement will be got executed on our first visit to Kalam which should not be later than the 15th of November, 1954 [my italics].³⁴⁷

³⁴⁶ Saadullah Khan, [PS to Governor NWFP], to Sher Afzal Khan, PA, DSC, D.O. No. 2247/P.S., 28 September 1954, *ibid*.

³⁴⁷ Sher Afzal Khan, PA, DSC, to Khan Saadullah Khan, PS to Governor NWFP, D.O. No. 2777-C/St.7, dated Malakand 30 September 1954, *ibid*.

As a consequence, the Governor NWFP wrote to his Political Secretary that:

Will you please write to Sher Afzal and tell him that the Wali of Swat had undertaken to secure the signatures of the Kalam Tribes on the Model Agreement. He had assured me that he would do it immediately after the last cold weather but so far it has not been done. Sher Afzal should take this up strongly with the Wali and see that the thing is completed soon.³⁴⁸

We have, however, so far not come across such an agreement entered into with the Kalam tribes. If this is the case and the Government of Pakistan did not enter into an agreement with the tribes of Kalam as it did with other independent tribes, and entered into agreement only with the ruler of Swat State, and if the Pakistani authorities' plea that the Swat State's occupation of the tract was illegitimate and unauthorised is valid and legitimate – it then makes the Agreement of 1954 illegitimate.

Moreover, making the tract a part of the Federation of Pakistan, declaring it a Tribal Area and vesting its administration in a person not on the basis of agreement entered into with the tribes concerned or their *jargas* but on the basis of an agreement entered into with a person the Pakistani authorities themselves regarded and also recognised as a usurper and an unauthorised and illegitimate occupant makes it invalid as it has no legal basis. Not only this, but the subsequent rules and modifications made thereunder, due to which constitutional statuses were granted, regulations enforced, forests claimed as Provincial Government property, the area controlled and so forth done up till now - all this has no force of law. Moreover, the draft of the Model Agreement that was intended to be entered into with the Kalam tribes has no mention of either the ownership of the forests, nor their exploitation and management, etc.³⁴⁹

However, the Inspector General of Forests, Pakistan, claimed in 1955 that “as Government is the owner of these forests” and then stated that “there should not be any serious difficulty in declaring these forests as reserved”³⁵⁰ but it has also been stated earlier in section 4.5 that the Political Agent at Malakand stated in this respect in 1959, after four years after the Inspector General of Forests' claim, that as “the people of Kalam are de facto owners of the forests”, therefore “no Forest Act has been applied to this tract.”³⁵¹

³⁴⁸ K. Shahabuddin, Governor NWFP, to Khan Saadullah Khan, Political Secretary to Governor NWFP, dated Karachi 6 October 1954, *ibid*.

³⁴⁹ See “Alternative Draft of a Model Agreement,” *ibid*.

³⁵⁰ “Inspection note on the Kalam Forests: 3rd – 12th September 1955,” by Y.S. Ahmad, IGF, No. D. 2100-IGF/55, dated Karachi September 1955, *TARC*, S.N. 58/Swat, F.N. 21-S/48.

³⁵¹ PA, DSC, to CRFR, WP, Peshawar, No. 3580-C/Su/7, 17 December 1959, *TARC*, S.N. 70/Swat, F.N. 1160-S.F.R. I, Subject: Budget Estimates of Kalam.

4.10.2 Second Perspective

A second aspect of the issue is to regard the Swat State occupation of the tract as legitimate and then on the basis of that legitimacy look into the Agreement of 1954 and evaluate the constitutional and legal status of the issue. The Agreement of 12th February 1954 begins thus:

WHEREAS the Wali of Swat recognises and has all along recognised the Kohistan tracts of Kalam, Ushu and Utrot [Utror], also known jointly as Kalam, to be parts of the Tribal Areas included in the Federation of Pakistan and claims no right of his own in the areas.

And whereas the Government of Pakistan have decided to appoint the Wali of Swat (hereinafter called the Administrator) to be an agent of the Government of Pakistan for the administration of the said area.

And whereas the Administrator has undertaken to act as the Agent of the Government of Pakistan in relation to said areas and to carry out and abide by the instructions of the said Government.³⁵²

On the basis of the aforesaid assertion by the Wali, the tract became part of the Tribal Areas included in the Federation of Pakistan from 15th August 1947 with the birth of Pakistan and henceforth held the status of the Tribal Area due to which it was no longer part of Swat State.

This same status was retained under Article 2 section (1) subsection (iv) of the Establishment of West Pakistan Act, 1955,³⁵³ under Article 104 of the Constitution of the Islamic Republic of Pakistan, 1956 read with the definition of Special Areas³⁵⁴ and under Article 223 of the Constitution of the Islamic Republic of Pakistan, 1962 read with the definition of Tribal Areas.³⁵⁵

In this scenario the forests of the tract were not the property of Swat State as has also been mentioned above in section 4.5. In spite of the Inspector General of Forests' claim in 1955 to this effect, in 1959 the Political Agent at Malakand endorsed the de facto ownership of the people concerned.³⁵⁶

³⁵² "Agreement Regarding Administration of Swat Kohistan (Tracts of Kalam, Ushu and Utrot [Utror]," *TARC*, S.N. 32/Swat, F.N. 33/2-F.R.P, Vol. II.

³⁵³ See *PLD*, Vol. 7 (1955), Central Acts and Notifications, p. 273.

³⁵⁴ See "Constitution of the Islamic Republic of Pakistan," No. F. 33-I/56-Cons., 2nd March 1956 (*Gazette*, 2nd March 1956, *PLD*, Vol. 8 (1956), Central Acts and Notifications, pp. 88-89, 121-22.

³⁵⁵ See "The Constitution of the Republic of Pakistan," *Gazette of Pakistan*, Extraordinary, 1st March 1962, in *PLD*, Vol. 14 (1962), Central Statutes, pp. 206, 215.

³⁵⁶ For both the views see, respectively, "Inspection note on the Kalam Forests: 3rd – 12th September 1955," by Y.S. Ahmad, IGF, No. D. 2100-IGF/55, dated Karachi September 1955, *TARC*, S.N. 58/Swat, F.N. 21-S/48; and PA, DSC, to CRFR, WP, Peshawar, No. 3580-C/St/7, 17 December 1959, *TARC*, S.N. 70/Swat, F.N. 1160-S.F.R. I, Subject: Budget Estimates of Kalam.

The forests of the tract therefore did not become the property of the Provincial Government on the basis of Notification No. 10/16-SOTA-II/72-1521, dated 15th September 1972, because the said notification was issued in pursuance of MLR No. 122 of 1972. This was only to determine which property in the former Swat State belonged the rulers personally and which to the State so as to devolve its proprietorship to the Provincial Government. To make the position easy to understand, MLR No. 122 of 1972 states that:

3. The Provincial Government, on the basis of the recommendations of the Commission [namely Dir-Swat Land Disputes Enquiry Commission], and subject to any directive given by the President shall, by order notified in the official Gazette, determine—

(a) *what property is State Property of the former State of Dir or Swat respectively* [my italics];

(b) what property is private or personal property of the late Nawab Sir Shahjehan Khan, ex-Ruler of the former State of Dir, and the late Sir Abdul [sic, Abdul] Wadud Mian Gul Sahibzada [sic, Shahzada], K. B. E., Badshah Sahib of the former State of Swat respectively;

(c) the respective shares of the various heirs of the aforesaid two Ex-Rulers in their personal or private property.

4. On the issue of an order under paragraph 3.—

(a) *the State property shall vest and shall be deemed to have vested in the Provincial Government on and from the coming into force of the Regulation* [my italics]; and

(b) the Private or personal property of the two Ex-Rulers referred to in paragraph 3 shall devolve upon and be distributed among their respective heirs in accordance with the said Order.³⁵⁷

Whereas, Notification No. 10/16-SOTA-II/72-1521, dated 15th September 1972, itself states that:

In pursuance of clause (a) of paragraph 3 of the Devolution and Distribution of Property (Dir and Swat) Regulation (Martial Law Regulation No. 122) and on the basis of the recommendations of the Dir-Swat Land Disputes Enquiry Commission, and in accordance with the directions of the President, the Governor of the North-West Frontier Province is pleased to order that:—

(a) the property specified in column 2 of the Schedule to this Order, and more particularly described in the file of the case specified in column 3 of the said Schedule, shall be the State property of the former State of Swat;

³⁵⁷ Regulation No. 122, 11 April 1972, in Gul Wali Khan, *Land Commission: Manual of Land Reforms*, p. 128.

(b) all Forests situated in the former State of Swat shall be the State property (subject to payment of fifteen per cent of their income as royalty to the local right holders).³⁵⁸

It is therefore crystal clear from both MLR No. 122 of 1972, dated 11th April 1972, and Notification, No. 10/16-SOTA-II/72-1521, dated 15th September 1972, that the question of the determination of the State and to that effect of the Provincial Government's proprietorship concerned only the Swat State areas and not the Kalam tract. Hence Article (b) of the said notification did not apply to the said tract. And as no separate notification under the relevant clauses of the Constitution (and in accordance with the steps required thereby) has been issued in respect of the Provincial Government's ownership, the claim that the said forests were the property of the Provincial Government has no legal basis. Thus the subsequent notifications for the application of Chapter IV of the Forest Act of 1927 and the declaration of the said forests as protected and all the trees therein as reserved are also without legal support. Because section 29 of the Forest Act of 1927 itself states that:

(1) The Provincial Government may, by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which Government is entitled.³⁵⁹

Subsection (1) is clear to the effect that the Provincial Government can declare the forestland or wasteland or a portion thereof protected when these are "property of Government or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which Government is entitled" which, as detailed above, the Provincial Government did not possess in the Kalam forestland. And the Provincial Government can apply Section 30 of the Forest Act of 1927 to the protected forests; yet the application of the said Section 30 under Notification No. SOFT(FAD)V-168/71(ii), dated 22nd December 1975, of the Agriculture Department, Government of NWFP, also has no worth and legal basis and to that effect everything done on the basis of the said two notifications – No. SOFT(FAD)V-168/71(i), dated 20th December 1975, and No. SOFT(FAD)V-168/71(ii), dated 22nd December 1975, of the application of Sections 29 and 30 of the Forest Act of 1927, respectively –has no legal basis and cover either.

But if despite the fact that this is not the property of the Provincial Government and that the Provincial Government has no proprietorship rights over the said forests, the Provincial Government was entitled to apply section 29 of the Forest Act of 1927 to the

³⁵⁸ Notification, No. 10/16-SOTA-II/72-1521, 15 September 1972, Government Gazette, Extraordinary, HTA&LGD, Govt. of NWFP. Also see *ibid.*, Appendix D, S.N. 198.

³⁵⁹ Subsection (1) of Section 29 of the Forest Act, 1927, in Zia Ullah Khan Niazi, *Manual of Forest Laws*, p. 278.

forests of Kalam on the basis of this portion of subsection 1 of the said Act that “or to the whole or any part of the forest-produce of which Government is entitled” then too, although application of sections 29 and 30 of the Forest Act of 1927, under Notifications, No. SOFT(FAD)V-168/71(i), 20th December 1975, and No. SOFT(FAD)V-168/71(ii), 22nd December 1975, would have legal base and support, the ownership or proprietorship of the forests of Kalam remains with the people.

Writing about the Kalam forests, G.M. Khattak,³⁶⁰ Beat Stucki and Haider Ali Khan,³⁶¹ and Nazir Muhammad and Shamsul Wahab³⁶² have defined the rules regarding the ownership of the Swat State areas and the Kalam forests during both the pre- and post-Swat State periods. Thus, their writings purport that the Kalam forests were Swat State property and then, on the basis of Notification, No. 10/16-SOTA-II/72-1521, dated 15th September 1972, the Provincial Government’s property. Relying on the sources these authors quote, this author made the mistake of terming the Kalam forests as Government property in his articles about land ownership and forest governance in Swat,³⁶³ without consulting the original Notification, No. 10/16-SOTA-II/72-1521, dated 15th September 1972. As is clear from the aforesaid discussion, the contentions of G.M. Khattak, Beat Stucki and Haider Ali Khan, and Nazir Muhammad and Shamsul Wahab, and therefore also those the present author made in the quoted works, are not founded.

4.10.3 Third Perspective

The third aspect of the legal status of the Kalam forests is to evaluate the issue from a perspective that the ownership or proprietorship of the Provincial Government of the said forests is legitimate as is commonly stated and believed, whether this be on the basis of an agreement with the tribes concerned or on any other grounds. From this perspective, the present legal status is of the same as described for the forests of the areas that comprised the former Swat State in section 3. 8. The details therefore do not need to be repeated here and that sub-section can be considered to also speak of the legal status of the forests of the Kalam area from the said perspective.

³⁶⁰ See Khattak, *Issues in Forestry*, pp. 38-39, 55.

³⁶¹ See Stucki and Khan, *Working plan for Utror-Desan Forests (Compartment Utror –1 to 15) of Kalam Forest Division (1985-86 to 1998-99)*, pp. 6-8.

³⁶² See Mohammad and Shamsul Wahab, *Working Plan for Kalam Forests of Upper Swat Forest Division (1987-88 To 2001-02)*, 6-7.

³⁶³ See Sultan-i-Rome, “Land Ownership in Swat: Historical and Contemporary Perspective,” in *Land Tenure and Resource Ownership in Pakistan*, edited by Zabta Khan Shinwari and Ashiq Ahmad Khan, p. 138, and idem, “Governance of Forests in Swat,” in *Troubled Times: Sustainable Development and Governance in the Age of Extremes* (Sustainable Development Policy Institute (SDPI), Islamabad, and Sama Editorial & Publishing Services, Karachi, 2006), p. 104.

5 Concluding Remarks

The year 1947 proved a turning point not only in the history of the subcontinent, when colonial rule came to an end and the Dominions of India and Pakistan came into being, but also in the history of forestry of Swat State and Kalam areas. The Swati ruler executed an Instrument of Accession to the Dominion of Pakistan in November 1947 in which he accepted full control of the Government of Pakistan, both legislative and executive, in respect of External Affairs, Defence and Communication only. Thus he gained total legal freedom in his management and control of the forests for he made no commitment – as he had previously in clause 6 of the Agreement with the colonial Government of India executed on 3rd May 1926 – to manage the State forests according to the instruction and under the supervision of the Government of Pakistan or its Forest Department.

In the meantime, the Wali of the State also changed in December 1949 and the new Wali signed a Supplementary Instrument of Accession in 1954, under which he accepted the control of the Government of Pakistan also in other aspects. He agreed that the Pakistani Legislature could make and extend laws to the State with regard to matters contained in parts I and II of the Schedule of the Instrument. He still wielded all the powers with regard to forests however for these were included in Part III of the Schedule. Therefore, in the post-1947 period, the Walis in practice wielded all the powers and control and promulgated their own decrees and rules, and the Pakistani forest laws were not extended to Swat State at all (see chapter 2). The staff of the Forest Department of the Provincial Government, however, continued to assist the Swat State authorities but only in the preparation of Working Plans for the State forests.

On the one hand the State established its own Forest Department in 1946/47, headed by the Ruler with Wazir-e-Maal/Mashir-e-Maal under him, to manage the forests with its own staff. On the other hand the local administrative officers, i.e. Tahsildars and Hakims, also had a role and responsibility with regard to the forests. Side by side the Provincial Government created the Malakand Forest Division, in 1956, for the forests of Dir, Swat and Chitral States, after which Forest Ranges in Swat State were also established. In 1960, the forests of Dir and Chitral States were separated from the Malakand Forest Division, which henceforth dealt only with the forests of Swat State, Kalam and the Malakand Protected Area.

The ownership of the forests was claimed by the State but there were no written law or regulations to back this up. Even the term forest was not clearly defined, and was

generally used for land of any size containing woody plants.³⁶⁴ The forests were declared or at least claimed as State property, but the people concerned still considered themselves to be the owners despite receiving a minor portion of the sales proceeds from the trees that were harvested for commercial purposes only. Besides, there has been no permanent demarcation of the forest and non-forest land during the post-1947 period. There has not only been no permanent forest settlement but the extent of rights and concessions enjoyed by the local population were not properly defined either. The main rights and concessions or privileges enjoyed by the people have been dealt with in chapter 2.

The concern of the Last Wali, Miangul Jahanzeb, to protect the forests can be judged, among other things, from his oral instruction that a case of fire in the forest constituted the only reason urgent enough for him to be awakened from sleep,³⁶⁵ and also from his attempts to promulgate decrees and regulations about the proper use/exploitation of forests (see chapter 2). There is, however, evidence testifying to illicit fellings of trees and timber smuggling, especially during the final days of the State, and this even involved State officials and servants. The Last Wali not only used the forests for purposes of favouritism but also for political gains (see chapters 2 and 4).

The Chief Secretary, Sipah Salar, and a number of other State officials and favourites of the Wali made a great deal of money mainly due to their involvement in forest contracts, illicit fellings and smuggling – a few examples are given in chapter 2 – and this is why the former Minister and then Prime Minister of the State namely Hazrat Ali alias Mashar Wazir (elder Wazir) used to say after leaving the State that ‘*zamung khyal wu chey paisay da khalqu pa sarmanu kay di, khu us pata walagayda chey hagma pa largu kay wey*’ meaning: "We thought that money could be extracted/squeezed out of people but now it has been revealed that the money was in wood."³⁶⁶

All these outwardly contradictory but factual findings lead to the conclusion that in the period between 1947 and 1969, the forests as a whole were not altogether ideally managed as is generally believed. Quite contradictory facts have been found, as detailed in chapters 2 and 4, testimony to the *de jure* and *de facto* situation and in stark contrast to the commonly held beliefs and notions about forest management and conservation during the reign of the Last Wali.

The occupation of the Kalam tract by Swat State in 1947 proved a turning point in forestry within the tract. The occupation was not recognised by the Government of Pakistan, but fellings and forest operations were started by Swat State’s ruler and

³⁶⁴ Khan, Working Plan for the Lower Indus Kohistan and Buner Forests, Swat State, 1964-1978, p. 30; Khan, Working Plan for the Forests of Swat and Swat-Kohistan, Swat State (Malakand Agency), (1965–1980), pp. 11, 228.

³⁶⁵ Abdul Halim Advocate, IA, Verbal, Gulkada, Swat, 9 June 2004.

³⁶⁶ Amanul Mulk alias Jaja, IA, TR, Paronra, Swat, 19 August 2000.

inspection by officers of the Provincial Forest Department were made in 1950 and 1953. The Swati ruler, moreover, subjected the forests of Kalam to his laws and to the arrangements enforced in other parts of the State, subjecting them to some State ownership and allocating only 10% of the sales proceeds to the former owners or the relevant landowners.

The execution of the “Agreement Regarding Administration of Swat Kohistan (Tract of Kalam, Ushu and Utrot [Utror]” in February 1954 proved another landmark for the forests of Kalam, at least from a legal perspective, because under the Agreement the tract was declared as part of the Tribal Area included in the Federation of Pakistan and the Wali was appointed as Administrator of the area on behalf of the Pakistan Government. Under this Agreement, however, it became the subject of Pakistan and theoretically its forests were now to be governed according to the prescriptions of the Government of Pakistan. In actual practice however the Wali (Administrator for Kalam) wielded all the power and managed and worked the said forests in the same manner as he did in the forests of the State areas. Illicit cutting of trees in the Kalam forests and the smuggling of timber from the said forests continued in the post-1954 period. Moreover, the people concerned still received only 10% of the sales proceeds from the trees harvested for commercial purposes and the remaining 90% went into the Kalam budget. Besides, the people concerned continued to enjoy their other rights and privileges as has been shown in section 2.7 and section 4.6. It was due to the peoples’ being *de facto* owners of the forests that no Forest Act was extended to the Kalam forests, as the Political Agent, Dir, Swat and Chitral stated in December 1959.

The pattern of land ownership remained generally the same after the merger of the State as well but land ownership disputes of new kinds came to surface. Announcements made by Pakistan Peoples Party and the introduction of the Land Reforms by Z.A. Bhutto under Martial Law Regulation No. 115 of 1972, also created new kinds of land ownership problems. These problems and disputes, and the new state of affairs left significant negative marks on forestry in the post-State period.

The introduction and implementation of land settlement by the Revenue Department of the Provincial Government also proved to be a landmark from a forestry perspective because for the first time forest and non-forest land was determined, although this was not altogether free of anomalies because favours and disfavours were committed when recording the forest and non-forest land. The significance of the land settlement from a forestry perspective is evident from the fact that it is on the basis of the land settlement record that the process of demarcation of forest and non-forest land was started in 2001-2002, and this work is still in progress.

The status of the forests of the Kalam tract remained the same after the merger of Swat State. The Pakistani authorities, however, gradually brought in changes. It has been claimed that the Government of NWFP declared the forests of the tract Provincial Government property subject to the payment of 15% of the sales proceeds as a royalty

to the local right-holders, but the said notification has nothing to do with the forests of the tract since it only relates to the forests of the former Swat State areas. This is evident from the assertion of the notification which states that “all Forests situated in the former State of Swat shall be the State property (subject to payment of fifteen percent of their income as royalty to the local right holders.”³⁶⁷

But as stated in chapter 4 the Kalam tract was no longer part of Swat State after 12th February 1954, but rather a Tribal Area included in the Federation of Pakistan, and was not part of Swat State both under the Agreement of 1954 and the constitutions of 1956 and 1962. Therefore, the forests of the said tract did not become the State property and to that effect of the Provincial Government. Technically speaking their status being the ownership of the concerned people remained unchanged.

Under the Interim Constitution of 1972 and then the Constitution of 1973, the special and separate status of the tract has been retained and this is still the case today. The present legal status of the forests of the Kalam tract has been detailed in section 4. 10.

It is evident from the contents of chapters 3 and 4 that in the post-State period, the Government’s claim to ownership of the forests is not based on any agreement with the people concerned but on the declaration by Government. The concerned landowners, though holding a different point of view, i.e. still considering themselves the rightful owners, accept the Government’s claim, at least at face value, particularly by acceding to and receiving a specific share of the sales proceeds. While on the other hand the Government too accedes to the people’s claim by paying them a major portion of the sales proceeds as their share and also by providing them with free timber to meet their bona fide needs.

In the light of the discussion and critical evaluation in chapters 3 and 4, technically speaking the forests of the study area are neither protected, nor are all the trees therein reserved. Therefore, operations under sections 29 and 30 of the NWFP Forest Ordinance, 2002 turn out to have no legal backing or support in the area covered by this study.

With the merger of the State, the rules and regulations introduced by the Walis remained in force under Regulation I of 1969. But despite maintaining the State’s rules and regulations, the situation made a U-turn, because there were no more checks and control over the common people at least and the unbounded freedom the people got after the merger was abused by almost anyone in all kinds of ways. In practice, there was no authority to maintain control at the very least over the common people and also the previous governance system. Sensing their freedom, the people themselves and the

³⁶⁷ Notification, No. 10/16-SOTA-II/72-1521, 15 September 1972, Government Gazette, Extraordinary, HTA&LGD, Govt. of NWFP.

contractors, in collaboration with the officers and staff of the Forest Department, started to ruthlessly cut down the forests. The announcement of Hayat Muhammad Khan Sherpao, Governor NWFP, and Z.A. Bhutto, Prime Minister of Pakistan at a public meeting – in the Grassy Grounds, Gulkada, Swat in 1973 – that people were free to cut the trees also had its effects and impact on the exploitation and conservation and stimulated deforestation.

On the implementation side, the new administrators showed apathy. Not only the administrators themselves but also staff from the law enforcement agencies, the Forest Department and other government departments were involved, one way or the other, in smuggling timber extracted by illegal cutting.

The Provincial Government, although it at first maintained Swat State rules and regulations as well as the rights and privileges enjoyed by the people, later brought in changes. The major steps in this respect were the extension of the Forest Act of 1927 in 1974 and then in December 1975, the application of sections 29 and 30 of the said Act and the declaration of all the forestland as protected and all the trees therein as reserved. A number of other restrictions were enforced under section (b) of notification No. SOFT(FAD)V-168/71(ii), dated 22nd December 1975; and also with the promulgation of the Protected Forests Management Rules, 1975. However, the declaration that forests were Government property, the extension of the Forest Act of 1927 and the subsequent notifications brought no fruitful changes because the physical boundaries of the forest and non-forestland were not marked and nothing was done to ensure proper implementation of the Forest Act of 1927 and the subsequent notifications.

The situation went from bad to worse. The Government failed miserably to implement its laws, rules and regulations and to protect the forestland it had declared its own property and the trees that had been designated as reserved. Although the Government considerably increased the royalty from 15% to 60% in other parts of the study area and 80% in Buner and Indus Kohistan forests, the people - both the landowners and the non-landowners - still wanted to cut down the trees and clear the forests for their own reasons; the contractors and forest mafia also ruthlessly cut down the trees. None of them cared for the maturity of the trees, etc., nor for silvicultural practice.

The NWFP Forest Ordinance, 2002 extended to the study area on 24th July 2004 is the latest step as well as an overt attempt to remove some of the loopholes and anomalies and to remedy the situation. But whether and how it will be implemented in practice is still an open question. For framing laws, rules and regulations, setting objectives and framing principles, etc. on paper in Islamabad and Peshawar – at Central and Provincial levels respectively – and their mere promulgation and extension is of no use when they are not implemented in the right spirit on the ground far away from the places where they have been framed, formulated, promulgated and extended.

There are anomalies and loopholes in the procedures to promulgate and extend the rules and regulation to the study area due to its special constitutional status. But the major issues are not the laws, rules and regulations or the anomalous procedures in their extension to the area but rather their non-implementation. This is also evident from and could be endorsed and supported by the fact that the rules and regulations of Swat State were left intact yet the situation on the ground did not stay the same and deforestation was stimulated by the merger of the State.

Therefore, there is a need for proper and spirited implementation of the laws, rules and regulations that have already been promulgated and extended to the area. Strategic plans should be developed at Forest Division level by the Forest Department or at district level under the devolved system on the basis of approved documents and policies; management should be made efficient and effective; and the bona fide needs of all the people of the area should be met as a top priority in an easy and bureaucracy-free manner, at concessional rates and with no quota limitations on the numbers of trees.

Without these steps, there will be no success because otherwise people will continue to meet their bona fide needs by unauthorised means, by hook or by crook, as on the whole they do today. In this case, just making and framing strategic plans even at the Forest Division or District level under the devolved system will be of no use or value.

Annex: Overview on agreements and Government of Pakistan laws and rules referred to in the text

Year	Name	Details
1954	Supplementary Instrument of Accession (signed by the Wali on 12 and Governor General of Pakistan on 17 February 1954)	The Wali surrendered some powers to Federal Legislature of Pakistan
1955	Establishment of West Pakistan Act, 1955	Swat declared as part of "special areas"
1956	Constitution of the Islamic Republic of Pakistan, 1956	Swat status as part of "special areas" retained
1962	Constitution of the Republic of Pakistan, 1962	Swat declared as part of "tribal areas"
1969	Dir, Chitral and Swat (Administration) Regulation, 1969 (Regulation I of 1969), dated 15 August 1969	Divested the Wali from his powers and authority
1970	Notification No. 66/SO (Spl) HD/70, dated 8 October 1970	Constituted Dir-Swat Land Disputes Enquiry Commission
1971	Notification No. OSD/SO/HD/70, dated 6 January 1971	Asked the Dir-Swat Land Disputes Enquiry Commission also to determine, beside other terms of reference, the ex-ruler's (Miangul Abdul Wadud) private property and the ex-Swat State property
1972	Interim Constitution, 1972	Created PATA and Swat declared its part
1972	Martial Law Regulation No. 122 of 1972, dated 11 April 1972	Provided for notifying the private property of the ex-ruler, and the Swat State property which shall vest in the Provincial Government
1972	Martial Law Regulation No. 123 of 1972, dated 11 April 1972	Provided special machinery for the settlement of claims of private individuals against the ownership of the ex-ruler/his heirs and other landlords
1972	Notification No. 10/16-SOTA-II/72-1521, dated 15 September 1972	Notified former Swat State's property, and also the forests as Swat State property (subject to payment of 15% of their income as royalty to the local right holders)
1972	Martial Law Regulation No. 115 of 1972 (notified on 11 March 1972, and extended to Swat on 7 November 1972)	Extended land reforms laws to and initiated land reforms process in Swat
1973	Constitution of 1973	Swat status as part of PATA retained
1974	Regulation I of 1974, dated 17 April 1974 (extended, beside others, the following two Acts to Swat and Kalam): The West Pakistan Land Revenue Act, 1967 (W. P. Act XVII of 1967) The North-West Frontier Province Tenancy Act, 1950 (NWFP Act XXV of 1950)	Provided base for land settlement and also deciding revenue matters and disputes according to laws enacted in the West Pakistan Land Revenue Act, 1967 Provided the laws dealing with the affairs between the landlords and the tenants
1974	Forest Act of 1927 (Act XVI of 1927) (extended to Swat and Kalam under Regulation II of 1974, on 20 May 1974)	Consolidated the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce
1975	Notification No. SOFT (FAD) V-168/71 (i), dated 20 December 1975, Agriculture Department, Govt. of NWFP	Applied the provisions of Chapter IV of the Forest Act of 1927 to all forest-land in Chitral, Dir, Swat, Kalam and Malakand Protected Area; and declared the said forest-land as protected forests
1975	Notification No. SOFT (FAD) V-168/71 (ii), dated 22 December 1975, Agriculture Department, Govt. of NWFP	Declared all the trees in the protected forests of Chitral, Dir, Swat, Kalam and Malakand Protected Area as reserved, and deprived the concerned people of a number of their rights

1975	North-West Frontier Province Management of Protected Forest Rules, 1975—issued as Notification No. SOFT (FAD) V-168/71 (iii), dated 24 December 1975, Agriculture Department, Govt. of NWFP	Provided rules for management of protected forests in Dir, Swat, Kalam, Chitral and Malakand Protected Area
1975	The Provincially Administered Tribal Areas Criminal Law (Special Provisions) Regulation, 1975 (NWFP Regulation No. I of 1975), enforced with immediate effect on 26 July 1975	Provided special provisions for trial of certain offences in Dir, Chitral, Kalam, Swat and Malakand Protected Area of PATA
1975	Provincially Administered Tribal Areas Civil Procedure (Special Provisions) Regulation, 1975 (NWFP Regulation No. II of 1975), enforced with effect from 25 March 1976	Provided special procedure for adjudication of disputes on certain matters in Chitral, Dir, Swat (which include Kalam) and Malakand Protected Area of PATA
1976	The West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 (W.P. Act V of 1962) Extended to Swat District through: Provincially Administered Tribal Areas (Application of Laws) Regulation, 1975 (NWFP Regulation I of 1976), dated 15 January 1976	Granted right of inheritance to females
1976	Constitution (Sixth Amendment) Act, 1976 (Act LXXXIV of 1976)—received assent of the President on 31 December 1976 and issued on 4 January 1977	Right Bank Indus Kohistan separated from Swat District and Kohistan District created, with effect from 1 October 1976
1981	Notification No. 276-78/1(32)DC/A-II, dated 20 February 1981	Declared the forests of the estates of Sapal Bandai, Gul Bandai, and Murghazar as protected, instead of Provincial Government property—as stated in the Wajib-ul-Arzs of the said estates
1994	West Pakistan Board of Revenue Act 1957 (The W. P. Act No. XI of 1956), extended to Swat District on 26 May 1994	Extended the authority and jurisdiction of the Board of Revenue NWFP to Swat District
1994	Provincially Administered Tribal Areas (Nifaz-e-Nizam-e-Shariah) Regulation, 1994 (NWFP Regulation II of 1994)	Provided for Nifaz-e-Nizam-e-Shariah (enforcement of Islamic system) through courts in Malakand Division of PATA, and also extended some laws to the area
1995	NWFP Regulation I of 1995	Extended Provincially Administered Tribal Areas (Nifaz-e-Nizam-e-Shariah) Regulation, 1994 (NWFP Regulation II of 1994) to Kohistan District of PATA
1999	The Shari-Nizam-e-Adl Regulation, 1999 (NWFP Regulation I of 1999) Promulgated for Malakand Division and Kohistan District of PATA	Replaced NWFP Regulation II of 1994 and NWFP Regulation I of 1995, and also extended some laws to the area
1999/ 2004	NWFP Forestry Commission Act, 1999 (Act XV of 1999) (extended to PATA on 24 July 2004 vide Notification No. SO(Judicial)HDI-34/04, Home and Tribal Affairs Department, Govt. of NWFP)	Provided for establishment of a three-members commission, supported by a secretary, which shall endeavour to further the cause of the protection, management and sustainable development of the forests of the province
2001	The North-West Frontier Province Local Government Ordinance, 2001 (NWFP Ordinance No. XIV of 2001)	Provided for establishment of local governments—at District, City, Tahsil, Town and Union Council levels
2002/ 2004	The North-West Frontier Province Forest Ordinance, 2002 (NWFP Ordinance No. XIX of 2002), dated 11 June 2002 (extended to PATA on 24 July 2004 vide Notification No. SO(Judicial)HDI-34/04, Home and Tribal Affairs Department, Govt. of NWFP)	Consolidated and amended the laws relating to protection, conservation, management and sustainable development of forests and natural resources in NWFP
2005	North-West Frontier Province Protected Forest Management Rules, 2005—issued as Notification No. SO(Tech)ED/V-105/2004/Vol:VII, dated 23 April 2005, of Environment Department, Govt. of NWFP	Provided rules for management of protected forests in NWFP including PATA

Abbreviations

AD	Agriculture Department
<i>AIR</i>	<i>All India Law Report</i>
B.N.	Bundle Number
BoR	Board of Revenue
CCF	Chief Conservator of Forests
<i>COP</i>	<i>Files of the Commissioner Office, Peshawar, in the Directorate of Archives and Libraries, Peshawar</i>
CPD	Commissioner, Peshawar Division
CS	Chief Secretary
DC	Deputy Commissioner
DD	Development Department
DFO	Divisional Forest Officer
D.O.	Demi Official
<i>DQOGS</i>	<i>District Qanungo Office at Gulkada, Swat</i>
<i>DRRGS</i>	<i>District Record Room at Gulkada, Swat</i>
DS	Deputy Secretary
DSC	Dir, Swat and Chitral
FDC	Forest Development Corporation
F.N.	File Number
Govt.	Government
GP	Government of Pakistan

<i>GSNWFP</i>	<i>Files of the Governor Secretariat, NWFP, in the Directorate of Archives and Libraries, Peshawar</i>
HTAD	Home and Tribal Affairs Department
HTA&LGD	Home, Tribal Affairs and Local Government Department
IA	Interview by/with the Author
IGF	Inspector-General of Forests, Pakistan
Lah.	Lahore
MLR	Martial Law Regulation
MSFR	Ministry of States and Frontier Regions
NCCR	Swiss National Centre of Competence in Research, North-South, Switzerland.
NWFP	North-West Frontier Province
<i>NWFP:RBA</i>	<i>The North-West Frontier of Pakistan: Report on the Border Administration</i>
OSD	Official on Special Duty
PA	Political Agent
PATA	Provincially Administered Tribal Areas
Pb.	Punjab
<i>PCA</i>	<i>Personal Collection of the Author</i>
PFI	Pakistan Forest Institute, Peshawar
PFD	Provincial Forest Department
PIU	Produce Index Unit
<i>PLD</i>	<i>The All Pakistan Legal Decisions</i>
<i>PLJ</i>	<i>Pakistan Law Journal</i>

<i>PRFANWFP</i>	<i>Progress Report on Forest Administration in the North-West Frontier Province</i>
<i>PRFA-WP</i>	<i>Progress Report on Forest Administration in West Pakistan</i>
PS	Political Secretary
Rev.	Revenue
Rs.	Rupee(s)
Secy	Secretary
SFD	State Forest Department
SFRD	States and Frontier Regions Division
S.N.	Serial Number
SS	Settlement Swat
<i>TARC</i>	<i>Tribal Affairs Research Cell, Home and Tribal Affairs Department, Government of North-West Frontier Province, Peshawar</i>
TR	Tape Recorded
<i>TRCA</i>	<i>Files of the Tribal Research Cell (Agencies) in the Directorate of Archives and Libraries, Peshawar</i>
WP	West Pakistan
WWF	World-Wide Fund for Nature

Glossary

The meanings of local words and terms have been given in the text in the relevant place. Here we give only words and terms that are either used more than once or could not be given in the text due to their length.

Abasin Kohistan: Indus Kohistan.

Ajars: The Ajars are a segment of the Gujars. Unlike the majority of the Gujars, they practised nomadism by proceeding to the lower plains with their livestock and belongings in winter, and to the higher hills and pastures (*bandas*) in the summer. They possessed cattle, a few ponies (to transport their belongings and food), dogs for protection and a small number of goats also.

Alaqa: Area; territory; locality.

Amil: Tahsildar/Hakim.

Bacha Sahib: Miangul Abdul Wadud, the Wali/Ruler of Swat State, who ruled from September 1917 to December 1949, is generally known as Bacha Sahib in Swat.

Banda (pl. *Banday/Bandajat*): hamlet; remote pasture in the hills with few residential houses.

Dawtar also spelled as *daftar/dafter*: the land liable to re-allotment in the traditional *wesh* system. The owners of *dawtar* had proportionate shares in all categories of land belonging to the village or locality where they had their shares in the *dawtar* and alongside other related privileges and obligations. However, in Swat Kohistan, though the land was permanently allotted since ancient times, most land is in this category and had the same status from other aspects, e.g. proportionate share in *Shamilat*, and the owners having the same rights and obligations as *dawtar* landowners in other areas of the Swat State.

Faisalalah: decision; order.

Gujars (Gujran): Gujars are an ethnic group, not Afghans but of the Jat or Rajput group. They had no share of the land by virtue of their descent, and remained mere vassals to the *dawtar* and *serai* landowners. On the whole, they possessed cattle, i.e. either cows and buffaloes or both, and sometimes also one or a few goats. They were not necessarily nomads. They are now a powerful group and can be found in all walks of life.

Hakim: Hakim was the administrative-cum-judicial-cum-executive-cum-financial officer or the person in charge of a Hakimi. Hakim was superior in rank and status to the Tahsildar. If the Hakimi consisted of more than one Tahsil, the Hakim was posted to one Tahsil where he performed the duties of both Tahsildar and Hakim for that Tahsil and was the immediate superior officer to the Tahsils and Tahsildars associated with the particular Hakimi. The Hakim appointed over more than one Tahsil also formed the court of appeal against the judgements of the Tahsildars under his jurisdiction.

Hakimi: Hakimi was a somewhat larger administrative unit in Swat State. It consisted either of a few small Tahsils or of one Tahsil if the Tahsil covered a larger area; in such cases the unit was called a Hakimi instead of a Tahsil.

Hukam Namah: written order; decree.

Hukamran Riyasat-e-Swat: ruler of Swat State.

Jamadar: The immediate lower-ranking officer after the *Subidar*. In the fort organisation of Swat State, the *Jamadar* usually headed the smaller or less important forts in the State. The rank or post of *Jamadar* also existed in the military organisation of the State, but in that case his status and duty was different from that of the *Qala Jamadar*.

Jarga/Jargah/Jirga: consultative assembly; forum; council; council of the tribal chiefs. It has other meanings, composition, functions and uses in different contexts.

Karin: the terraces or hillside land that cannot be cultivated by plough and is therefore cultivated with a pickaxe. The term is sometimes, and in some localities, also used to designate land cleared in the forests but cultivated by plough.

Khan: The meaning of the word *Khan* depends on the particular context in which it is used. It is used as a title for a chief; to address and show respect to a landowner; sarcastically for an unworthy person; and it is also given as a name. In this study it refers to the tribal chief.

Kohistan: a mountainous county; a hilly tract; high land.

Logay: literally smoke, but in the context of this study it means a single household. The smoke rising from the house when the meal is cooking represents a single household. If smoke rises from more than one place in the same house, the number of columns of smoke represents or bears witness to the number of households living in a single house.

Malak/Malik: a tribal chief recognised as head of the whole tribe, or of its major or minor sub-divisions, or a section or sub-section. Among the Swat, Yusufzais *Malak*

was the lesser tribal chief when compared with the *Khan* and some times subordinate to the respective *Khan* as well. Nevertheless, sometimes the *Malak* of the Swat Yusufzais' status was as powerful and influential as the big *Khans*' and his personal position and powers made him stronger and more influential than the lesser *Khans*, though this was not due to his title. In Kohistan areas, however, the title of Khan does not exist and the tribal chiefs are always called Malak.

Mashir-e-Maal: Revenue Advisor.

Mehtar: title of the ruler of Chitral State.

Mian (plural: *Miangan*): the descendants of saints and spiritual leaders of the past who have acquired widespread fame and reputation among many tribes.

Miangul: the descendants of saints and spiritual leaders of the past who have acquired widespread fame and reputation among many tribes are called *Mian*. However, as Abdul Ghafur alias Saidu Baba of Swat, was yet not ranked in that category, his descendants were given the courtesy title of *Miangul/Miangwalan*. It is inferior in sense to *Mian*.

Mundan: tree stumps.

Nautor: an illegal intrusion onto land in the forest; newly made land in the forest or hillside by encroachment.

Nawab: title of the ruler of Dir State.

Pakistan Peoples Party: the political party founded by Zulfikar Ali Bhutto in 1960s, with 'Islam our religion, democracy our politics, and socialism our economy' as its slogan. It came to power in Pakistan after the country had been divided into two in 1971, when East Pakistan broke off to become an independent State under the name of Bangladesh.

Patwari: a keeper of records and accounts of land especially at village/estate level.

Purdah: veil observed by the Muslim women.

Qala: fort.

Qalang/Kalang: rent, whether in cash or in kind.

Qaum: in the context of this report, this means a particular tribe; a section of a tribe or sub-tribe.

Rahdari: transit permit.

Riwaj: custom; fashion; practice; prevalence. In this study it refers to the customary law; and in the post-merger context also to the rules and regulations or customs of Swat State.

Riwaj Namah: Customary Law Book.

Sahib: a title of courtesy.

Sardaftar: revenue record keeper at Tahsil in Swat State.

Serai: lands which were under permanent ownership and were not liable to re-allotment under the traditional *wesh* system. The *serai* lands on the whole had no proportionate share in other categories of land and *shamilat* of the village or locality. There are, however, *Serai* lands which possess *shamilat* and had a share of the forests.

Shamilat: land, hills and forests etc. held in common by the *dawtar* landowners on the basis of their *dawtar* shares; wasteland, hillside, etc. included in a piece of land.

Shariat/Sharia/Shara: the divine code of life; revealed law; statute; ordinance; justice; equity. It, however, specifically means Islamic law.

Shari share: the share people are entitled to under Islamic law.

Shpunkis (Shpanyan): The Shpunkis practise nomadism like the Ajars and a section of the other Gujars. They consider themselves different from the Gujars and Ajars. They possess no cattle but only goats or sheep, mostly in flocks. They also possess (though not necessarily) a pony or ponies to transport their belongings and food, and a dog or dogs for protection. A number of them have now settled and have given up rearing herds. Local and non-local writers generally refer to them as Ajars.

Sipah Salar: Commander-in-Chief.

Subidar: in the fort organisation of Swat State, he was the officer who headed a fort, in general major or important forts. However, in the military organisation of Swat State, he was the head or person in charge of the lowest unit called a *Sawkai*.

Tahsil: Tahsil was the smallest administrative unit in Swat State.

Tahsildar: Tahsildar was the administrative-cum-judicial-cum-executive-cum-financial officer or person in charge of a Tahsil.

Tamasuk: written legal deed of the land transaction.

Tanra/Thana: police post.

Tanradar/Thanidar: a low-ranking police officer in charge of a Tanra in Swat State.

Ushar/Ushr: according to Islamic law, Muslims are required to pay a portion of the produce of their land to the Islamic State at the rate of ten or five percent, depending on the nature of the water given to the fields, which is known as *ushar*. However, the heads under which it is expended and disbursed have also been specified.

Wajib-ul-Arz: statement of rights and obligations of the inhabitants of each village/estate and their customary law written or recorded at the time of the preparation of the ‘record-of-rights’ as a prerequisite for the land settlement, and thereafter having force of law.

Wali: official title of the two rulers of Swat State namely Miangul Abdul Wadud and Miangul Jahanzeb.

Wali Sahib: Miangul Jahanzeb, the Wali/Ruler of Swat State, who ruled from December 1949 until the end of the State in 1969, is generally called and known as, in Swat, as Wali Sahib. Having proved to be the last Wali of the State, he is also referred to as the Last Wali.

Wazir-e-Maal: Revenue Minister.

Wazir-e-Mulk: Minister of State.

Wesh: distribution, but in the context of this study the proper word for it is allotment/re-allotment; the system of land tenure devised/adopted by Shaikh Mali after the occupation of the land by the Yusufzai tribe in the sixteenth century and practised by the sub-tribes of the tribe for centuries.

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Files of Deputy Commissioner Office, Peshawar

Files of Governor's Secretariat NWFP

Files of Tribal Research Cell (Agencies)

District Record Room, at Gulkada, Swat

Record of Swat State/District Swat

District/Sadar Qanungu Office, at Gulkada, Swat

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Wajib-ul-Arzs of different villages, District Swat

Tribal Affairs Research Cell, Peshawar

Dir Distt:/State Files

Swat Files

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Dasatirul Amal (Codes of Conduct) of various localities of Swat State (photostatted copies).

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Decrees/Orders issued under the instructions of *Hukamran Riyasat-e-Swat* (original/photostatted copies).

Miscellaneous: Notifications, Orders, Rules, Regulations, Ordinances, and so forth (original/photostatted copies).

Personal Collection of Shah Salam Khan Advocate, Gulkada, Swat

Unpublished Law Cases/Courts' Verdicts.

B. Interviews Conducted by the Author

Abdul Halim (61 years old³⁶⁸; hails from Ghaligay, Swat; ex-Assistant Secretary cum Information Officer, Swat State; presently: legal practitioner), 6 July 1998; 7 August 1999; 5 August, 7 October 2000; 3 June 2003; 9 June 2004; 18, 23 February, 20 March, 20, 25 May 2006.

Abdul Khaliq Baluch (58 years old; hails from Dera Ismail Khan; Range Officer, Pakistan Forest Institute, Peshawar), 7 January 2004.

Abdul Wahid Khan (66 years old; hails from Ronryal, Swat; ex-Professor of Political Science and Principal Government Jahanzeb College, Saidu Sharif, Swat), 25 May 1998.

Ali Haidar (51 years old; hails from Kokrai, Swat; legal practitioner), 5 September, 7 October 2000.

Amanul Mulk (alias Jaja), (74 years old; hails from Paronra, Swat; ex-Professor of Mathematics, and Principal Government Jahanzeb College, Saidu Sharif, Swat, d. 2003), 19 August 2000.

Amir Muhammad (57 years old; hails from Shagai, Swat; Range Forest Officer, Swat Forest Range), 14 February 2006.

Amir Zaman (66 years old; hails from Hazara, Swat; father of the author; possessed sharp memory and intellect, d. 1994), 15 March 1987.

Bahadar (about 95 years old; hails from Ningwalai, Swat, d. 2001), 16 March 1997.

Bakht Rashid (57 years old; hails from Pajigram, Swat; District/Sadar Qanungo, District Swat), 7 January 2006.

Bawar Khan (83 years old; hails from Saidu Sharif, Swat; served in the Swat State militia), 26 February 1997.

Ghaniy-ur-Rahman (hails from Mingawara, Swat; ex-Afsar-e-Jangalat [Forests Officer], Swat State, and Chief Conservator Forests, NWFP), 11 December 2005.

Haider Ali Khan (53 years old; hails from Mingawara, Swat; Conservator of Forests, Malakand Forest Circle), 20 February, 16 May 2006.

Kamran Khan (74 years old; hails from Gulkada, Swat; ex-Senator), 14 September, 7 October 1998.

Mian Muqarab Shah (58 years old; hails from Ibrahimzi, Charsada; Range Officer, Pakistan Forest Institute, Peshawar), 7 January 2004.

Muhammad Arif (66 years old; hails from Saidu Sharif, Swat; ex-Director Physical Education, Government Jahanzeb College, Saidu Sharif, Swat; Rabita Secretary, Swat Employees

³⁶⁸ Age and other particulars given in respect of all those personally interviewed by the author are at the time of the first interview of each one of them. However, the years of birth and death has been given in respect of those, who died since then.

Association; Administrative Officer, Chitral Area Development Project (CADP); presently: legal practitioner), 4, 14 July 1998; 19, 30 September 2000.

Muhammad Khan (58 years old; hails from Mingawara, Swat; legal practitioner; Standing Forest Counsel, Forest Department, at District Courts Swat), 18 February 2006.

Muhammad Shoaib (64 years old; hails from Makanbagh, Mingawara, Swat; ex-Divisional Forest Officer), 7 December 2003.

Muhammad Zeb Khan (49 years old; hails from Chakdara, District Lower Dir; Forester, Lower Dir Forest Division; Central President, Forest Guards, Foresters and Deputy Rangers Association, Forest Department NWFP), 13 April, 26 May 2006.

Saifullah Khan (56 years old; hails from Mingawara, Swat; Section Officer Universities, Higher Education Department NWFP), 20 February 2004, 7 January 2006.

Sanaullah Khan (50 years old; hails from Sambat, Swat; Divisional Forest Officer, Swat Forest Division), 24 February 2006.

Shahdin (54 years old; hails from Darolai, Swat Kohistan; worked with a number of timber contractors as Assistant, for 22 years; clerk with Shah Salam Khan Advocate), 21 January 2006.

Shah Salam Khan (49 years old; hails from Gulkada, Swat; legal practitioner), 10 December 1999; 5 July 2000; 16, 29, 30 November 2003; 12, 15 December 2005; 17, 28 January, 11, 21 February, 4, 15, 25 March, 8, 21, 29 April, 6, 15 May 2006.

Sirajuddin Khan (about 76 years old; hails from Sanghota, Swat; writes in the name of Sirajuddin Swati), 11, 27 June 1998.

Syed Muhammad (72 years old; hails from Gulkada, Swat; Retired Lieutenant Colonel), 27 May 1999.

Taj Muhammad Khan (70 years old; hails from Ghaligay, Swat; ex-Mashir-e-Maal, Swat State, and Secretary, Home and Tribal Affairs Department, NWFP, d. 2006), 9, 16 May 1999.

Tajunu (53 years old; hails from Saidu Sharif, Swat; In-charge District Maal Khana at Saidu Sharif, Swat), 24, 27, 28 February 1997.

Zainul Abidin (75 years old; hails from Chindakhwara, Swat; medical practitioner), 21, 27 June 1998.

Ziaullah Khan (69 years old; hails from Gulkada, Swat), 6 June 1998.

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Forests in North-West Pakistan

Legend

- International Boundary
 - Provincial Boundary
 - District Boundary
 - Southern Boundary of PATA (Provincially Administered Tribal Areas)
 - Forest
 - Scrub
 - Pastures
 - Glaciers
 - Arable Land
- SWABI** Name of District
Peshawar Important Places



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