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South Asia-Central Asia Inter-Regional Connectivity: The Future Perspective

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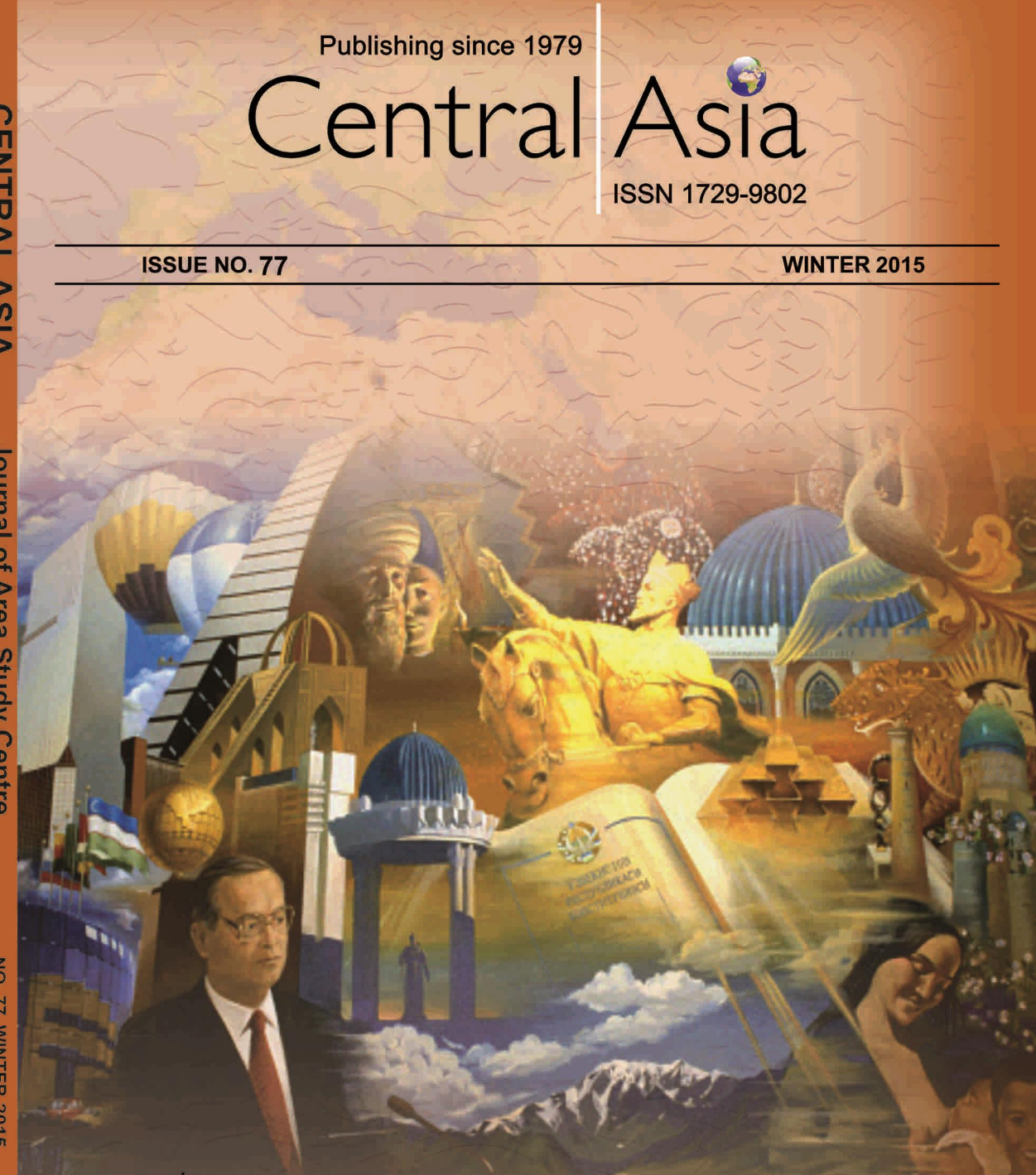
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## Cover Image

*(Late Islam Abduganievich Karimov, 1938-2016)*

*Political painting depicting Uzbek President Islam Karimov and Uzbekistan's glorious history. He Worked first as an aircraft engineer (1961–66) before entering government employment in 1966 as an economic planner for the Uzbek state planning office, became first secretary of the Communist Party of Uzbekistan in 1989, President of Uzbekistan in 1991 and held this office till death. (September 2, 2016).*

*(Source: <https://www.britannica.com/biography/Islam-Karimov> & <https://www.panos.co.uk/preview/00017530.html?p=2> )*

## AN ANALYSIS OF SULTAN MUHAMMAD KHAN'S WORK: THE CONSTITUTION AND LAWS OF AFGHANISTAN

*Muhammad Shafi\* and Noor Ul Amin\*\**

### Abstract

*Afghanistan, from its inception in 1747, had remain an ill-defined country with no centralized authority until the rule of Amir Abdur Rehman (r.1880-1901). He not only settled the boarders of Afghanistan but also established a centralized government which, though dictatorial in nature, was ruled under the restrains of the 'Sharia' (Islamic Law) and Customary Laws of the Afghan tribal society. These laws existed in written literature in Pashto and Dari, but not in English. The first ever book in English containing the laws governing Afghanistan is 'The Constitution and Laws of Afghanistan' written by Sultan Muhammad Khan in 1900. The work is mostly derived from oriental customs and Mohammadan law. It describes the laws and constitution of Afghanistan before 1900 in the light of modern European laws. The author, Sultan Muhammad Khan, a British-Indian, the father of renowned Urdu poet, Faiz Ahmad Faiz, had been Mir Munshi (chief secretary) of Amir Abdur Rahman in Afghanistan from 1888 until 1898. After trusting and recognizing his services in Afghanistan, the Amir appointed him as ambassador to England for the period 1899-1901. This paper analyzes the established system of laws as given in 'The Constitution and Laws of Afghanistan'.*

**Keywords:** *Amir Abdur Rehman, Sultan Muhammad Khan, laws and constitution, Muslim Jurisprudence, Oriental versus occidental laws, Private law, Customary law, Rule of the Ruler*

### Introduction

The work 'The Constitution and Laws of Afghanistan' was published in 1900 in London by John Murray publishers. It compares private and constitutional laws of Afghanistan with advanced European countries. The

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main research question in the work is to find out how the laws of Afghanistan are derived from oriental customs and Mohammadan law? It also explores how much of Afghanistan laws are derived from other sources, such as, India and other neighboring states.<sup>1</sup> The author, Sultan Muhammad Khan was born in Sialkot in 1861. He was father of renowned Pakistani Urdu poet, Faiz Ahmad Faiz.<sup>2</sup> He was well versed in Persian, Dari and English. In 1886, Amir Abdur Rehman, invited him to Kabul and employed him. Sultan was elevated to the position of Chief Secretary (called Mir Munshi in Persian) by the Amir and also served on other positions. During demarcation of eastern borders with British Empire in 1893, known as the Durand Line, Sultan Muhammad Khan was member of negotiating team of Amir Abdur Rehman. The author stayed in Afghanistan for almost a decade from 1888 until 1898. During his stay, he observed closely the events and happenings, ranging from social, cultural and political issues. Thus, his information is first-hand. The writer ran away from Afghanistan in 1898 and reached British India where he was imprisoned at Lahore, and released by the efforts of Dr. Lillies Hamilton. Later on, he went to London, did his Barrister-at-Law from Christ's College Cambridge. His professional degree helped him in writing on the subject of law.

This study is going to look into the content analysis of the work, *The Constitution and Laws of Afghanistan*, to evaluate its argument, its coherence and intent of the writer. Thus, the work is investigated to check whether it is a pure intellectual pursuit of the writer or part of a discourse, the post-modernist approach, to give meaning to, or legitimize the socio-political realities constructed during that period of time by those in power. Michel Foucault argues, "We must be very suspicious of any information which is produced, even when it seems most self-evidently to be adding to the sum of human knowledge, it may at the same time play a role in maintenance of status quo and the affirming of current power relations"<sup>3</sup>

Foucault further held that every moment of production of knowledge or instances of someone talking on behalf of someone else, no matter how good their intentions are, needed to be interrogated.<sup>4</sup>

While the work, *The Constitution and Laws of Afghanistan*, was being published, the author was outside Afghanistan and he was no longer on the official roll of Afghan kingdom. Hence, apparently, the book can be equated to just an intellectual pursuit of the writer without being influenced by Amir Abdur Rehman, the sitting Amir, and additionally there is no obvious conflict of interest as the author is no longer Afghan government servant.

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<sup>1</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. 30

<sup>2</sup> Sarfraz Khan & Noor ul Amin, *Mir Munshi Aala Sultan Muhammad Khan and His Services to Afghanistan: Peshawar*, Bi-Annual Research Journal Central Asia, issue No. 72. 2013, P.3

<sup>3</sup> Foucault Michel, *Critical Thinkers: London*, Routledge 11 New Filter Lane 2003, p.60

<sup>4</sup> Foucault Michel, *Critical Thinkers: London*, Routledge 11 New Filter Lane 2003, p.78



Despite these two reasons, would it be enough for the work to be called independent and it was produced without having any link to political influence of the Afghan authorities, the Amir. But the work clearly gives credit to Amir Abdur Rehman as pioneer of reforms especially for constitutionalism and new laws to the level that this work seems to be an apology of Amir Abdur Rehman. Thus, it seems that under a discourse, the Amir's policies are being justified and are provided with meaning. The subjectivity of the work and its partiality can be confirmed by analyzing the contents of the work.

In Chapter III, page 29, the work quotes Elphinstone asserting that like in most Asiatic countries, in Afghanistan too, there are no limits to the power of the ruler or Amir except the endurance of the people.<sup>5</sup> It further argues that Amir Abdur Rehman had the right and power to amend customary law and prescribe punishments in order to suit the Afghan circumstances and situation. The work highlights that Amir Abdur Rehman time there were three laws: laws of Islam, laws of ruler, and the customary laws.<sup>6</sup> Amir squeezed the customary laws and laws of Amir into one, along with a number of new laws. These laws were administered mostly through sword and the cases were decided on spot. Under Kabul Police Code, various punishments were prescribed for various social evils, such as, evil speaking in public, evil speaking against the descendants of Prophet, against man of learning or of a civic elder could be punished by 20 lashes and a fine of Rs. 50.<sup>7</sup>

Abdul Latif in his work entitle, *Judiciary in Afghanistan since the Days of Amir Abdur Rehman*,<sup>8</sup> highlights the ruthless treatment meted out on public by Amir Abdur Rehman.<sup>9</sup> The same author provides a list of verdicts announced by Amir Abdur Rehman which reflects the standard of laws and quality of administration of justice (see Annexure 1). The torture for the purpose of extorting confession was so horrible in criminal, political, revenue and other cases that could force the imprisoned to admit each and everything. The work justifies these cruel and harsh laws. It argues that it was only after these cruel laws that in fifteen years only five murder cases occurred in Afghanistan against previous practice of almost 500 to 1000 in a

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<sup>5</sup> Mountstuart Elphinstone, *An Account of Kingdom of Caubul*: London, Vol. II, Longman Hurst, Rees, Orme, Brown and Murray 1815, p.129

<sup>6</sup> Mountstuart Elphinstone, *An Account of Kingdom of Caubul*: London, Vol. II, Longman Hurst, Rees, Orme, Brown and Murray 1815, p.126

<sup>7</sup> Mountstuart Elphinstone, *An Account of Kingdom of Caubul*: London, Vol. II, Longman Hurst, Rees, Orme, Brown and Murray 1815, p. 121

<sup>8</sup> Abdul Latif, *Judiciary In Afghanistan Since The Days Of Amir Abdur Rehman*: Peshawar, unpublished PhD Dissertation, Area Study Centre University of Peshawar 2003, p.103

<sup>9</sup> Abdul Latif, *Judiciary In Afghanistan Since The Days Of Amir Abdur Rehman*: Peshawar, unpublished PhD Dissertation, Area Study Centre University of Peshawar 2003, p.p 8-24

clan of 20000 families.<sup>10</sup> The work has quoted some outside sources such as Mr. Wheeler who says,<sup>11</sup>

*“These laws may seem barbarous to Europeans but we must not forget that Orientals look at these things quite in different light”*<sup>12</sup>.

Despite such harsh laws of Amir, why the work justifies his administration of justice and miserable life of those alleged for some folly need to be further explored. Was it an act of atonement by the author to the Amir who helped him in his personal growth and monetary benefits bestowed upon him?

Faizullah Jan says, *“In the Foucaultian sense, a discourse regulates the way a topic can be talked about meaningfully in a particular culture at a particular time in history”*.<sup>13</sup> The discourse that justify and provide meanings to whatever happened in Afghanistan during the rule of Amir Abdur Rehman by the author further reflected in other parts of his work.

Another contradiction in the work under analysis is the author eulogizes the contribution of Amir Abdur Rehman towards growth of a constitutional Afghanistan by introducing legal reforms and new laws. The term ‘constitutional’ in modern language reflect a government where there is sufficient separation of powers in executive, legislative, judicial spheres and these are not concentrated in one hand and with defined parameters. Abdul Latif and Misal Zada in *“Judiciary in Afghanistan Since The Days of Amir Abdur Rehman”*<sup>14</sup> and in *“The Role of Afghan Loya Jirga In Law Making”*<sup>15</sup> respectively, portray how Amir Abdur Rehman took in his own hands judicial powers by exercising original jurisdiction in criminal cases. Even Abdul Latif, in his dissertation portray the moody Amir awarding two different punishments for the same crime to convicts as laws were not fixed and punishments not defined at that time.<sup>16</sup> He quotes a case, a wife seeking

<sup>10</sup> Abdul Latif, *Judiciary In Afghanistan Since The Days Of Amir Abdur Rehman*: Peshawar, unpublished PhD Dissertation, Area Study Centre University of Peshawar 2003, p.134.

<sup>11</sup> S. Wheeler, *The Ameer Abdur Rahman*: London, Federk & Co, 1895, p.89

<sup>12</sup> Sultan Muhammad Khan, *The Constitution And Laws of Afghanistan*: London John Murray 1900, p. 122

<sup>13</sup> Faizullah Jan, *Representing the Self and the Other: Discourse of Pakistan Based Militant Organizations*, PhD Dissertation, American University, Washington .D.C., 2016 , p. 14.

<sup>14</sup> Abdul latif, *Judiciary in Afghanistan Since The Days of Amir Abdur Rehman*: Peshawar, Area Study Centre (Central Asia) University of Peshawar, 2003, p.8 & 24

<sup>15</sup> Misal Zada *The Role of Afghan Loya Jirga In Law Making*: Peshawar, unpublished Ph.D. Dissertation. Peshawar: Area Study Centre University of Peshawar, 1998, p. 53

<sup>16</sup> Abdul Latif elucidate that the intensity of the punishment was dependent on the mood of Amir. There were no defined limits of punishments for the crimes. One individual was sentenced to death for a crime, the other person for the same crime was freed with a thrashing alone. Though in theory punishment for homicide, adultery and apostasy was death, practically the offenders on these points were treated with leniency (probably where expediency involved, kingdom interest, p. 21

divorce because her husband is toothless. The verdict handed over by Amir was to extract her teeth. Another case related to adultery, both, male and female, were ordered to live together till death as they both were fastened together back to back and were kept on a hill till death by starvation and exposure.<sup>17</sup>

Similarly, contrary to the views expressed in the work, horrible life of prisoners in jails is depicted by other sources such as, Abdul Latif, during Amir Abdur Rehman rule. Amir's son, prince Habibullah, was found guilty in sexual activities, especially he was a frequent visitor to Pari Khana (the fairy House).<sup>18</sup> Pari Khana, the female prison, where female were properly clothed and presented to Habibullah for sex. Thus, presenting a picture of Amir Abdur Rehman as perfect embodiment of law and justice seems a bit exaggerated by Sultan Muhammad Khan in the work. He portrays in the work that Amir Abdur Rehman was known for a strong network of spies in Afghanistan in the following way,

*“A strong and sound intelligence network was being operated by the Amir on the lines of Russian intelligence system which had impressed the Amir during his stay in Russia. Every fourth man in Afghanistan was believed to be a reportchee (spy).”*<sup>19</sup>

How could he remain ignorant in the presence of a well-organized intelligence mechanism, of his son indulgence in Pari Khan? Thus, we can conclude that the work is a wonderful intellectual contribution to Afghan political and socio-cultural literature, especially related to the subject of laws but a bit exaggerated so far portrayal of Amir Abdur Rehman character is concerned.

In Foucaultian sense the author under a discourse legitimizes the sitting Amir, Amir Abdur Rehman, by use of language and the knowledge the author has to legitimize his actions. All favorable sources and references are referred for the purpose in the work, such as, Wheeler, Lillias Hamilton and Alfred Grey, foreigners serving under the Amir, Lillias Hamilton, admires the peace and security prevailed in Afghanistan under Amir.<sup>20</sup> However,

<sup>17</sup> Abdul latif, *Judiciary in Afghanistan Since The Days of Amir Abdur Rehman*: Peshawar, Area Study Centre (Central Asia) University of Peshawar, 2003, p. 22

<sup>18</sup> The writer Abdul Latif writes that *Pari Khana* was female prison. Its incharge named as *Naib Kutwal* Sultan Abshar, used to offer female prisoners as gifts both to friends and male members of ruling family. These girls were well fed and well dressed and presented to prince Habibullah. Many girls lost virginity due to his this habit and committed suicide later on, p.23.

<sup>19</sup> Mir Munshi Sultan Muhammad Khan, *The Life Of Amir Abdur Rehman, VoII*: Karachi, Oxford University Press 1980 , p. 259.

<sup>20</sup> Lillias Hamilton is referred admiring Amir Abdur Rehman performance to bring peace and security to kingdom, something unseen before. *The Constitution and Laws of Afghanistan*, p. 123.



another work, the autobiography of Amir Adur Rehman, “*The Life of Abdur Rehman: Amir of Afghanistan*”<sup>21</sup> gives a picture of Afghan nation as very turbulent, difficult to control. The two dominant classes the tribal leaders, orthodox religious class and customary law are the main determinants in failure of establishing a centralized national political authority. Thus, in the second part of nineteenth century, Amir Abdur Rehman somehow tried to strengthen the power of the national government through a series of suppression of ethnic groups, tribal chief and later religious party.<sup>22</sup> Though there are other local sources as mentioned above which justified Amir Policies of harsh punishments and severe criminal administration for control.

One-fourth portion of the work is related to history of Afghanistan and the author borrowed from and depended on authentic European and Islamic sources. The work picks up the traditional Islamic discourse, the rule of hereditary succession of the eldest son, and the king’s right to nominate his successor, had been acknowledged in the work<sup>23</sup> to justify the nomination of prince Habibullah as future king nominated by Amir Abdur Rehman. Thus, nomination is legalized by constructing its meaning in a particular specific period of time through the use of language and it is linked to power, or maintenance of status quo as conceived by Foucault. Using the same old discourse also utilized in Europe, the work quote the king of England, Henry VIII (1207-1272), faced the issue of his successor when he was authorized to nominate anyone else as he was childless<sup>24</sup> Thus, there is lack of symmetry between the title of the work, ‘*The Laws and Constitution of Afghanistan*’ and the treatment of the text. The text is discussed in term of old discourse, using the language having terms with already constructed meanings, such as *darbar, jirga, Sardar, Khan, Mullah, shariat* etc.

Abdul Jabar Sabit has pointed out that in order to regulate affairs of the state, Amir Abdur Rehman enacted and enforced regulations, in the name of Muqararat. These were printed in leaflets and were not published in written forms. Thus, these documents were temporary and could not serve the character of any law.<sup>25</sup> Amir Abdur Rehman changed the system and instead put such laws in written form in two documents named *Dastoorul-Hukam Wa Zubat* and *Assosul-e-Quzat*<sup>26</sup> *Assosul-e-Quzat* was mainly based and

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<sup>21</sup> Mir Munshi Sultan Muhammad Khan, *The Life of Amir Abdur Rehman Amir of Afghanistan* (edited) Volume I & II: London, John Murray, Albemarle Street 1900, p.94.

<sup>22</sup> Muhammad Hashim Kamali, *Laws in Afghanistan a Study of the Constitutions, Matrimonial Law and the Judiciary*, Leiden E.J. Brill 1985, p.5.

<sup>23</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.19.

<sup>24</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. 20.

<sup>25</sup> Abdul Jabar Sabit, *Laws of Afghanistan*: Peshawar, Central Asia, No. 11, Area Study Center, University of Peshawar 1982, p. 107.

<sup>26</sup> Abdul Jabar Sabit, *Laws of Afghanistan*: Peshawar, Central Asia, No. 11, Area Study Center, University of Peshawar, 1982, p.107

derived from Muhammadan law (Sharia). The main subjects addressed in this document were treason, rebellion, embezzlement of state's fund, forgery and bribery on the part of officials. Sabit, argues that despite the establishment of many new institutions, courts, appointment of Nawabul Hukomas (a Viceroy type, overlooking a few Governors), provincial governors, and Hakims (the governors of provincial sub divisions) for controlling administrative affairs of the provinces. He also established the first court of appeals at Kabul with twelve members led by a chief named Khana-e-Uloom.<sup>27</sup>

However, authority of Amir Abdur Rehman was not restricted. In other words executive dominated judiciary by trespassing on its jurisdiction. However, a possible explanation for this situation is the longstanding traditions of executive domination of the judiciary in Afghanistan due to the nature of judicial authority in the constitutional structure of Islam. The leader or Imam exercising temporal power has the fundamental duty to administer the Sharia.<sup>28</sup> But at least even in Sharia there is due process of law but, in Afghanistan, it was up to Amir's mood to follow due process or decide the case. This reality is not highlighted in the work. Besides, how the robbers of Mazar e Sharif, were punished, is a case in point, in this regard.<sup>29</sup> Furthermore, being highest court of law, the Amir could reverse the decisions made by judges.

### **Summaries of A Few Important Chapters of the Work**

The first chapter of the book covers a brief history of Afghanistan from Mir Wais Hotak (r.1709-1715) to Amir Abdur Rehman (r.1880-1901). The chapter has also highlighted the advent of Islam in Afghanistan. It discusses characters and role of various Afghan rulers, decline of Ahmad Shah Abdali's (r. 1747–1772) descendants and the rise of Barakzais under the leadership of Dost Mohammad Khan (1793-1863). Timor Shah, son of Ahmad Shah Abdali made a blunder to divide the country into various territories among his sons. Besides, the legal reforms of Sher Ali Khan (1825-1879) with special reference to his faulty decision to fix head money for murder, led to more killing<sup>30</sup>. The same blunder of dividing territories among the sons was repeated by Dost Muhammad Khan (r.1826–1839&1845–1863) that led to many problems. During this time of change of dynastic rules, the title “King” changed to “Amir”. The title “Amir” was first

<sup>27</sup> Abdul Jabar Sabit, *Laws of Afghanistan: Peshawar, Central Asia*, No. 11, Area Study Center, University of Peshawar, 1982, p.72

<sup>28</sup> Muhammad Hashim Kamali, *Law in Afghanistan A Study of The Constitutions, Matrimonial Law and the Judiciary*, Leiden E.J. Brill 1985, p. 209

<sup>29</sup> Abdul jabar Sabit, *Laws of Afghanistan. Central Asia*, no. 12. Peshawar: Area Study Center, University of Peshawar, 1983, p. 73

<sup>30</sup> Amir Sher Ali Introduced several laws during his reign includes: establishment of military conscription, household taxation, the custom of blood feud or blood money.

adopted by Dost Muhammad Khan, having Islamic meaning of “the commander of the faithful”.<sup>31</sup>

## Chapter II: The Title of the Crown

It discusses the subject of crown and issue of the succession to the throne. Sultan articulates that the issue of succession is a big one in Muslim societies. In West, it is generally understood that Muslims societies like Afghanistan has lacked the system of succession. In East, the right of succession is decided through sword and strength. Sultan narrates further that though the laws in the East on the subject of succession of private property are fully explained but have little or nothing to say on the subject of succession to the throne. He has quoted the view of a writer in this connection, published in Edinburg review (October 1883). In Jews, Turkish Empire and Afghanistan, he quotes the example of Muhammad III, who massacred 19 of his brothers to get the throne.<sup>32</sup>

### Three Modes: Reasons and Difficulties<sup>33</sup>

Sultan argues that Muhammad (PBUH) left a republican government but when he died a question about who will succeed in the government of commonwealth raised. Mohammad had often indicated Ali as his successor, but he had not laid down definite rule for that. The Muslims difficulty is that religion and state were never separated. The qualifications which prevailed for a successor were:

1. Historically the right of the eldest son to the throne had been recognized before Mohammad from time immemorial. In Genesis it is mentioned that leadership in the house of Abraham, descended to his eldest son. He also quotes old Hindu culture, in the same way.<sup>34</sup> Hence there are ample examples in history, in Turkey, Iran and Afghanistan that the eldest son or nearest male relative to the succession of the office of headship, was observed. Even Arabs accepted the rule. The son of Abu Talib (Ali) was the chief of the family and hereditary prince of the city and temple of Mecca.
2. Election by the people, among the Arabs the chieftaincy is not hereditary but elective. There is rare principle of universal suffrage

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<sup>31</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. 7.

<sup>32</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.12.

<sup>33</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.14.

<sup>34</sup> Sultan Muhammad Khan. *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.14.

where all the members of a tribe have a voice in election of a chief. The election is made among the surviving male on seniority of the deceased sovereign. This custom was followed in the choice of successors of Muhammad.

3. Moawyah nominated his son, introducing hereditary principle to the chieftaincy in Islam. After this 14 ruler were nominated in this manner. Hence the rule of hereditary succession of the eldest son has ever since been observed.<sup>35</sup> The king's right to nominate his successor has always been acknowledge. Even in England up to the time of Henry VIII, the uncertainty of the succession to the throne was a continued anxiety to the nation.
4. Wish of the outgoing sovereign, or respect to the expressed wish of the deceased sovereign of Afghanistan:<sup>36</sup> In Afghanistan numerous kings, have successes to the throne when supported by chiefs of the country. But sometimes, a king nominated his son, although he was not the eldest or because his mother was the king favorite. But this nomination often resulted in civil wars. Hence a candidate has never faced difficulties if he was favored by three points: hereditary succession by primogeniture, nomination by his father and approval of the electorate. Amir Abdur Rehman did right thing that he nominated his eldest son.

#### **Comments/Analysis:**

- Among the Muhammadans no law is more complicated than the law of succession.
- In east, laws for private property are defined and explained but not law of succession.
- It is believed in the west that in Muhammadans right of succession is decided through sword and strength. Example of Muhammad III<sup>37</sup> who killed 19 of his brothers
- A civil war is the natural sequence of vacancy.
- Among the Muslims one difficulty is that religion and state were never separated. It frequently happened that a person, who was qualified for being the head of the state, has not been qualified of being the head of the religion.

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<sup>35</sup> Ibid., p.19

<sup>36</sup> Ibid., p.20

<sup>37</sup> Muhammad III (1566-1603) was Sultan of Ottoman Empire from 1595 until his death in 1603. Muhammad III was born at Manisa Palace in 1566 (Turkey), during the reign of his great-grandfather, Suleiman, the magnificent, a well known Ottoman Sultan. Muhammad III was known for notoriety to kill 19 of his brothers and half-brother in order to secure throne. They all were strangled.

### Chapter III: Prerogative of the Crown

The title of the chapter reflects the prerogative of the crown, or the king of the time. But before addressing the main idea, the author touches upon how the coronation and oath taking ceremony of a new sovereign is conducted. He began from the custom prevailed in period during the time of Muhammad (PBUH). In that time, Arab culture allegiance was generally received by placing the right hand on the right hand of the sovereign, as a token of allegiance, started first by Muhammad (PBUH).

But Amir Abdur Rehman changed this method and instead took the oath of allegiance and fidelity from his subjects by taking oath on Quran. Generally in Pakhtun Culture, still prevailing, the oath on Quran is stronger than any other commitment. Amir did this while he was intending to leave Afghanistan for England in 1891. He was trying to bind them tightly. The same oath was extended to all the subjects again in 1895.

Besides, as general custom in Afghanistan, during Dastar Bandi<sup>38</sup> i.e. coronation, the chief of the tribes would put the turban on the head of the new sovereign, then the chiefs would put their swords at his knee, a symbol of submission. Then the name of the new sovereign is put in Khutba or Friday sermon. Besides, his name is also put on coinage for the country and on the Royal Seal.

The author goes into the history of Islam as to how the republican spirit of Muhammad's short rule was changed from elective to hereditary Kingdom<sup>39</sup>. It was because of this change that war and blood was shed, and the system of succession banished.

The author has compared the prerogative of Muslim sovereign with Roman praetors. Here the author makes a very candid debate on how the Orientals ruled with impunity. How Muslim kings could not dispense with Muhammadan laws as they had the power of interpreting them. They made small changes in customary laws and they introduced laws on new points, not been mentioned in Muhammadan laws.

The author has articulated further that in reality, as depicted by many historians there is no limit to the powers of the sovereign in Oriental countries, their word is law and they have the power of life and of death. But exceptions were also there, it doesn't mean that all sovereign had ruled in autocratic way. It is in human nature that they want more power. Even in European history we get examples of Henry VIII, Charles I and James II. Thus the author has discussed the case of Afghanistan, particularly the role and rule of Amir Abdur Rehman, based on outside sources, to reform the legal system.

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<sup>38</sup> Crowning or placing the new turban (investiture of academic turbans)

<sup>39</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.26.

The founding father of Afghanistan, Ahmad Shah Baba was elected, but later, his sons broke down the democratic government into despotic one, resulting in anarchy.<sup>40</sup> The author has quoted Elphinstone<sup>41</sup> that in most Asiatic countries, there are no limits to the power of the crown except upon the endurance of the people. The king is removed only through a general resurrection.

### **Criticism:**

The author though quotes outside sources but in fact he tries to justify Amir Abdur Rehman rule and policies giving it a coating of legality.

In Afghanistan, the power of Durrani aristocracy along with other tribes is a main source of control of royal authority. It is also the source of peaceful maintenance of public privileges. But as they have no statutes law except that of Muhammadan Law and no public record of proceeding for their government, it was impossible that a regular constitution would have developed and grown among them. It is because of certain established customs and opinion which is mentioned here and justify crown powers. These are as follow: Privilege of coinage, privilege being mentioned in Khutba, the right and power to declare war and peace and can make treaties on his own authority.<sup>42</sup>

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<sup>40</sup> Sultan Muhammad Khan. *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.29

<sup>41</sup> Mountstuart Elphinstone (1779 – 1859) book *Account of the Kingdom of Cabul* first published in London in 1815 by M/S Longman Hurst, Rees, Orme, Brown and Murray is the product of his assigned visit to Afghanistan, of which he could only visit the eastern portion and most information was collected at Peshawar from February –June 1809. It took him five years to compose his data in *Poona* (India) and give the document a book form. His associations with Afghans could be counted to around six months. He entered the area beyond Indus (7<sup>th</sup> January 1809) and re-crossed Indus (20<sup>th</sup> June 1809). It is not mere oral collection of data on Afghanistan but is based on all then known oriental (Persian) and European books plus travel accounts. Chapter V Book V of Volume II of Elphinstone's work concerned with judiciary, the role of *Qazi* (judge), the *Mufti* (*Juriconsult*), *Amin-e-Mehkama* (in charge of department) and *Darogha-e-Adalat* (Reader). Mountstuart Elphinstone was a Scottish peer: his father John was Lt. Governor of Edinburgh castle, whose two sons James and Mountstuart joined the East India Company at very Young age. They earned political position being of baronial descent in the company services and Mountstuart appointed as a Resident at Nagpur. Here he learned both Sanskrit and Persian. He also visited Persia in between this period and was charmed by Persian poetry. Elphinstone in all served in India for 31 years (1796-1827) retiring as governor of Bombay. He was also offered the governor generalship of India later but he declined. Elphinstone remained bachelor, yet his house remained attached to India, his nephew was assuming the position of governor at Bombay and Madras. He died in 1859.

<sup>42</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.36.



## Chapter V: The King in Darbar (Court) and Council

The author compared the Afghan constitution with British constitution that grew slowly overtime. He says that if someone asks him to define the Afghan legislature, during Amir Abdur Rehman rule. I would just quote the well-known Greek poet Homer. Homer in the *Odyssey* as given in the Sir Henry Main work, the *Ancient Law*, says<sup>43</sup>,

“They have neither assembly for consultation, nor Themistes, but everyone exercise jurisdiction for his wives and his children, and they pay no regard to one another.”

The author however, argues that the present Amir improved the constitution by combining the old customs and laws of Afghanistan with modern additions both from India and western governments, especially from British constitution. He says that the court or Darbar of Amir comprised of three classes of chiefs, the Sardars, the Khans and the Mullahs. Sardars are like British hereditary peers, being members of royal clan. The Khans are representing the area or country while Mullahs are the representatives of religious class. The author explains that tribe in itself is a multiplication of a small family led by its own hereditary chief. Mostly tribes are dominantly unmixed and have their own independent territory. Each tribe branched into several divisions and each of this division is headed by its own independent chief. The name Ulas is used either to the whole tribe or sometime a branch of it. Each chief of the subordinate tribe is subordinated to the chief of Ulas known as Khan. Khan is always chosen from the oldest family of the Ulas. In most cases Amir has the power to remove a Khan at pleasure, appointing one of his relative instead. During Amir Abdur Rehman rule all cases of appointments of Khans could be made with approval of Amir.

In some Ulas, Khan is elected by the people. During the election preference is given on the basis of primogeniture, but more to age, experience and character. When Khan dies two or more of his sons or nephews try to make parties in the tribe and sometime this led to open war that causes great damage, as hostile tribes aligned against each other. Amir Abdur Rehman abolished this culture and now king nominate a new Khan without any loss of time.

The head of clans are always elected by people from the oldest family in it, except sub lower level where superior is always natural. The internal administration of tribe is run by a Khan and assemblies of the head of sub clans. These assemblies are called as jirga. In less important cases Khan always decide things himself, however, when a circumstance admits the sentiment of the whole tribes is ascertained. In rare cases the Khan serves in

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<sup>43</sup> The Greek poet Homer was born sometime between the 12th and 8th centuries BC, possibly somewhere on the coast of Asia Minor. He is famous for the epic poems *The Iliad* and *The Odyssey*, which have had an enormous effect on Western culture, but very little is known about their alleged author.

arbitrary manner without consulting jirga. His example is followed by clans. However, mostly the chiefs are neglected and every sub clan or family asserts itself through its own chief promoting its own interest.

### **Laws of the Kingdom:**

The general law of the Kingdom was Muhammadan which was also adapted to the civil subject of the people. However, their peculiar code, the only one applied to the internal administration of tribe, especially criminal justice, is Pakhtunwali. Pakhtunwali is the way of life of Afghans; a raw system of customary law. The Amir abolished those rough notions of law throughout the whole kingdom but retaining some reasonable customs at the same time.

### **Comments/Analysis:**

The author has accepted the notion that every man has right and duty to do justice to himself, to revenge his own injuries and take redress for wrong and punishment of crime into his own hands. If he cannot avenge his offender, his vengeance is afflicted on his relatives and in some cases on any man of his tribe. The author informed us that this practice has entirely been abolished by Amir Abdur Rehman.

### **Composition of Kingdom:**

Afghanistan, the common wealth is created by assemblage of all under a single sovereign into one state under a king. He was the natural head of the tribe of Durrani. The government of the whole country centered on the king, though he was supposed to consult the Khans, the Sardars and Mullahs.

## **Chapter X: Comments on Private Law**

In the last chapter of the work, the author informs the reader about the system of private laws prevailing in Afghanistan. He has compared the legal contributions of Amir Abdur Rehman with Napoleon (1769-1821) of France, the Justinian<sup>44</sup> and Peter the Great (1672-1725) of Russia, the world caliber leaders. Even Lord Curzon appreciates Amir Abdur Rehman services to reform laws.<sup>45</sup>

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<sup>44</sup> One famous Byzantine Emperor was Justinian I. Justinian ruled from AD 527 to 565. Justinian created a set of laws called the Justinian Code. This code said that the emperor made all of the laws and interpreted the laws as well. The Justinian Code was law throughout the empire. Many of our modern laws can be traced back to the Justinian Code.

<sup>45</sup> But his humble servant, who had the honour of enjoying his confidence for twelve years, as Lord Curzon (1859-1925) says, in one of his friendly letters to the author prefer to call the Amir the "Justinian of Afghanistan", which is a title worthier of him and yet has not been bestowed upon him by any previous writer. Curzon writing is as Follow:

*"My dear Mir Munshi, I congratulate you upon the honourable position that you occupy in the regard of H.H. the Amir who has evidently no more devoted servant than yourself..."*

The work under discussion compares, contrast and justify the laws practiced by Amir. The central theme is to explain the laws of Amir, Muhammadan and Customary law. The author summarizes that during Amir Period there were three laws, Islamic law, law of Amir, and the customary law of various Afghan tribes.<sup>46</sup> The writer held that Amir Abdur Rehman squeezed the three into two, the Fraiz (compulsory and unchangeable) i.e. those strictly lay down by Islam and the Koran and secondly, the laws of Amir and customs of the country. The second category was declared amendable and modified by the Amir to suit the socio-political circumstances of the country.<sup>47</sup>

### Comments/Analysis:

Amir could amend and change the customary law and he was the law giver in respect of local customs and traditions. The author justifies that according to Islam any law in clash with Koran, shall be subservient to it, but all the rest of laws are made by men.<sup>48</sup>

The author praised the reforms introduced by Amir such as introduction of engineering and mechanical industries. He justified Amir strong laws and strong arm method of ruling and cruelties due to the wild nature of Afghans. He refers to various laws introduced by Amir and which were so numerous that even a donkey could not be managed without a law by an Afghan. He refers to the codes dully sealed and signed by Amir for every office. According to Sultan, if someone denies that Amir did not frame any law; it is like an owl that does not see the light of the sun. He also refers to the cages Amir introduced for putting culprits or looters on the road from Peshawar to Kabul.<sup>49</sup> What Amir did, it was done with best intentions in his mind.<sup>50</sup> The author finds justification in the wild nature of people of hills.

### Amir Improvement

The author quoted Stephen Wheeler's work "The Ameer Abdur Rahman" (1854-1937) to explain how Amir administered laws. Amir used his sword and on spot justice himself. In Kabul, he used strong measures to

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*Wishing you all success in you distinguished career, I am, yours very truly, George Curzon."*

<sup>46</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.126.

<sup>47</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.127.

<sup>48</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. 127.

<sup>49</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.119.

<sup>50</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.120.

discourage lawlessness. He refers to Kabul Police code in detail, mentioned by Mr. Wheeler. Evil speaking in streets was forbidden. Evil speaking against the Sayyids (descendants of Prophet), a man of learning, or of a civic elder could be punished by 20 lashes, and a fine of Rs 50.<sup>51</sup> Punishment for dishonest tradesmen who cheat public with fake weights, or adulterate the food they sell, the gambler, the charm purveyor, person who misbehave in mosques, those forget to say their prayers or refuse to hold fast. At one place the author writes, "The man who kissed other people's wives had to be punish with 30 lashes and sending to prison for further inquiry".<sup>52</sup>

During Amir Abdur Rehman rule it was decided to take special cognizance of religious offences. If any free thinking Kabuli omitted to bend his head with due reverence at the hour of the prayers, the police would warn first and in case of continuous disobedience could force by police otherwise refer to Amir as last resort. Earlier, the powers of head of family and clan were enormous but Amir finished this practice. The laws of head of clans were in conformity with the law of Amir and Islam. Similarly, Sultan informed that before Amir Abdur Rehman, laws were recorded on loose papers. But in 1894, Amir introduced written books with each page stamped and number of pages counted as previously used sheets were relinquished and replaced.<sup>53</sup>

### **A Procedure was Adopted for Handling Violations**

At first stage the alleged person would be advised to be careful. After this, if violation continued, a guarantee of his good behavior would be obtained, the last stage was to put him in prison.<sup>54</sup> However, reports against the criminal or offender were to be proved. Mostly, the people were bound to report of a loose character person or criminals and they were arrested on spot. This practice of taking guarantee from near relatives or bonding people to report criminals was also in practice in China in old times. Due to this community involvement in pinpointing criminals a popular aphorism developed, that in Afghanistan there is no single house where there is no spy. Any official or courtier who exceeded his jurisdiction was severely punished. The purpose was the official might not misuse the power. Certain persons and places were more sacred, and wrong committed to them was severely taken, such as, offences against property of orphans, widows,

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<sup>51</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.121.

<sup>52</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. 123.

<sup>53</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.131.

<sup>54</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.136

judges, tax-collectors, and those committed to mosques or other sacred places.<sup>55</sup>

A severe issue pointed by the work is the issue of bribe in administration of justice. Before Amir Abdur Rehman, the greatest drawback in the administration of justice was bribery to officials, and use of false, borrowed or hired witnesses.<sup>56</sup> The issues was solved by creating a special law of evidence, requiring all evidence to be qualified by law and permitting cross examination, to put a check on false witnesses.

### **Comments/Analysis:**

There are many new harsh punishments formulated by Amir, not only highlighted in this work under analysis but also by other sources, but these have been justified by the author. He quotes even outside sources such as remarks of the Wheeler. Wheeler argues that these laws may seem barbarous to Europeans but we must not forget that Orientals look at these things quite in different light<sup>57</sup>. However, the author points out two major fault lines during this period in Afghan society and government. One is the system of torture for the purpose of extorting confession in criminal, political and revenue cases. The torture is so inhuman that can force a person to speak untruth due to pain. Secondly there is no limits to punishments.<sup>58</sup> The author rationalizes this brand of punishments which ultimately led to peace in the kingdom. He writes that the punishment reduced the killing rate as after 15 years of efforts there were only 5 murder cases in the whole kingdom against previous practice of almost 500 to 1000 in a clan of 20000 families.<sup>59</sup>

### **Amir's Contribution to Law<sup>60</sup>**

The author held that Amir Abdur Rehman was quite successful in retaining law and order and ensuring security in the kingdom but against it rebellions were raised by almost every tribe as interference in their internal lives by taking away from them the practice of homicide as well as the private war between the tribes. The tradition of self-revenge in Afghanistan,

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<sup>55</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.138

<sup>56</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.138

<sup>57</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.123

<sup>58</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. 131

<sup>59</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.134

<sup>60</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.138

the author compares with old England during the time of Anglo-Saxons<sup>61</sup> as well as in Germanic laws<sup>62</sup> one find the idea of wrong to a person or his relative is still primary and that of offence against the common is secondary. The work points out the inherent reasons for all tribal traditions, such as, self-revenge, is because of peculiar Afghan culture.

### **Pushtoonwali**

Elphinstone has said that the general law of Afghan Kingdom was Muhammadan but their peculiar code and the only one applied to their internal administration of criminal justice was Pushtunwali. Pushtunwali or usage of Afghans is a raw system of customary law that prevailed before the introduction of civil government. Pushtunwali may be put in this way that it is every man's right and duty to do himself justice and revenge his own injuries. The author narrates that this still prevailed in Afghanistan. The right of society to restrict and take law in its own hand to redress offences and punish the wrong doers was still not accepted. Probably its roots were in the times when the government could not afford protection to individuals and in such circumstance it was considered beneficial and necessary to take root in Afghan culture. It is still lawful and even honorable to seek the self-revenge mode of redress rather than to leave it to government. The injured pray is entitling to strict retaliation on the aggressor, an eye for eye and a tooth for a tooth. If the offender is out of his power he may inflict on the relative and even tribe of the offender. If no opportunity occurs for revenge he may defer his vengeance for years. But it is disgraceful to neglect or abandon it entirely and it is incumbent on his relations or even tribe to assist him. In many cases retaliation excused lead to new disputes and in serious cases the fighting is often transmitted from father to son. This system encourages assassination and the chiefs of the society or officers of the state are trying to reduce it by levying some compensation to be given to the injured or to his relatives, as it is not thought that society is injured, or that it has any right to punish for the sake of example after the actual sufferer has been satisfied.

### **Comments/Analysis:**

To cut short the author highlights the procedure and point out two laws, Muhammadan and Pushtunwali prevail in afghan society. But in fact it is Pushtunwali, the rude customary law, the afghan usage that provide real procedure.

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<sup>61</sup> The Anglo-Saxon were Germanic tribes who inhabited Great Britain from 5<sup>th</sup> century A.D. They migrated from main European continent.

<sup>62</sup> Several Latin law codes of the Germanic peoples written in the Early Middle Ages (also known as *leges barbarorum* "laws of the barbarians") survive, dating to between the 5th and 9th centuries. They are influenced by Roman law, canon law, and earlier tribal customs



The dominate procedure is self-revenge, private responsibility to retaliate. One reason is clearly that civil society or government took a long time to assert its writ. Hence in the absence of any outside authority private system was necessary and beneficial to keep peace. Hence personal right stands above society. The author also refers to the work on situation of frontier tribes under the British sphere (by Warburton, Eighteen Years in the Khyber) Lord Hobhouse Speech in Annexure 11, throw light on the socio-political conditions of frontier tribes.<sup>63</sup>

### **Status of Woman:**

The author shed light on the subject of status of women. He argues that criminal law related to woman is similar both in west and east. The work ascribes the reason to the influence of Church in Middle Ages. As the religious law of Islam takes its origin from the Law of Moses<sup>64</sup> which is the foundation of Christian law also. The author quotes Amir Ali “Spirit of Islam Chapter XIII” it quotes even Athenians<sup>65</sup> where woman was a chattel, saleable.<sup>66</sup> As with the Romans, and among the Athenians, so with the Afghans, women were originally considered as chattels and part of property.

### **Conclusion**

Following the analysis of the work of Sultan Muhammad Khan in the light of the discourse theory as enunciated by Foucault, the work reflects use of discourse favorable to and justify Amir Abdur Rehman policies, ultimately linked to power and maintenance of status quo. As Foucault held:

“We must be very suspicious of any information which is produced, even when it seems most self-evidently to be adding to the sum of human knowledge, it may at the same time play a role in maintenance of status quo and the affirming of current power relations”<sup>67</sup>

Besides, the work is written in modern format with proper authentic citations, local, non-local, and under theoretical framework, in Foucauldian sense, Islamic one, in order to justify Amir’s son nomination and other related political subjects such as, king absolutism. A number of old civilizations are referred to have had passed through the same stages of development as Afghan society went through. Thus, whatever policies, laws

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<sup>63</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. 142

<sup>64</sup> The name assigned to the whole collection of written laws given through Moses to the house of Israel. The Law of Moses consisted of many ceremonies, rituals, and symbols, to remind the people frequently of their duties and responsibilities.

<sup>65</sup> Athens was a Greek city state and the people living in it are known as Athenians.

<sup>66</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. p. 143-144

<sup>67</sup> Foucault Michel, *Critical Thinkers*, Routledge 11 New Filter Lane, London, 2003, p.60

and punishments were prescribed by Amir Abdur Rehman is somehow rationalized under a discourse as being the need of the hour.

Besides, this work if other two works edited by the same author, autobiography of Amir Abdur Rehman are analyzed it convince the reader that Afghanistan was really a turbulent country, a land of unruly independent tribes, inhibited by orthodox religious class and a society where death was lurking all the time. This fact is reflected in Amir Abdur Rehman work "The Life of Amir Abdur Rehman, Vol. I & II. published the same year make an interesting reading. It is an original depiction on the Afghan society witnessed by a person who was going to become a king.

Though in Foucaultian sense the work under analysis seem to be created in order to construct a positive picture of Amir policies but realities of Afghan land, if read the other works justify a strong hand in order to create a shape in the then prevailed anarchy. Reforms such as related to matrimonial life as highlighted by Muhammad Hashim Kamali, (1985), *Law in Afghanistan: A Study of the Constitutions, Matrimonial Law and the Judiciary*, Leiden E. J. Brill 1985, and crushing the strong role of tribal chiefs and religious leaders are contribution of Amir Abdur Rehman no one would deny. Though at what human cost, Amir Abdur Rehman introduced peace and calm is a question needed to be evaluated as a separate subject in future.

Hence, the work, *The Constitution and Laws of Afghanistan* by Mir Munshi Sultan Mohammad Khan, F.R.G.S. (Fellow of The Royal Geographical Society) Barrister-At-Law, Advanced student of Christ's College, Cambridge read in the 21<sup>st</sup> century may not make much transcending impression. As by now much had been known and written on Afghanistan and its public, yet one centuries back it was indeed a monumental work in a foreign language on laws and legal subject even knowledge on the Afghan constitutional in legal history with in India was limited.

Furthermore, after thoroughly evaluating the work and analyzing, the work shows the writer's originality. He was very relevant and trustworthy of Amir Abdur Rehman and was enjoying status, thus had access to important information. Being the confidante of Amir, this work and richness it reflects speaks of much the author knows about Afghanistan. He, most probably, knows about many things, the internal situation, external affairs and enjoy very personal intimacy to Amir Abdur Rehman. Due to these reasons he was deputed to remain with Amir during the most important historical event, the Durand Mission, in 1893, to discuss and demarcate borders between the British and Afghan kingdom. He was kept behind the curtain to listen to the talks of the British, translate it to the Amir in Dari.<sup>68</sup> Thus, the argument by a section of Afghan writers that he was British spy seems exaggerated. Moreover, after consulting other sources as mentioned above and in the bibliography the work seems to be more authentic and reliable and worth reading for those to understand the judicial administration and laws of Afghanistan.

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<sup>68</sup> Mir Munshi Sultan Muhammad Khan, *The Life Of Amir Abdur Rehman*(edit. Vol. II. London : John Murray, 1900, p.145

## **ANNEXURE: I**

### List of Verdicts (Original Text)

1. Two men charged for the rumour for the death of the Amir from cholera were cut in pieces. Their remains were exhibited in the markets for several days.
2. Mullah Abdur Rahim , leader of the Ulema of Kandahar, who supported Sardar Muhammad Ayub, against Amir Abdur Rehman, (whom the Mullah considered to be infidel for being a subsidy holder of the British government) was personally executed by the Amir to cause a deterrent effect on the other likeminded clergy men.
3. A Mullah, named Khishmash, once made a report against the Amir's own son. The charge was proved to be baseless. The poor (probably unwise) Mullah was blown from the mouth of gun.
4. Timur Shah Ghilzai, once deputy commander in Chief of Amir's forces, was stoned to death for taking part in a rebellion against the Amir.
5. After action against the Shinwaris, the Amir ordered that the heads of all those killed in the battle should be filed up in the shape of two big towers, one at Jalal Abad and the other at the presidential palace Shahmod who encouraged the rebellion.
6. During the first three years of rebellion, five thousand people were blown from guns and the army killed ten thousands. Eight captains were blown from guns for attempting coup against the Amir.

**Source:** Abdul Latif, Judiciary in Afghanistan since the Days of Amir Abdur Rehman, unpublished PhD Dissertation, Area Study Centre University of Peshawar, 2003, p. 19

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# **SOUTH ASIA-CENTRAL ASIA INTER-REGIONAL CONNECTIVITY: THE FUTURE PERSPECTIVE**

*Muhammad Azhar\* and Ayaz Muhammad\*\**

## **Abstract**

*Progress and prosperity require joint intra-regional and inter-regional collaboration, utilizing resources at their maximum and exploring new avenues for transit and trade. This will not only bring the prosperity, uplift the socioeconomic conditions of the masses, but also contain the role of non-state actors. In the contemporary world, economic interests and benefits have become more important players rather than ideologies in defining the mutual relations and cooperation among the states. Land-sea corridors connect several states, regions and continents into single transnational entity. Resultantly, mutual trade and commerce cooperation multiplies. The paper aims to have an insight into whether the revival of the Silk Route and access to Caspian region will play any role to improve political, cultural and socioeconomic ties between both the regions and how it will become the economic hub of the world economy. The study will explore how new possibilities will provide the rational and cost-effective transitional and trade route to the non-coastal states of Central Asia and how the strategic energy reserves will be beneficial for South Asian States.*

**Keywords:** *OBOR, Economic Corridor, China-Pakistan Economic Corridor (CPEC), inter-regional collaboration, Gwadar Port, Chabahar port, South Asia, Central Asia Republics (CARs).*

## **1. Introduction**

Conflicts and wars can be managed and averted by cultivating and promoting multilateral cooperation among the states regardless their

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territorial connectivity. Inter-state cooperation opens new avenues of multifaceted cooperation among different sectors and areas. However, the modes of interaction and cooperation have to be managed carefully, so that, “the states be benefited in positive and productive manner”.<sup>1</sup> The states can improve and enhance their mutual relevance and create a conducive environment through mutual economic activities, especially in the field of trade, exchanging technical expertise, infrastructural development, expedite joint ventures to cope with natural disasters, and people to people interaction.<sup>2</sup> The designated proposition can be achieved if the ruling elites and intelligentsia of the regional and non-regional states cope up the prevailing issues through meaningful dialogues. The mutual cooperation will deplete the chronic stigma of terrorism.

In the contemporary world, internal politico-economic synchronization and resilience have become the most effective and influencing variables to determine the state’s role at international level. Market economy, privatization and exchange of goods and services regardless the states’ borders have been recognized as the basic pillars in the globalized international system. Economic ties and interests have become the most important features in defining the states mutual relationship rather than ideologies and territorial linkages. Sub-regional, regional and inter-regional politico-economic groups and their mutual mode of interactions are playing a significant role to deplete the international issues and vice versa. This multi-faceted and multi-dimensional inter-state cooperation have attracted the greater attention of the world towards the “soft power” rather than “military power”. The said proposition, however, can be achieved through joint economic ventures based on mutual relevance, progressive and vibrant media, political and social-cultural connections.<sup>3</sup> It requires strong political will, dedicated leadership, continuity of the policies, inclusive society and devising mechanism to manage the differences among states through peaceful manner.

## 2. Economic Corridor: Historical Perspective

Economic Corridors are defined as “the culture of trade agreements and treaties, status, delegated legislation, and customs that govern and guide trade relations, institutions and structures, or movement of products, services

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<sup>1</sup> H. A. Rizvi., The China-Pakistan Economic Corridor: Regional Cooperation and Socio-Economic Development. *Strategic Studies*, 3(1), 2015, p.p 1–17.

<sup>2</sup> J. E. Dougherty, & Pfaltzgraff, R. *Contending Theories of International Relations: A Comparative Survey* (5th ed.). Pearson, 2000

<sup>3</sup> H. A. Rizvi., The China-Pakistan Economic Corridor: Regional Cooperation and Socio-Economic Development. *Strategic Studies*, 3(1), 2015, p.p 1–17.



and information in a geographic vicinity among people in and across borders”<sup>4</sup>.

It promotes and boosts the economic activities along an identified geography and provides “a connection between economic nodes or hubs.... In which a large amount of economic resources and multiple actors are concentrated.” It links “the supply and demand side of markets.” Therefore, an economic corridor does not represent “mere transport connections along which people and goods move.” It is “integral to the economic fabric and the economic actors surrounding it” which “have to be analyzed as a part of integrated economic networks” (Brunner, 2013).<sup>5</sup>

In the present world, the development of economic corridors has become the most important instrument to enhance trade as well as for expanding economic relations, regional integration and political harmony. These corridors are useful to provide interconnectivity among various economic nodes and hubs along a defined geography. These also provide the new opportunities to accelerate commercial activities in the region which leads to the socio-economic development and regional integration.<sup>6</sup>

In short, land-sea connectivity has become the permanent source of transitional transportation among states which would become more time and cost effective.<sup>7</sup>

### 3. Research Questions

1. Whether or not CPEC can play a dynamic and productive role in the regional connectivity between South Asia and Central Asia.
2. Will the proposed CPEC be helpful for the China to maintain its growth momentum and a new economic order be established?

### 4. Research Methodology

Qualitative research techniques are used to conduct the research. The study is based on exploring the set of secondary data including research articles, journals, reports, web site and books.

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<sup>4</sup> S. Perveen & J. Khalil. Gwadar-Kashgar Economic Corridor: Challenges and Imperatives for Pakistan and China. *Journal of Political Studies*, 22(2), 2015, p.p 351–366.

<sup>5</sup> H.P.Brunner. *What is Economic Corridor Development and What Can It Achieve in Asia's Subregions?* (No. 117). Manila, 2013.

<sup>6</sup> K. M. Butt, & A. A. Butt. Proceedings of International Conference on China-pakistan Economic Corridor. In K. manzoor Butt & M. U. A. Siddiqi (Eds.), *CPEC: Regional Perspective*, 2015, p. 175.

<sup>7</sup> H. A. Rizvi,. The China-Pakistan Economic Corridor: Regional Cooperation and Socio-Economic Development. *Strategic Studies*, 3(1), 2015, p.p 1–17.

## 5. China Pakistan Economic Corridor (CPEC)

Global and regional politico-economic and strategic milieu has been reshaped during the 21<sup>st</sup> century. Rapidly and persistently changing global trends have inspired the states to develop and promote mutual economic relevance, geo-political and geo-strategic cooperation and collaboration. Old loyalties are being changed and new alliances are being constituted befitting their economic, political and other interests (K. masood Khan, 2016).

In the contemporary world, state economy has become one of the most decisive factors to define the significance and importance of states at international canvas. It has become almost impossible for states to protect their interests at international level availing domestic resources and capacities. Resultantly, multilateral inter-state and inter-regional cooperation, collaboration and connectivity have been emerging across the board. Therefore, “high level talks and diplomatic consultations have become the hallmark of ever-growing cooperation among states in multi-faceted fields such as industrial ventures, capacity building, infrastructure development, defense, commerce and related areas of the economy”<sup>8</sup>

In 2013, China envisioned intra-regional and inter-regional connectivity to boost the economic activities and mutual relations of the states adopting latest modes of transportation and communication. President Xi Jinping, in April 2013, addressing in the Boao forum stressed over the expediting of cooperation between Asia and the rest of the world. He said,

*“China will increase connectivity with its neighbours... advance economic integration within the region.... China will take an active part in Asia’s regional cooperation process and promote regional and sub-regional cooperation with non-Asian regions”*<sup>9</sup>

Later on, in the last leg of 2013, he floated an idea to re-originate Silk Route for economic activities and connect China with Eurasia.<sup>10</sup>

China’s vision of “One Belt One Route (OBOR)” and “21<sup>st</sup> century Maritime Silk Road” emphasis to lay highways and develop maritime links for geo-strategic and geo-economic cooperation and collaboration among the states. China is eager to maintain her economic growth momentum through cutting its energy import bill and increasing her exports to rest of the world.<sup>11</sup> China is excited to connect with South Asia, Russia, Central Asia, the Persian Gulf and Europe, on one hand, and extending its land-sea

<sup>8</sup> S.Noor, S.M.A. Shah, S.M. Khan, & Ali, S. F. Pakistan’s Foreign Policy: Quarterly Survey: April — June 2008. *Pakistan Horizon*, 61(3), 2008, p.p 1–9.

<sup>9</sup> X. Jinping. *Working Together Toward a Better Future for Asia and the World*. 2013

<sup>10</sup> L. Xinzhen. Silk Road Resurrection. *Beijing Review*. November 7, 2013.

<sup>11</sup> D.Hyder, M. Khan. CPEC: The devil is not in the details. *Herald*, 2017

connectivity with ASEAN countries, Southeast Asia and the Indian Ocean region, on the other hand. China is enthusiastic for the revival and functioning of the ancient Silk Routes in the present day context.

The CPEC is a multifaceted and multi-dimensional initiative by both China and Pakistan to avail the resources at their maximum. It is designed to connect the Gwadar port to Xinjiang, China's northwestern region, through motorways, railway tracks, energy pipelines and telecommunication links. The designated corridor has designed to lay 2700 Kilometers highway to connect Kashgar and Gwadar through Khunjrab. Railway tracks between Gwadar-Khunjrab and further extends to China for freight trains are being laid to enhance the commerce and trade activities between both the states. This connectivity will be beneficial to other intra-regional and inter-regional states (Government of Pakistan, n.d.; Sial, 2014). Moreover, under the project appropriate measures will be initiated for the revival and extension of the Karakoram Highway, which connects Pakistan's northern area and Khyber Pakhtunkhwa to China's Xinjiang.

Besides physical links, both countries have agreed to establish several multi-dimensional economic zones along the corridor. To meet out the energy deficit in Pakistan, both China and Pakistan have decided to complete the CPEC power projects on a priority basis. In this regard, an Energy Planning Group (EPG) under CPEC has been constituted. It is estimated that 21,690 MW energy will be produced (Government of Pakistan, n.d.; H. Khan, 2015).

Under the CPEC project, three main routes have been designed in Pakistan. The Western route indicates that CPEC will enter the Balochistan Province via D.I. Kahn and connect Gwadar through a highway via Zhob, Qila Saifullah, Quetta, Kalat, Punjgur and Turbat. The Central route will provide connectivity D.I. Khan, D.G. Khan and Gwadar port via Dera Murad Jamali, Khuzdar, Punjgur and Turbet. The Eastern route will enter in the Punjab Province from Khyber Paktun Khwa. The said route will enter the Balochistan Province via Lahore, Multan and Sukkur and lead towards Gwadar port passing through Khuzdar, Punjgur and Turbet. An alternate route is also designed which will pass through Sukkar to Karachi and from there to Gwadar along the coastal highway (Ali, 2015; Government of Pakistan, n.d.; K. Hussain, 2017).

Uncertain global economy has become a threat for the states to maintain political stability and defuse the existing social unrest across the board. The prevailing proposition instigated China to explore new markets so that its economic growth momentum be maintained. The proposed CPEC will become a more beneficial and productive project for China's economy. To maintain the growth momentum, China requires huge resources of oil and gas.<sup>12</sup> As it has become the world's largest oil and gas consumer and

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<sup>12</sup> D.Hyder, M. Khan. CPEC: The devil is not in the details. *Herald*, 2017 & N. M. Qureshi. Critical Analysis of China Pakistan Economic Corridor, 2015

importer, fluent, uninterrupted and time and cost effective energy resources transportation has become a life line for China. It is most important for China to maintain the uninterrupted energy transportation to keep its industry operational.

Moreover, the China's trade flow has become the central pillar of its "hard power". US presence in Indian Ocean, Thailand, Philippine and Australia is a permanent source of threat. US geo-strategic presence in the sea has a potential to disrupt trade flows destined for and originated from China, if there has been a standoff with USA on any issue. Gwadar-Xingjian route will be the alternative route for the transportation of energy to China, which will be time and cost effective and safe passage rather than Malacca straits.<sup>13</sup>

Through CPEC, China will be able to find new markets to export its products and import raw material from Africa, Middle East and Central Asia. The proposed CPEC will provide an opportunity to China to utilize its installed but under-utilized capacity in steel, cement, chemicals and heavy machinery at their maximum and reap economic benefits through export and building infrastructure in neighboring countries. The operational CPEC will provide an access to warm waters of Arabian Sea to China through Xingjiang, which will be conducive to initiate vigorous economic activities in comparatively less developed North-Western province.<sup>14</sup>

The operational CPEC would be the game changer for Pakistan. The proposed CPEC will bring a huge foreign investment in Pakistan. It is estimated that direct foreign investment involved in CPEC would exceed all the investment in Pakistan since 1970. It would be equivalent to 17% of Pakistan's 2015 gross domestic product. It will generate new avenues of employment in Pakistan. It is estimated that more than 0.7 million jobs would be created in the period of 2015-2030. Moreover, the proposed operational CPEC would add up to 2.5% to the country's growth rate ("How will CPEC boost Pakistan economy?," 2015). It is proposed that more than 11 billion dollars will be fueled up in the infrastructural projects to construct and overhaul the road and rail connectivity. It is planned to construct 1100 kilometers long motorway between Karachi and Lahore. Moreover, Karakoram high way will be reconstructed and overhauled to develop a connectivity between Rawalpindi and China ("Karachi to Lahore motorway project approved," 2014).

It will provide an opportunity to overcome the energy crises and stabilize the economy; develop infrastructure through constructing roads, laying railway tracks, bolting energy pipelines and making Gwadar port an economic and transit trade hub for regional and non-regional states.

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<sup>13</sup> Ibid.

<sup>14</sup> D.Hyder, M. Khan. CPEC: The devil is not in the details. *Herald*, 2017 & H. A. Rizvi. The China-Pakistan Economic Corridor: Regional Cooperation and Socio-Economic Development. *Strategic Studies*, 3(1), 2015, p.p 1-17.

Moreover, Pakistan will be able to develop strong political and economic ties with its neighboring states.<sup>15</sup> The proposed CPEC will further improve defense and security cooperation between China and Pakistan. Resultantly, this will overcome the problems like terrorism, extremism, and separatism. Through CPEC, Pakistan and China would also get an opportunity to enhance strategic cooperation including joint naval exercises and trainings. Moreover, the capacity building will enable both the states to eradicate the menace of high seas piracy.<sup>16</sup>

However, Pakistan should make it ensure to maintain the sovereignty of the state invulnerable as a vast area of land in Gwadar city and along the route of corridor has been leased out to the China. Secondly, China has planned to bring all or most of the equipments for the projects from its own suppliers. The proposed proposition would be a threat to the Pakistan's industry. It would be more beneficial for Pakistan if the investment be made in setting up industry in Pakistan to supply the diverse range of equipment and machinery to the various CPEC projects.<sup>17</sup>

### **5.1 CPEC: Geo-strategic and geo-economic impact on Regional and Extra-Regional Actors**

Political and economic pundits are optimistic that in near future the proposed CPEC will bring the drastic changes in overall geo-political and geo-strategic landscape of Asia. The corridor will boost the economic activities and reshape the economic outlook of the regional and extra regional states. The project has potential to increase transnational and trade linkages, enhance technical and methodological cooperation, generate new paradigms of financial and commercial opportunities, and multiply political and socio-cultural connectivity among the people across the board. However, some regional and extra-regional actors are of the opinion that the corridor will be a threat to their national interests and doing their utmost to jeopardize the project (*Ibid*).

India has raised and conveyed its apprehensions to China over the CPEC and termed it "unacceptable".<sup>18</sup> India alleges that Gilgit Baltistan is a disputed area and the passage of CPEC from the Gilgit Baltistan will undermine its sovereignty. On January 17, 2017, Narendra Modi, the Prime

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<sup>15</sup> K. Ejaz, & M. Ejaz. Potential of Chahbahar and Gwadar ports as gateway to Inter-regional connectivity. In K. M. Butt & M. M. Elahi (Eds.), *Proceedings of International Conference on Inter-regional connectivity: South Asia and Central Asia* (pp. 128–135). Lahore: Department of Political Science, Centre of Excellence China Studies GC University Lahore, 2016

<sup>16</sup> Butt, K. M., & Butt, A. A. (2015). Proceedings of International Conference on China-pakistan Economic Corridor. In K. manzoor Butt & M. U. A. Siddiqi (Eds.), *CPEC: Regional Perspective* (p. 175).

<sup>17</sup> N. M. Qureshi. *Critical Analysis Of China Pakistan Economic Corridor*, 2015

<sup>18</sup> F.Shah. (2017). *Does the China-Pakistan economic corridor worry India?* India. Al Jazeera, 2017

Minister of India says “only by respecting the sovereignty of countries involved, can regional connectivity corridors fulfill their promise and avoid differences and discord” (“china-pakistan economic corridor pakistan: US should not look at CPEC from India’s perspective: Pakistan,” 2017, “Don’t look at CPEC from Indian perspective, Pakistan urges US,” 2017). Moreover, India has a concern that if CPEC became operational, it would be the “economic boom” for Pakistan. The fate-changer project will transform Pakistan into an economic hub. The strategic location of functional Gwadar deep sea port will become the junction of naval traffic and will strengthen the already Pak-Sino strengthened ties. India seeks the CPEC as a major hurdle in implementing its regional hegemonic doctrine.<sup>19</sup>

The functioning Gwadar sea port will undermine the importance of Iranian Chahbahar sea port. Iran is concerned that if Gwadar port became functional, it will challenge its port’s importance especially for Central Asia and Afghanistan. To contain the strategic importance of the Pakistani Gwadar port, India has initiated a plan to invest a huge amount to develop Iranian Chahbahar port to make its access to Central Asia and Afghanistan.<sup>20</sup>

USA is also concerned that CPEC will change the strategic balance of the region. China will manage to make an access to the warm water from two sides. This will increase the trade and strategic depth of the China, which the USA is assuming a threat to its interest in the area.<sup>21</sup> USA has a permanent eye over the CPEC and propping up India in the region as the competitor of China.<sup>22</sup>

## 5.2 CPEC and Afghanistan:

The corridor will become the reinforcing agent for the Afghanistan in geo-strategic and geo-economic sense. The project has the potential to enloop the landlocked state to develop its fragile economy. Pakistan has planned to link up Afghanistan with CPEC. In this regard, Pakistan has decided to construct 265 Kilometers highway which will connect Peshawar and Kabul. The designated connectivity will integrate Afghanistan with other regional actors and provide her a way to avail Indian Ocean for transnational trade (Tahir, 2015).

Moreover, a trilateral transit trade agreement (PATTTTA) has been signed among Pakistan-Afghanistan-Tajikistan to boost the economic activities by providing a transit trade route to these landlocked states.

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<sup>19</sup> Rizwan. CPEC Presents Serious Concern for U.S. and India : The Canadian National Newspaper, 2016

<sup>20</sup> U. Aneja. *Gwadar Port: External and Internal Challenges*. 2016.

<sup>21</sup> K. M. Butt, & A. A. Butt. Proceedings of International Conference on China-pakistan Economic Corridor. In K. manzoor Butt & M. U. A. Siddiqi (Eds.), *CPEC: Regional Perspective*, 2015, p. 175

<sup>22</sup> Rizwan. CPEC Presents Serious Concern for U.S. and India : The Canadian National Newspaper, 2016

The interstate connectivity will enhance time and cost effective mutual trade between the two neighbors. The corridor will facilitate Afghanistan to reap maximum benefits as it will provide an easy access to hot water of Arabian Sea.<sup>23</sup>

### 5.3 CPEC and Central Asia Republics (CARs):

After the disintegration of USSR, central Asian Republics attract the world attention due to their geo-strategic location and wide range of natural resources, especially oil and gas reservoirs. The international community is looking forward to develop close relations with these states on one hand, and all these landlocked states are striving to get an easy and shortest access to warm water to explore new markets to export their natural resources, on the other hand. It is believed that proposed CPEC will become a bridge between consumer based economy of South Asia and central Asian production-based economy.<sup>24</sup> The corridor can facilitate CARs to develop trade and transnational relations with the Middle East and Europe via Gwadar port. Moreover, the CPEC will be a catalyst for these resources rich states to come out from the control of Russia. “Central Asian States, especially Kyrgyzstan and Tajikistan attach great importance to the transport infrastructure, the lack of which remains a chief hurdle for their slow cooperation with the international markets; however CPEC will relatively overcome the issue.<sup>25</sup> If the proposed Pak-China Railway track is completed, Tajikistan could access to Indian Ocean directly through connecting with it”.<sup>26</sup> Moreover, CASA-1000 project (Electricity Transmission and Trade Project for Central Asia and South Asia) is the evidence of inter-regional cooperation.

The project will become a game changer in the region. On one hand, Pakistan and Afghanistan will be able to overcome their energy crisis and on the other hand, Tajikistan and Kyrgyzstan will be benefited through exporting their energy. In addition, the proposed project will elevate the socio-economic conditions of the livelihood, living along the CASA-1000 corridor. This would be a shining opportunity to make the way of economic success for Pakistan and Tajikistan.<sup>27</sup>

Pakistan has already intended to be connected with Central Asia via Termez (Southern City of Uzbekistan). In this way, the landlocked CARs

<sup>23</sup> H. Khan. Is China-pakistan Economic Corridor really a game changer? *Pakistan Today*. 2015, June 13

<sup>24</sup> Khalid Manzoor Butt, and Elahi, M. manzoor (Ed.). Inter-Regional Connectivity: South Asia and. In *Inter-Regional Connectivity: South Asia and Central Asia*. 2017, p. 310 & N. M. Qureshi. *Critical Analysis Of China Pakistan Economic Corridor*, 2015

<sup>25</sup> A. Zholdasbekova & A.G. Levaggi, A. G. *Eurasian Integration through New Silk Roads: Opportunities and Considerations*.2016

<sup>26</sup> H.P.Brunner. *What is Economic Corridor Development and What Can It Achieve in Asia's Subregions?* (No. 117). Manila, 2013.

<sup>27</sup> A. Naseem. *China Pak Economic Corridor could be a game changer*. 2015

can greatly be benefited from a shortest viable land-sea access to the world market.<sup>28</sup>

## 6. Chabahar: Iran-Afghanistan-India Trade and Transport Corridor:

Rapidly changing regional geo-strategic situation is in the wake of safe guarding of the world powers' interests and containing each others. Old loyalties are being changed and new alliances are being constituted befitting their economic, political and other interests (K. masood Khan, 2016).

To boost the economic activities, redrawing the geopolitics of the region and developing connectivity with Afghanistan and Central Asia via Iran bypassing the Pakistan,<sup>29</sup> India signed a deal with Afghanistan and Iran to upgrade the Chabahar port of Iran, about 150 Kilometers away from Gwadar port under its "Connect Central Asia Policy (2012)". According to the deal, India will invest millions of dollars to develop two terminals and five berths at Chabahar.<sup>30</sup> The proposed corridor will connect the Chabahar port to Zaranj, a town of the Afghan border via Zahedan. The Zarang town already has been connected through Indian built highway to Delaram, a city of Afghanistan, 135 miles away from Zaranj. In this regard India has invested billions of dollars and constructed link roads to get an access to Afghanistan and Central Asian Republics (CARs). Moreover Indian's move to engage Iran and Afghanistan through Chabahar is designed to counterbalance the presence of China in Gwadar.<sup>31</sup> The Chabahar port agreement will be beneficial for Afghanistan, in a sense, that it will provide an alternate transit and trade route to a landlocked state.<sup>32</sup> However, both for India and Afghanistan, the proposed route will not be cost and time effective as compared to the land based connectivity path through Pakistan.

Srivastava believes that *"the economic rewards of this pact are huge. The development of Chabahar port and the connecting transport and trade corridor has the potential to unlock the untapped energy and mineral riches of Iran, Afghanistan, and Central Asia for export towards India, one of the largest and fast growing economies in the world"*.<sup>33</sup>

Bhaskar said, *"The Chabahar pact, if realized, will connect India to Afghanistan and Central Asia and Kabul will get an alternate route to the Indian Ocean. The proposed corridor is of immense importance for the*

<sup>28</sup> S.Ahmed, S.Kelegama, & E.Ghani. *Promoting Economic Cooperation in South Asia*. NewDelhi: SAGE , 2010

<sup>29</sup> S. Ashraf.*China US Focus*. June 2015

<sup>30</sup> N. Mandhana. *THE WALL STREET JOURNAL*. (2016, May 23).

<sup>31</sup> D.Hyder, M. Khan. CPEC:The devil is not in the details. *Herald*, 2017 & Rizwan. CPEC Presents Serious Concern for U.S. and India : The Canadian National Newspaper, 2016

<sup>32</sup> Mandhana. *THE WALL STREET JOURNAL*. (2016, May 23).

<sup>33</sup> S. Srivastava. Indian, Iran and Afghanistan sign trade corridor deal. *THE DIPLOMAT*. (2016, May 27).



*landlocked Afghanistan, as it changes the geopolitics of the region and is seen as a way out of its dependency on Pakistan*". He further stated that "the deal would not cause much comfort and happiness for China and Pakistan".<sup>34</sup>

However, Pakistan has welcomed the trilateral deal and expressed a hope that both the ports would complement each other rather than compete and would become "sister ports".

## **Conclusion**

In short, geo-strategic and geo-political significance of Gwadar and Chabahar ports is unique. Economically and strategically both are vital choke-points which provide unrestricted access to the Indian Ocean where about 100,000 ships and around 70 percent of the world's petroleum trade passes each year. The strategic significance of these ports is visibly clear from the fact that these sea trade centers are located at the crossroads on international sea shipping and oil trade routes while linking three regions that are: South Asia, Central Asia and the Middle East (<http://www.voiceofjournalists.com>). However, the experts believe that Gwadar deep sea port is more beneficial and located at strategic location that it would be more time and cost effective for world trade. Through the port China will be able to have a sizeable cut in its energy import bill and increase its exports to the rest of the world. The operational Gwadar port will be beneficial for China in a sense that she will make her economic growth momentum intact and manage to capture the world markets. Pakistan will reap the maximum benefits from the CPEC. However, Pakistan should take necessary steps to make her sovereignty supreme and make it sure to boost her industry.

Both the ports, when become operational, Inter-regional politico-economic cooperation and collaboration will be enhanced. Resultantly, the economic activities will be enhanced and socioeconomic conditions of the masses will be uplifted. Furthermore, these ties will defuse the tension between or among the states, boost the people to people contact and the expertise will be exchanged. Both the ports will be the game changer for the regional and non-regional peace and prosperity. However, it requires political will, internal political harmony and vision to move forward to solve the pertaining issues in cordial and peaceful manner, so that, the menace of poverty, extremism and terrorism be washed-out. If all the regional and non-regional actors work together, the poverty and terrorism ridden region would become the economic hub for the international community.

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<sup>34</sup> Bhaskar. Indian, Iran and Afghanistan sign trade corridor deal. *Aljazeera*. (2016, May 24).

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## DEATH OF ISLAM KARIMOV AND THE FUTURE OF ISLAMISM IN CENTRAL ASIA: CASE STUDY OF ISLAMIC MOVEMENT OF UZBEKISTAN

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### **Abstract**

*Islamic Movement of Uzbekistan (IMU) is deemed as the most lethal terrorist organization throughout Central Asian region. Although it emerged in 1998, its roots can be traced back to the era right after the demise of former Soviet Union. This Movement was created to launch an armed struggle against Islam Karimov's regime in Uzbekistan. IMU, however, could not make solid bases in Uzbekistan and remained engaged in Tajik civil war between 1992 and 1997. After the General Peace Accord of 1997 signed between the rival groups which ended the Tajik Civil War, Uzbek militants had no choice but to move to Taliban ruled Afghanistan. The US led attack in Afghanistan after 9/11 forced the remnants of Islamic Movement of Uzbekistan to take refuge in the FATA region of Pakistan. IMU's focus was primarily targeting Western forces in Afghanistan. However, when Pakistani government initiated a military action in FATA against the terrorists in 2004, IMU joined its hands with Tehreek-e-Taliban Pakistan (TTP). After this union IMU started its operations in mainland Pakistan and Afghanistan. It also supported Islamists to siege Swat in 2007. From attacks on armed forces bases in Karachi and Peshawar to jail break in Bannu and from attacks on Karachi, Peshawar and Quetta airports to kidnapping for ransom, IMU had played central role in terrorist activities in Pakistan. Similar kinds of activities have been carried out by IMU in Afghanistan as well.*

*The IMU has least focus on Central Asia for the time being and is more engaged in Afghanistan and Syria. It has joined its hands with global Islamic militant organizations. It has close relationship with Islamic State*

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*(IS) and majority of its top leadership has joined the later. The death of Mullah Omar has led to the fragmentation of IMU in different groups. One group is pro-Taliban and al-Qaeda while other supports Islamic State. IMU has helped IS to group in northern Afghanistan especially in Faryab and Zabul provinces, which are the strongest hold of later in the entire Central-South Asian region. This paper will discuss the history, objectives and operational capabilities of the IMU. It will also explain the current nexus of IMU with the IS and its impacts on the broader regions of Central and South Asia besides possible future of the group especially after the death of Islam Karimov.*

**Keywords:** *Islamism, Uzbekistan, Terrorism, Islamic State, Central Asia.*

## **Introduction**

The whole region of South and Central Asia has witnessed a continuous insecurity in terms of separatism, extremism, terrorism and religious fanaticism. The last quarter of twentieth century is marked with extraordinary local, regional and global developments in the region. Such developments include rise of Zia to power in Pakistan in 1977, Islamic Revolution in Iran in 1979, Afghan war of 1980s, insurgency in Indian held Kashmir in early 1990s and demise of Soviet Union and emergence of independent Central Asian states in 1991-92 followed by Taliban rise to power in Kabul in 1996. These developments brought a radical paradigm shift in security dynamics of this region.

The rise of Taliban in Afghanistan and their rule in Kabul not only harbored the militants (once called *jihadis* by the whole world including USA) but created a concert of international *jihadis* in Afghanistan to implement sharia laws in the Muslim lands. When Osama bin Laden moved to Afghanistan in 1998, Taliban distanced themselves from Islamabad, Riyadh and Washington; the soft supporters of the former. Al-Qaeda dominated the Taliban regime and persuaded them to follow their ideology. Mullah Omar and his administration was happy to harbor al-Qaeda chief and his companions. Osama's presence in Kandahar provided further economic, human and weaponry strength to Taliban regime. Like other jihadi organizations across the region, Islamists from Central Asia and Chinese Xinjiang also moved to Afghanistan and joined their hands with al-Qaeda.

Most important of such groups were East Turkestan Movement (ETM) which adopted its name East Turkestan Islamic Movement (ETIM) later on and militants from Uzbekistan (hiding in Tajikistan at that time) led by Juma Namangani and Tahir Yuldashev. With the help of Osama, these Central Asians constituted a new militant organization named "Islamic Movement of Uzbekistan" (IMU) in 1998 with an aim to topple the "un-Islamic" regime of Islam Karimov. IMU, however, has remained engaged in Pakistan and Afghanistan most of the times instead of Uzbekistan or any other Central

Asian state. After being uprooted from Federally Administered Tribal Areas (FATA) by Pakistan military in 2014 when operation *Zarb e Azb* started, most of the IMU members shifted to Afghanistan. Currently, IMU is concentrated in the Eastern and northern Afghanistan and the areas where Taliban are influential. There are reports that IMU along with other militant organizations have concentrated in the northern Afghanistan and have created local cells of Islamic State (IS).

## **Background**

IMU's roots can be traced back to the early twentieth century when Red Army marched into the Central Asian region, then called Turkestan. The Basmachi Movement<sup>1</sup> resisted the Red Army for about a decade until it was destroyed by Bolsheviks. That armed movement was first indicator against the oppression and injustice in modern Central Asia. Although, religion remained under strict control during the Soviet era in Central Asia, underground teachings of Islam kept it alive in one or the other form notably through *Sufism*. Gorbachev's liberal reforms provided Central Asian population with an opportunity to learn and practice their religions. Soviet defeat in Afghanistan along with Islamic Revolution in Iran and funds provided to the underground and newly established Islamic organizations by Saudi Arabia and other wealthy Arab states generated a slow but gradual process of Islamic revivalism in the region<sup>2</sup>.

Independence of Central Asian states was deemed as a blessing by the common people of the region. They predicted a real and positive change in their lives. On the other hand, old socialist elite continued to govern the independent states. All the presidents elected before independence continued as the heads of the states after independence. They secured their positions through newly created constitutional and legal set ups. They continued with their old styled political and economic policies. They provided people with 'substantial' religious freedoms as well. Despite such freedoms, there were few religious groups which demanded ban on all un-Islamic social practices. Such groups were more active in Uzbekistan and Tajikistan than rest of Central Asia.

Ferghana valley has extreme importance in Central Asian political and religious life. Currently divided into Uzbekistan, Tajikistan and Kyrgyzstan, this valley has remained a hub of religious activities in the region. Groups like *Tauba*, *Islami Lashkari*, *Adolat* and *Barka* from Ferghana region of Uzbekistan and Islamic Renaissance Party from Tajikistan came at the forefront and demanded radical changes in the social and political systems.

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<sup>1</sup> For details see Fazlur Rahim Marwat, *The Basmachi Movement in Soviet Central Asia: A Study in Political Development*, Peshawar: Emjay Books International, 1985.

<sup>2</sup> For details see Ahmad Rashid, *Jihad: The Rise of Militant Islam in Central Asia*, Lahore: Vanguard, 2002.

They were supported by secular parties as well to bring political change. *Adolat*<sup>3</sup> was at the forefront of such demands. When their demands were not fulfilled, they staged protests and later demonstrations. Situation worsen in Namangan (most densely populated region of Uzbekistan which is part of Fergana valley) where young people came out in streets and occupied few government buildings in order to implement Islamic laws in a bid to control bribery, corruption, drugs addiction, prostitution and use of alcohol. This was such an alarming situation that president Islam Karimov had to flee to Namangan to negotiate with the Islamists. The negotiations failed as Karimov assured them to put their demands in front of *Majlis* (Uzbek Parliament)<sup>4</sup> but Islamists wanted to implement their demands at the spot. The tone of Islamists was authoritarian and insulting which was not acceptable to the Uzbek president who had a long and strong socialist background.

Upon his arrival in Tashkent, Karimov ordered indiscriminate crackdown on Islamists. He stated “fundamentalism falsely presents the Islamic religion to the masses as a universal mean to solve all social, economic, political, and international problems”.<sup>5</sup> According to Islam Karimov the opposition forces “both Islamists and anti-state actors” are not sincere with the state and people of Uzbekistan but their “every slogan and action is backed by a political motivation”.<sup>6</sup> Karimov while recalling his memories stated that “I went to Namangan and met face to face with those who had lost their minds...they insisted on proclaiming the Islamic state. I still remember those bearded persons, attracting people by raising these matters. I still remember their (insulting) voices.”<sup>7</sup> Uzbek legislature immediately enacted a new law on ‘Public Associations’ banning all the political parties based on religion.

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<sup>3</sup> Adolat was an offshoot of Uzbek Islamic Renaissance Party (banned immediately after its creation by Islam Karimov). It got split from IRP due to their differences on the strategy to establish an Islamic state. Abdul Ahd, one of the leaders of Adolat and a local imam in Namangan told Ahmad Rashid that we have differences with IRP. Since their struggle is for political power within the existing set up, we do not want to be a part of this un-Islamic political structure. Our ultimate goal is Islamic revolution which is impossible through constitutional impossible. He further stated that Islamization of society will be a gradual process, “We will ensure that first Fergana, then Uzbekistan and then the whole Central Asia will become an Islamic state.” Ahmad Rashid, *Jihad: Op. Cit.*, p.139.

<sup>4</sup> Abdumonnob Pulot, “The Islamic Revivalism in Uzbekistan: A Threat to Stability”, in Roald Sagdaev and Susan Eisenhower, eds. *Islam and Central Asia: An Enduring Legacy or An Evolving Threat?* Washington D. C.: Washington Center for Political and Strategic Studies, 2000, pp.45-46.

<sup>5</sup> Islam Karimov, *Uzbekistan at the Threshold of Twenty First Century*, Massachusetts: N.K., 1998, p.27.

<sup>6</sup> *Ibid.*, p.32.

<sup>7</sup> Islam Karimov, Speech to the Uzbek legislature on 1<sup>st</sup> May 1998. “Freedom to Profess Faith must be on Lawful Guards”, URL: [www.president.uz](http://www.president.uz)



The Islamists had already constructed many mosques in the region<sup>8</sup> which carried slogans like “long live Islamic state.”<sup>9</sup> These mosques were used for propaganda by religious zealots. The authorities started indiscriminate crackdown and held not only many of the Islamists but secular opposition members as well. Out of those held, many were sentenced to heavy imprisonment. But the real leadership of that insurgency; Juma Namangani<sup>10</sup> and Tahir Yuldashev<sup>11</sup> managed to flee the country. Namangani went to Tajikistan to fight against the Rehmanov regime alongside the Opposition forces led by Islamic Renaissance party of Tajikistan while Yuldashev went on a funds collection trip to Muslim countries for Uzbek Islamists.

When the General Accord for Peace was signed between government and opposition forces to end the five years bloody civil war in Tajikistan,<sup>12</sup> Juma Namanagani along with his fighters moved to Gorno Badakhshan area of Tajikistan.<sup>13</sup> He was living peacefully there until Osama bin Laden arrived in Afghanistan. Tahir Yuldashev who was residing in Afghanistan at that time got closer to Osama who persuaded the former to establish IMU in order to achieve their goal. Namangani was asked by Yuldashev to move to Afghanistan along with his fighters. Upon his arrival in Afghanistan, IMU was formally established in northern Afghanistan in 1998.

<sup>8</sup> Millions of Dollars were given to the Islamists by wealthy Arab states to construct mosques. Copies of Quran and other religious material were translated into the Central Asian native languages as well as Russian language and were distributed free of cost among the Central Asian citizens.

<sup>9</sup> Ahmad Rashid, *Jihad: The Rise of Militant Islam in Central Asia*, Lahore: Vanguard, 2002, p.138.

<sup>10</sup> He was a paratrooper in the Soviet Army which invaded Afghanistan in 1980s. Namangani remained in Afghanistan for a substantial time and when he went back from Afghanistan he had already lost his heart to *Mujahedin*. He was a born fighter and not an Islamic scholar. However, he had a huge impression on his followers. For more details see Ahmad Rashid, *Jihad: The Rise of Militant Islam in Central Asia*, Lahore: Vanguard, 2002, pp.137-138 and 143.

<sup>11</sup> Yaldashev was a local imam of an underground mosque. He was a brilliant speaker as well.

<sup>12</sup> It is estimated that more than 50,000 casualties and around 100,000 injuries were reported during this war. Almost 1.5 million people were displaced.

<sup>13</sup> Namangani had very strong hold in Gorno Badakhshan area of Tajikistan. He had close contacts with the local people. There are also reports that he married the daughter of a local strong tribal chief as well. Namangani had close contacts with the Islamists of Tajikistan especially Said Abdullah Noori (founder of Islamic Renaissance Party of Tajikistan) and Hoji Akbar Turajunzode, ex grand mufti of Tajikistan. Namangani remained in the area even after the Civil war ended. He started transport business and farming. However, due to the pressure from government and mediators of the Peace Accord, Namangani was requested to leave Tajikistan. He demanded a safe passage to Afghanistan along with millions of dollars. The Russian helicopters transported him, his family and close cronies to Afghanistan. For details see Adam Saud, “Islamic Renaissance Party of Tajikistan: From Militancy to Moderation”, *Regional Studies*, Vol. XXVIII, No. 2, 2010.

## Goals of the IMU

The major goal of IMU was to topple the Islam Karimov regime and to replace it with the one based on principles of *Sharia* laws. “The goal of IMU is to establish an Islamic state under sharia”<sup>14</sup> says Yuldashev in a statement. IMU thinks that when an Islamic system of state would be implemented in Uzbekistan all the problems of common man would be resolved. It would be the responsibility of state to take care of each and every citizen. In a policy document, IMU declared that “their type of Islamic government would have nothing to do with the Islamic political systems of Pakistan, Iran, Afghanistan or Saudi Arabia. In fact, our system would be based on the pattern of Islamic state of Madina.”<sup>15</sup>

IMU demanded immediate resignation of Karimov which would lead to “a council of top-level *ulema* to draft and pass laws in conformity to Sharia and also select people who will perform the political and executive function. The external relations of the Islamic state would be based on justice and fair play and all the existing treaties with enemies of Islam will be broken and a jihad will be launched against all those states which persecute Muslims.”<sup>16</sup>

As Uzbekistan is declared one of the most undemocratic and not-free countries by international organizations, people had no other choice but to support 27 years long Karimov regime. There are lots of reports which confirm oppressive measures by the Uzbek regime to contain its political opponents. Such measures include illegal detention, charge under terrorism act, extra judicial killings and confiscation of properties.<sup>17</sup> “Nobody is free in Uzbekistan. Everything was controlled by Karimov. He was a cruel person. He did not allow any kind of opposition politics. He had appointed his cronies to all the important administrative positions. Corruption is rampant; you even have to bribe to go for pilgrimage”<sup>18</sup> narrates Abdujalil Boymatov, Chairman, Human Rights Commission of Uzbekistan.

Under such circumstances underground Islam has got popularity especially among the young Uzbeks. Along with IMU, Hizb-ut-Tahrir has also got grounds in Central Asia especially in Ferghana valley. Both, Islamists especially IMU and the secular opposition forces had a similar

<sup>14</sup> [www.youtube.com/watch?v=2dpiD=cQe-m](http://www.youtube.com/watch?v=2dpiD=cQe-m). Accessed on 10<sup>th</sup> August 2015.

<sup>15</sup> For details see Ahmad Rashid, *Op. Cit.*, p. 148, see also Vitaly V. Naumkin, *Radical Islam in Central Asia: Between Pen and Rifle*, Lanham: Rowman & Littlefield Publishers Inc., 2005, pp.74-76.

<sup>16</sup> Vitaly V. Naumkin, *Op. Cit.*, pp.74-76. For more details see Ahmad Rashid, *Jihad: Op. Cit.*, p. 148.

<sup>17</sup> For details see US state department’s reports. Craig Murray, *Murder in Samarkand: A British Ambassador’s Controversial Defiance of Tyranny in the War on Terror*, London: Mainstream Publishing, 2006. Urdu Gunnarsdottir, “Uzbek President Re-elected to Third Term in Elections Criticized as Unfair”, *Central Asia Caucasus Analyst*, 27<sup>th</sup> December 2012. URL: [www.caclanalist.org/?q=node/4773](http://www.caclanalist.org/?q=node/4773). Accessed on 12th May 2014.

<sup>18</sup> Interview with respondent via skype on 14<sup>th</sup> July, 2014.

agenda; change of Karimov regime which would definitely be ‘change of system’ now. Nevertheless, all the opposition forces are still not on a single page. There is least cooperation among opposition forces to chart out a single strategy for future political system of Uzbekistan.

## **Militant Activities in Central Asia**

Tashkent witnessed the deadliest bomb explosions after independence of Uzbekistan in February 1999 killing several people besides injuring dozens others.<sup>19</sup> The regime blamed both Islamists and the secular opposition forces for the blasts. Uzbek authorities stated that these attacks were the outcome of meeting between Juma Namangani and Muhammad Saleh, head of *Erk* party of Uzbekistan (living in exile in Turkey) in Istanbul.<sup>20</sup> Both Islamists and secular opposition, however, denied the allegations and declared that they have nothing to with the blasts. Regime again started severe crackdown and imprisoned members of Islamist organizations who were sentenced to long imprisonment besides hanging six. The charge list against the accused not only included bomb explosions but robbery, killings and loot etc.<sup>21</sup> Uzbek president stated that “such people must be shot in the head. If necessary, I will shoot them myself”.<sup>22</sup> He further stated that “if my child chooses such path, I myself would rip off his head.”<sup>23</sup>

Despite such firm statements by the president, IMU incurred into Kyrgyzstan and then to Uzbekistan in the summers of 1999 from Afghanistan. Few Kyrgyz security officials, three Japanese geologists, four American climbers and a Kyrgyz mayor were made hostages by the IMU members.<sup>24</sup> After negotiations and receiving ransom money, the hostages were released by the militants. It is said that a helicopter was also provided to the IMU militants for a safe exit to Afghanistan.<sup>25</sup> During summers of 2000, members of IMU re-entered into Uzbek and Kyrgyz territories. Although, they managed to enter but faced strict retaliation and had to retreat to Afghanistan with heavy casualties. Since Kyrgyzstan and Tajikistan have

<sup>19</sup> For details see Ahmad Rashid, *Op. Cit.*, and Craig Murray, *Murder in Samarkand: A British Ambassador's Controversial Defiance of Tyranny in the War on Terror*, London: Mainstream Publishing, 2006.

<sup>20</sup> Richard Weitz, “Storm Clouds Over Central Asia: Revival of the Islamic Movement of Uzbekistan”, *Studies in Conflict and Terrorism*, No. 27, 2004. pp. 472-473.

<sup>21</sup> Ahmad Rashid, *Jihad: Op. Cit.*, p.152.

<sup>22</sup> Ahmad Rashid, *Op. Cit.*, p.146.

<sup>23</sup> *Ibid*, p.150.

<sup>24</sup> K. Warikoo, ed. *Religion and Security in South and Central Asia*, New York: Routledge, 2011, p.145. See also M. Ashimbaev, ed. *New Challenges and new Geo-Politics in Central Asia: After September 11*, Almaty: Kazkah Institute of Strategic Studies, 2003, p.47.

<sup>25</sup> Josie Le Blond, “Analysis: Radical Uzbek Groups Recruiting in Europe”, *Washington Times*, 20<sup>th</sup> January 2012, URL: <http://www.washingtontimes.com/news/2012/jan/20/analys-radical-uzbek-groups-recruiting-in-europe>. Accessed on 10<sup>th</sup> August 2013.

weak security apparatus, Uzbekistan and Russia under the umbrella of Commonwealth of Independent States (CIS) carried military actions in the form of air strikes.

IMU fighters have one aim, 'kill or to be killed'. One of the Commonwealth of Independent States (CIS) soldiers who were deployed there at the time of incursion to protect the border region states "they are crazy and show no mercy. They never surrender and if caught explode grenade which they always carry with them".<sup>26</sup> These incursions were done during the Taliban-Northern Alliance fighting in northern Afghanistan. Some of the people opined that such incidents were to bare the Central Asian states not to support Northern Alliance against Taliban regime. Those militants were not only Uzbeks but included others as well. Colonel Ormakoyev, commander of southern region of Kyrgyz security forces confirmed that IMU militant included Central Asian, Uighurs, Arabs, Afghans and Pakistanis.<sup>27</sup> There are reports that thousands of Central Asian students got admission in Pakistani and Afghan madrasahs after the independence. These students were quick to join Taliban movement in early 1990s and IMU in 1998.

After an interval of about four years, Tashkent again came under attack when bomb exploded and shootings happened in *Charsu* market in March 2004<sup>28</sup>. This incident killed six people besides injuring many. Islamic Jihad Union (IJU)<sup>29</sup> claimed the blasts and shooting declaring that our ultimate aim is to topple the oppressive and un-Islamic regime of Islam Karimov. In July of the same year, American and Israeli embassies along with office of the Prosecutor General came under attack. The embassies came under suicide attacks by females. Human rights organizations question the authenticity of these attacks. They say that the attacks were planted by authorities themselves.<sup>30</sup> Craig Murray, the then British ambassador to Tashkent says that the alleged female suicide bombers were real sisters and

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<sup>26</sup> Eduard Poletaev, "Islamic Rebels Threaten New Mountain Offensive", Institute of War and Peace Reporting, URL: [www.iwpr.net/index.pr?arcvme/rca/rca\\_200103\\_51\\_1\\_eng.txt](http://www.iwpr.net/index.pr?arcvme/rca/rca_200103_51_1_eng.txt). Accessed on 12<sup>th</sup> October 2012.

<sup>27</sup> Jatin Kumar Mohanty, *Op. Cit.*, p.71.

<sup>28</sup> Craig Murray, then British Ambassador to Uzbekistan says that police on that day muster in the green belt instead in the office. Secondly no such damage was seen on the sight which is caused by a suicide bombing.<sup>28</sup> He further says that the evidences from the scene showed that explosion was not more than that of a hand grenade. Few people interviewed by Murray confirmed that all it was planted as police fired and killed different people due to different issues. To hide these killings, police planted all this show. For details see Craig Murray, *Murder in Samarkand: A British Ambassador's Controversial Defiance of Tyranny in the War on Terror*, London: Mainstream Publishing, 2006.

<sup>29</sup> A splinter of IMU.

<sup>30</sup> Interview with Abdualil Boymatov via Skype on 14<sup>th</sup> January 2016.

were picked up by the authorities from their house and were kept at unknown place for a few weeks before the explosions.<sup>31</sup>

Since then, no major IMU offensive has been witnessed in Uzbekistan. However during "October 2010, 28 Tajik soldiers got killed in an ambush with alleged IMU members in Rasht valley."<sup>32</sup> IMU has support in the areas where Namangani used to live during and after the Tajik civil war. Major reason for the support is that Namangani used to help those people financially during his stay over there. In return, villagers used to provide him with intelligence and shelter in case of emergencies.<sup>33</sup> IMU militants still use Tajikistan as transit route from Afghanistan to Central Asia.

IMU's focus of activities has largely been confined to Afghanistan and Pakistan where it is currently stationed. It remained in the FATA region of Pakistan for about a decade but had to leave after subsequent operations against militants in the area by Pakistani military. Both Tahir Yuldashev and his successor Usman Adil were killed in FATA region by American drones. Many of IMU members joined Islamic State (IS) and went to Syria. "Thank the Lord, following the Almighty's will we have pledged our allegiance (Bayaht, or Bay'a) to the Caliphate that has bowed to Islam," Usman Ghazi<sup>34</sup> says "And we are now part of it."<sup>35</sup> An estimated 1000 Uzbeks have joined the Islamic State in Syria. However, recently most of them are back in

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<sup>31</sup> Murray took an interview from the parents of one of the alleged female suicide bombers; they revealed that they had two daughters who were very happy and satisfied university students. One day both of them disappeared. When they did not come back, we registered a report with police the next morning. After a couple of weeks, some SNB personnel came to our house and took away the possessions of the girls. Then after six weeks of their disappearance, an unknown call came and the caller told us that our daughters are unharmed and are currently in the 'north'. Then after another couple of weeks, another unknown caller told us to reach at a location in Tashkent and onboard a vehicle standing there. That vehicle took us near to presidential palace where we met Dildora, our elder daughter for a brief time.

The only conversation between us was that our daughters are alive and are well cared. Then she fled back in a convoy of five vehicles. Then on the day of bombing, SNB men came at our residence by 2:30 am, took us to a lockup and put us behind the bars without telling us anything. Then by 11:30 am, one of the SNB men told us that our daughters are dead and released us. After three days, Dildora's body was handed over to us which had one hand burnt and a burnt mark at her stomach 'as small as a walnut'. There was no other mark on her body while the body of younger daughter was never returned back. For details see Craig Murray, *Murder in Samarkand: A British Ambassador's Controversial Defiance of Tyranny in the War on Terror*, London: Mainstream Publishing, 2006, p.334-337.

<sup>32</sup> Lola Olimova, "Few Tears Shed for Tajik bin Laden", IWPR, RCA issue No. 647. 5<sup>th</sup> May 2011. URL: [iwpr.net/report-news/few-tears-shed-for-tajik-bin-laden](http://iwpr.net/report-news/few-tears-shed-for-tajik-bin-laden). Accessed on 12<sup>th</sup> October 2012.

<sup>33</sup> For details of Tajik civil war, see Adam Saud, "Islamic Renaissance Party of Tajikistan: From Militancy to Moderation" in *Regional Studies*, Spring 2010.

<sup>34</sup> The last leader of united IMU. He was killed in November 2015 during an ambush between a group of IMU loyal to Islamic State and Taliban.

<sup>35</sup> "Islamic Movement of Uzbekistan", *Global Security*, URL: <http://www.globalsecurity.org/military/world/para/imu.htm>. Accessed on 16<sup>th</sup> September 2016.

Afghanistan and have established a local cell of IS along with other militants notably from Central Asia, Xinjiang and Chechnya.

### **Activities in Afghanistan and Pakistan**

The Operation Enduring Freedom (OEF) forced IMU to leave Afghanistan and take refuge in FATA. Juma Namangani was killed in the OEF by American air strikes. Tahir Yuldashev took over as the new leader of IMU and left for FATA. IMU stayed there for a couple of years living peacefully. Nevertheless, local tribes got clash of interests with IMU and warned them to leave their areas. However, IMU did not comply with the warning and a heavy fighting started between the both in 2004. Meanwhile, Pakistan military started an offensive against the terrorists in FATA and IMU was left with no option but to leave to Afghanistan.

It was late 2006 when IMU re-appeared on the FATA scene. This time it aligned itself with Tehreek-e-Taliban Pakistan (TTP). In order to keep itself alive and closer to Baitullah Mehsud-TTP chief-IMU carried out many terrorist activities inside Pakistan. Such activities include suicide bombing, kidnapping for ransom and attacks on airports and military bases. In 2007, IMU clashed with local tribesmen in South Waziristan in FATA. This ambush was so intense that 160 IMU militants were killed and around 60 were captured by the locals.<sup>36</sup> Attacks on Peshawar, Karachi and Quetta airports were claimed by the IMU. Pakistani security forces also released the photos of those terrorists who were killed in Mehran Base attack in Karachi. They looked very much Uzbeks from their appearance.

384 prisoners, mostly terrorists were freed by the militants when they stormed into Bannu jail in the southern region of Khyber Pakhtoonkhwa (KPK) province on 14th April 2012. The police chief of the region stated that “some of them were the most wanted” and “twenty of them were given death sentence.”<sup>37</sup> IMU was involved in this attack. Prior to this assault, a Naval Base Mehran in Karachi came under attack on 22nd May 2011. Around dozen terrorists entered the base and killed 11 people. Many of the terrorists were killed by the security forces. The photos of terrorists released by the then federal interior minister of Pakistan, Rehman Malik confirmed them as Uzbeks.

It was June 2014 attack on Karachi’s Jinnah International Airport which killed twenty eight people including ten terrorists, forced Pakistani authorities to clearly draw its line towards IMU. In a statement IMU

<sup>36</sup> Hans-Inge Longo, “Islamic Movement of Uzbekistan: Crackdowns (2005-2010)”, 10<sup>th</sup> March 2011, URL: <http://hegemonicobsessions.com/?p=281>. Accessed on 12<sup>th</sup> October 2012.

<sup>37</sup> Fida Aqeel, “Prison Break: Taliban Attack Bannu Jail, nearly 400 inmates escape”, *Express Tribune*, April 15 2012, URL: <http://tribune.com.pk/story/365064/prison-break-militants-attack-bannu-jail-over-900-inmates-freed/>. Accessed on 12<sup>th</sup> October 2012.

declared that “it (attack) was to avenge the military strikes in Pakistani tribal areas last month which claimed lives of innocent women and children”.<sup>38</sup> Full-fledged military air strikes started against militants primarily IMU members in Waziristan area by Pakistan military supported by Pakistan Air force. This operation *Zarb e Azb* was so ruthless and lethal for the terrorists that most of them have either been killed or forced to leave FATA. IMU remnants also left for Afghanistan where they have hideouts in northern Afghanistan primarily.

IMU members belong to multiple states and regions. Besides Central Asians, Afghans, Arabs and Chechens have also joined it. Ismatillah Faizullah, deputy head of the Uzbek mission to Islamabad says that “Uzbeks constitute only 35% of the IMU membership. 65% of its members are non-Uzbeks.”<sup>39</sup> Security forces in North Waziristan killed 16 IMU militants who were Turkmen in February 2012. Rahimullah Yousafzai also confirms that IMU is a multi-ethnic and multi-national organization now. Responding to a question regarding the Turkmen as members of IMU he said “yes, Turkmen also fight in Pakistan-Afghanistan border region. They want a change in their lives. They want to get rid of autocratic regimes. Since they don’t have legal opportunity to perform in political matters, they resort to violent activities. They have got an opportunity to achieve their goal by aligning themselves with broader Central Asian Islamist organizations.”<sup>40</sup>

Most recently, one of IMU’s factions alliance with the Afghan chapter of IS is the practical manifestation of Yuldashev’s dream to make the organization a global one. Yaldashev stated that “we are with Shiekh Osama bin Laden and al-Qaeda...after taking over Afghanistan and Pakistan (with the help of international *jihadis* based in these states), one part of us will go to India and the other will go to the Central Asian states.”<sup>41</sup> He further stated “this movement does not stop with someone’s death or martyrdom. This caravan will continue...this caravan shed a lot of blood...has suffered a lot...This (Islamic) knowledge and jihad are *amanat* (trust) of Allah for you and Allah will ask about the *amanat*. This jihad should be purely for Allah’s will and not for the kingdom, for nation or tribe...We have this goal that we will establish the Army of *Ummah* and they will only serve the *Ummah*. This special army will only be in the service of Islamic Khilafah. And this will be the Army which will liberate Palestine.”<sup>42</sup>

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<sup>38</sup> BBC, “Karachi Airport Attack: Islamic Movement of Uzbekistan Claims Responsibility”, 11<sup>th</sup> June 2014, URL: <http://www.bbc.com/news/world-asia-27790892>. Accessed on 16<sup>th</sup> September 2016.

<sup>39</sup> Interview with respondent in Islamabad on 16<sup>th</sup> November 2012.

<sup>40</sup> Author’s interview with the respondent in Peshawar on 9<sup>th</sup> January 2013.

<sup>41</sup> Abu Bkr Siddique, “IMU Takes Roots in Increasingly insecure Northern Afghan Provinces”, Radio Free Europe/RL. 8/12/10.URL: [www.rferl.org/content/imu-takes-roots-insecure-northern-afghan-provinces/2242579](http://www.rferl.org/content/imu-takes-roots-insecure-northern-afghan-provinces/2242579). Accessed on 24th March 2011.

<sup>42</sup> [www.youtube.com/watch?v=2dpiD=cQe-m](http://www.youtube.com/watch?v=2dpiD=cQe-m). Accessed on 10<sup>th</sup> August 2010.

In another statement Tahir Yuldashev said that “we must rid the world of infidels. There are no limits for us. Our goal is to take over not only Afghanistan and Pakistan, but the whole world and to re-establish a caliphate as Allah commanded”.<sup>43</sup> He further stated that “After 9/11, all *kuffar* (infidels, pointed towards OEF) are bombarding us. Children and women are getting martyred. But we will not leave Islam...Islam is a religion of sacrifice and not a religion of cowards...fighting is nothing for us. Either we become martyred or become ghazi but we will not fight according to plans of *kuffar*... They (enemies of Islam) could cut the branches of this movement, could cut big branches of this movement, but will never be able to uproot it...because most of those who put the foundation for this have long been martyred and we joined the IMU after them.”<sup>44</sup>

IMU once talked about ‘*Ghazwat-ul-Hind.*’ Initiated by IMU and with the help of other Muslim brethren, Islamic state in the whole of sub-continent region will be established, particularly those areas which belonged to Mughal Empire, says Abu Zar al-Barmi, *Mufti* of IMU.<sup>45</sup> Referring to many civil wars in Muslim African states, Abu Zar al-Burmi stated that the “ultimate triumph is for the mujahedin and that the enemies of Islam will face devastating defeats everywhere.”<sup>46</sup> IMU is facing the most crucial time since its inception. There are reports that it has dismembered and new factions have emerged in different regions of Afghanistan and Syria. Conditions at home i.e. Uzbekistan is also not suitable for the group.

Official religious figures, most of the common people especially living in urban centers of Uzbekistan, laws of the land and social conditions of Uzbekistan make IMU least attractive for Uzbek population. The grand mufti of Uzbekistan Usman Alimov denounces the militants and warns general public from such kind of people. In a statement on the occasion of a book (Appeal by the World’s Ulema) launch ceremony in Tashkent on 2nd June 2016, he said “ we want to shield young people from the influence of extremists...we ask Muslims to be vigilant about such kind of people.”<sup>47</sup> Most interestingly, Hizb ut Tahrir-declared as terrorist organization and banned throughout Central Asia-having same agenda to establish Islamic

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<sup>43</sup> Jeffery Thomas, “Transnational Terrorist Networks: The Afghanistan-Pakistan Connection”, Center for the Study of the Presidency and Congress, 18<sup>th</sup> August 2011, p.8.

<sup>44</sup> [www.youtube.com/watch?v=2dpiD=cQe-m](http://www.youtube.com/watch?v=2dpiD=cQe-m). Accessed on 10<sup>th</sup> August 2011.

<sup>45</sup> Christopher Anzalone, *Op. Cit.*,

<sup>46</sup> Jacob Zenn, “After Afghanistan, Central Asian Jihadis look to New Theatres”, *Central Asia Caucasus Analyst*, 31<sup>st</sup> October 2012. URL: [www.cacianalyst.org/?q=node/5868](http://www.cacianalyst.org/?q=node/5868). Accessed on 23<sup>rd</sup> December 2012.

<sup>47</sup> Maksim Yeniseyev, “Uzbek Ulema Denounce Extremists”, *Central Asia News*, 26<sup>th</sup> July 2016, URL: [http://central.asia-news.com/en\\_GB/articles/cnmi\\_ca/features/2016/07/26/feature-01](http://central.asia-news.com/en_GB/articles/cnmi_ca/features/2016/07/26/feature-01). Accessed on, 15<sup>th</sup> September 2016.



Caliphate distances itself from IMU. It is also critical to the IMU activities and declares its strategy against the teachings of Islam.

## **Future of IMU**

The above mentioned developments are extremely disappointing for the IMU. After the death of Mullah Omar not only Afghan Taliban has divided their ways, IMU has also been fractured and there are many splinter groups of the organization which are fighting in Afghanistan, Pakistan, Iraq and Syria. Usman Ghazi has pledged his allegiance to the IS. There are reports that Usman Ghazi has been killed in an ambush between *Wilayat e Khurasan*<sup>48</sup> and a Taliban group loyal to Mullah Omar in Zabul province of Afghanistan in November 2015.<sup>49</sup> If Ghazi is killed then there is no one left who can really claim the captaincy of IMU. All of its members are least known in the region and their native countries.

Despite these serious blows, IMU still struggles for its survival. Whether along with Taliban or IS (*Wilayat e Khurasan*) it continues its offensives. Its concentration in Northern Afghanistan has many gains. It can pose a threat to the NATO supplies through Northern Distribution Network (NDN), a message to the Central Asian states that it is still alive and operational and it can easily mingle and hide itself in the ethnic Uzbek and ethnic Tajik population provinces of Afghanistan. There are other reasons for the rise of militants in northern Afghanistan which include “less support from the central (Kabul) government, less confidence in local police, less coordination among security forces, and increased local Taliban propaganda.”<sup>50</sup>

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<sup>48</sup> After the death of Mullah Omar, supreme leader of Afghan Taliban was officially declared by the group, IMU shifted its focus from Afghanistan and Taliban to IS in Syria. When IMU pledged its allegiance to IS in 2015, most of its members went to Syria and Iraq. However, few members did not give allegiance to the IS and remained close to Taliban. Fractures have also been witnessed in Tehreek e Taliban Afghanistan chapter after the death of Mullah Omar. The faction of IMU which went to Syria and Iraq came back on the orders of Abu Bkr al-Baghdadi and has established the local cell of IS with a name “Wilayat-e-Khurasan.” The spokesperson of IS stated on 26<sup>th</sup> January 2015 that it (IS) will establish “Wilayat-e-Khurasan” in areas of “Afghanistan, Pakistan and other” neighboring regions. For details see <sup>48</sup> Nathaneil Barr, “Wilayat e Khurasan Stumbles in Afghanistan”, *Terrorism Monitor*, Vol. 14 No. 5, 3<sup>rd</sup> March 2016, URL: [http://www.jamestown.org/programs/tm/single/?tx\\_ttnews%5Btt\\_news%5D=45163&cHash=931cd87e22fd13bd3fa5c5c6ea44a6fe#.V92fSP197IU](http://www.jamestown.org/programs/tm/single/?tx_ttnews%5Btt_news%5D=45163&cHash=931cd87e22fd13bd3fa5c5c6ea44a6fe#.V92fSP197IU).

<sup>49</sup> Bruce Pannier, “Islamic Movement of Uzbekistan Unraveled”, *Radio Free Europe*, 28th November 2015, URL: <http://www.rferl.org/content/qishloq-ovozi-islamic-movement-uzbekistan-fractured/27395160.html>, Accessed on 16<sup>th</sup> September 2016.

<sup>50</sup> Catherine Putz, “Who Controls Islamic Movement of Uzbekistan”, *The Diplomat*, 15<sup>th</sup> August 2015, URL: [thediplomat.com/2015/08/who-controls-the-islamic-movement-of-uzbekistan/](http://thediplomat.com/2015/08/who-controls-the-islamic-movement-of-uzbekistan/), Accessed on 17<sup>th</sup> March 2016.

Faryab and Zabul are the main regions where IMU concentrates its strength. According to the vice president of Afghanistan, General Rasheed Dostam, leader of the Afghan ethnic Uzbek community, “Whenever the fighting gets tough, it is the Uzbeks who are in the lead... They are fighting our troops at very close range.”<sup>51</sup> But there is a tug of war for supremacy in these regions between IMU and the Taliban group. The latter has done serious harm to IMU in Faryab and Zabul provinces. Besides alleged killing of Usman Ghazi at the hands of Taliban in Faryab, most of the IMU fighters have been eliminated from this region. It is said that by eliminating IMU from northern Afghanistan “the Taliban achieved in 24 hours what the Americans were unable to do in 14 years.”<sup>52</sup> Nevertheless, Faryab could be cleared from all the members of IMU.

After that Taliban-IMU fight, one of the IMU members posted on Facebook that “the Taliban had killed hundreds of IMU fighters in Zabul and had laid siege to remaining IMU militants... This might be our last appearance on the Internet”<sup>53</sup> and till then no message has been posted by IMU on the internet. However, there are reports that few splinter groups of IMU are busy in the region. Some are fighting in Syria as well. Central Asian groups engaged in Syria include *Imom Bukhari* Brigade and *Katibot Tauheed wal Jihad*. Besides *wilayat e Khurasan*, *Sodiqlar* group of IMU is engaged in Tajikistan. Members of this group were arrested by Tajik security officials from Sughd and Ghafurov areas. Both the members have confessed that they were on a mission to recruit new members for their group.<sup>54</sup> The Tajik state security agency says that “we heard of this group (in 2013) when we were investigating 16 suspects in Spitaman and Panjakent districts [also in Sughd Province]. At that time, investigators considered Sodiqlar part of an existing movement, not a separate one.”<sup>55</sup>

<sup>51</sup> Margherita Stancati and Nathan Hodge, “Islamic State Ally Emerges as Threat to Afghanistan, Central Asia”, *The Wall Street Journal*, 18<sup>th</sup> August 2015, URL: <http://www.wsj.com/articles/islamic-state-ally-emerges-as-threat-to-afghanistan-central-asia-1439919456>.

<sup>52</sup> Nathaneil Barr, “Wilayat e Khurasan Stumbles in Afghanistan”, *Terrorism Monitor*, Vol. 14 No. 5, 3<sup>rd</sup> March 2016, URL: [http://www.jamestown.org/programs/tm/single/?tx\\_ttnews%5Btt\\_news%5D=45163&cHash=931cd87e22fd13bd3fa5c5c6ea44a6fe#.V92fSPI97IU](http://www.jamestown.org/programs/tm/single/?tx_ttnews%5Btt_news%5D=45163&cHash=931cd87e22fd13bd3fa5c5c6ea44a6fe#.V92fSPI97IU).

<sup>53</sup> Nathaneil Barr, “Wilayat e Khurasan Stumbles in Afghanistan”, *Terrorism Monitor*, Vol. 14 No. 5, 3<sup>rd</sup> March 2016, URL: [http://www.jamestown.org/programs/tm/single/?tx\\_ttnews%5Btt\\_news%5D=45163&cHash=931cd87e22fd13bd3fa5c5c6ea44a6fe#.V92fSPI97IU](http://www.jamestown.org/programs/tm/single/?tx_ttnews%5Btt_news%5D=45163&cHash=931cd87e22fd13bd3fa5c5c6ea44a6fe#.V92fSPI97IU).

<sup>54</sup> Negmatullo Mirsaidov, “Tajikistan Cracks Down on New Extremist Group”, *Central Asia News*, 23<sup>rd</sup> August 2016, URL: [http://central.asia-news.com/en\\_GB/articles/cnmi\\_ca/features/2016/08/23/feature-01?gclid=CIqPp7GUi88CFcGVGwod6KkNzA](http://central.asia-news.com/en_GB/articles/cnmi_ca/features/2016/08/23/feature-01?gclid=CIqPp7GUi88CFcGVGwod6KkNzA), Accessed on 16<sup>th</sup> September 2016.

<sup>55</sup> Negmatullo Mirsaidov, “Tajikistan Cracks Down on New Extremist Group”, *Central Asia News*, 23<sup>rd</sup> August 2016, URL: [http://central.asia-news.com/en\\_GB/articles/cnmi\\_ca/features/2016/08/23/feature-01?gclid=CIqPp7GUi88CFcGVGwod6KkNzA](http://central.asia-news.com/en_GB/articles/cnmi_ca/features/2016/08/23/feature-01?gclid=CIqPp7GUi88CFcGVGwod6KkNzA), Accessed on 16<sup>th</sup> September 2016.

## **Conclusion**

The death of Islam Karimov will not give any leverage to IMU in Uzbekistan as departure of Karimov has not changed the security apparatus and religious policies in Uzbekistan. The interim president Shavkat Mirzo had remained very close to Karimov and is likely to continue his style of government. According to Abdujalil Boymatov, “he (Shavkat Mirzo) is more brutal than Karimov.”<sup>56</sup> Most of the Uzbek political scientists like Nasrullah Qayyamov, Allakhverdiyev and Kamaluddin Rabimov have declared IMU as the least security threat to Uzbekistan. They say that since the movement has negligible support in the country, how it can be successful here. The leadership especially Namangani and Yuldashev has died. The new leadership of Usman Ghazi is inexperienced and simply means that IMU is out of fighters. Moreover, dilution of non-Uzbek membership has also lost its significance among Uzbek public. There are an estimated number of 1500-2000 fighters left with IMU and if we consider Ismatillah Faizullah’s statement true, it means Uzbek members are only 500-550. Having such a small number of indigenous membership, IMU cannot achieve its objective to create an Islamic state in Uzbekistan.

The ideology of IMU also does not suit to the current social and economic set-up of Uzbekistan. Majority of Uzbek public does not want political Islam to be implemented in their society. They are happy with the existing social system.<sup>57</sup> IMU has assessed its strength in Uzbekistan and knows it very well that it will not be able to penetrate deeply in Uzbekistan. Therefore, they have shifted their focus from Uzbekistan to Afghanistan especially where it can regroup, reorganize, and strengthen itself to chart out a new future strategy. In order to live in Afghanistan it must have good relations with Taliban and al-Qaeda but at the same time it is looking towards IS in the region.

Although, IMU had fragmented and it seems that IMU does not pose any immediate or near future real threat to Uzbekistan, it, nevertheless, would remain a constant headache to the Central Asian states. Islam Karimov had very wisely controlled the whole Uzbek socio-economic and political system in his hands through his secret agency. It was his style of government that most of the political opponents whether secular or religious are in exile. IMU may intensify its activities in Uzbekistan and may give a tough time to the new regime but no statement has yet been issued by any of the group of IMU on Karimov’s death. IMU may be assessing the situation and may be waiting for the results of the upcoming presidential elections. Till then it will remain in Afghanistan and if gets chance will also try to penetrate into Pakistan. But one thing is obvious, since IMU does not have

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<sup>56</sup> Interview with Abdujalil Boymatov via Skype on 14<sup>th</sup> January 2016.

<sup>57</sup> Author had been to Uzbekistan during August 2013 and had informal discussions with the general public from almost all strata of life.

capabilities to operate independently, it sides with the powerful and winners. It seems that it has rented its services to any of the militant organization which can pay it more and has no future in Uzbekistan.

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## AN ANALYSIS OF SULTAN MUHAMMAD KHAN'S WORK: THE CONSTITUTION AND LAWS OF AFGHANISTAN

*Muhammad Shafi\* and Noor Ul Amin\*\**

### Abstract

*Afghanistan, from its inception in 1747, had remain an ill-defined country with no centralized authority until the rule of Amir Abdur Rehman (r.1880-1901). He not only settled the boarders of Afghanistan but also established a centralized government which, though dictatorial in nature, was ruled under the restrains of the 'Sharia' (Islamic Law) and Customary Laws of the Afghan tribal society. These laws existed in written literature in Pashto and Dari, but not in English. The first ever book in English containing the laws governing Afghanistan is 'The Constitution and Laws of Afghanistan' written by Sultan Muhammad Khan in 1900. The work is mostly derived from oriental customs and Mohammadan law. It describes the laws and constitution of Afghanistan before 1900 in the light of modern European laws. The author, Sultan Muhammad Khan, a British-Indian, the father of renowned Urdu poet, Faiz Ahmad Faiz, had been Mir Munshi (chief secretary) of Amir Abdur Rahman in Afghanistan from 1888 until 1898. After trusting and recognizing his services in Afghanistan, the Amir appointed him as ambassador to England for the period 1899-1901. This paper analyzes the established system of laws as given in 'The Constitution and Laws of Afghanistan'.*

**Keywords:** *Amir Abdur Rehman, Sultan Muhammad Khan, laws and constitution, Muslim Jurisprudence, Oriental versus occidental laws, Private law, Customary law, Rule of the Ruler*

### Introduction

The work 'The Constitution and Laws of Afghanistan' was published in 1900 in London by John Murray publishers. It compares private and constitutional laws of Afghanistan with advanced European countries. The

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main research question in the work is to find out how the laws of Afghanistan are derived from oriental customs and Mohammadan law? It also explores how much of Afghanistan laws are derived from other sources, such as, India and other neighboring states.<sup>1</sup> The author, Sultan Muhammad Khan was born in Sialkot in 1861. He was father of renowned Pakistani Urdu poet, Faiz Ahmad Faiz.<sup>2</sup> He was well versed in Persian, Dari and English. In 1886, Amir Abdur Rehman, invited him to Kabul and employed him. Sultan was elevated to the position of Chief Secretary (called Mir Munshi in Persian) by the Amir and also served on other positions. During demarcation of eastern borders with British Empire in 1893, known as the Durand Line, Sultan Muhammad Khan was member of negotiating team of Amir Abdur Rehman. The author stayed in Afghanistan for almost a decade from 1888 until 1898. During his stay, he observed closely the events and happenings, ranging from social, cultural and political issues. Thus, his information is first-hand. The writer ran away from Afghanistan in 1898 and reached British India where he was imprisoned at Lahore, and released by the efforts of Dr. Lillies Hamilton. Later on, he went to London, did his Barrister-at-Law from Christ's College Cambridge. His professional degree helped him in writing on the subject of law.

This study is going to look into the content analysis of the work, *The Constitution and Laws of Afghanistan*, to evaluate its argument, its coherence and intent of the writer. Thus, the work is investigated to check whether it is a pure intellectual pursuit of the writer or part of a discourse, the post-modernist approach, to give meaning to, or legitimize the socio-political realities constructed during that period of time by those in power. Michel Foucault argues, "We must be very suspicious of any information which is produced, even when it seems most self-evidently to be adding to the sum of human knowledge, it may at the same time play a role in maintenance of status quo and the affirming of current power relations"<sup>3</sup>

Foucault further held that every moment of production of knowledge or instances of someone talking on behalf of someone else, no matter how good their intentions are, needed to be interrogated.<sup>4</sup>

While the work, *The Constitution and Laws of Afghanistan*, was being published, the author was outside Afghanistan and he was no longer on the official roll of Afghan kingdom. Hence, apparently, the book can be equated to just an intellectual pursuit of the writer without being influenced by Amir Abdur Rehman, the sitting Amir, and additionally there is no obvious conflict of interest as the author is no longer Afghan government servant.

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<sup>1</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. 30

<sup>2</sup> Sarfraz Khan & Noor ul Amin, *Mir Munshi Aala Sultan Muhammad Khan and His Services to Afghanistan: Peshawar*, Bi-Annual Research Journal Central Asia, issue No. 72. 2013, P.3

<sup>3</sup> Foucault Michel, *Critical Thinkers: London*, Routledge 11 New Filter Lane 2003, p.60

<sup>4</sup> Foucault Michel, *Critical Thinkers: London*, Routledge 11 New Filter Lane 2003, p.78



Despite these two reasons, would it be enough for the work to be called independent and it was produced without having any link to political influence of the Afghan authorities, the Amir. But the work clearly gives credit to Amir Abdur Rehman as pioneer of reforms especially for constitutionalism and new laws to the level that this work seems to be an apology of Amir Abdur Rehman. Thus, it seems that under a discourse, the Amir's policies are being justified and are provided with meaning. The subjectivity of the work and its partiality can be confirmed by analyzing the contents of the work.

In Chapter III, page 29, the work quotes Elphinstone asserting that like in most Asiatic countries, in Afghanistan too, there are no limits to the power of the ruler or Amir except the endurance of the people.<sup>5</sup> It further argues that Amir Abdur Rehman had the right and power to amend customary law and prescribe punishments in order to suit the Afghan circumstances and situation. The work highlights that Amir Abdur Rehman time there were three laws: laws of Islam, laws of ruler, and the customary laws.<sup>6</sup> Amir squeezed the customary laws and laws of Amir into one, along with a number of new laws. These laws were administered mostly through sword and the cases were decided on spot. Under Kabul Police Code, various punishments were prescribed for various social evils, such as, evil speaking in public, evil speaking against the descendants of Prophet, against man of learning or of a civic elder could be punished by 20 lashes and a fine of Rs. 50.<sup>7</sup>

Abdul Latif in his work entitle, *Judiciary in Afghanistan since the Days of Amir Abdur Rehman*,<sup>8</sup> highlights the ruthless treatment meted out on public by Amir Abdur Rehman.<sup>9</sup> The same author provides a list of verdicts announced by Amir Abdur Rehman which reflects the standard of laws and quality of administration of justice (see Annexure 1). The torture for the purpose of extorting confession was so horrible in criminal, political, revenue and other cases that could force the imprisoned to admit each and everything. The work justifies these cruel and harsh laws. It argues that it was only after these cruel laws that in fifteen years only five murder cases occurred in Afghanistan against previous practice of almost 500 to 1000 in a

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<sup>5</sup> Mountstuart Elphinstone, *An Account of Kingdom of Caubul*: London, Vol. II, Longman Hurst, Rees, Orme, Brown and Murray 1815, p.129

<sup>6</sup> Mountstuart Elphinstone, *An Account of Kingdom of Caubul*: London, Vol. II, Longman Hurst, Rees, Orme, Brown and Murray 1815, p.126

<sup>7</sup> Mountstuart Elphinstone, *An Account of Kingdom of Caubul*: London, Vol. II, Longman Hurst, Rees, Orme, Brown and Murray 1815, p. 121

<sup>8</sup> Abdul Latif, *Judiciary In Afghanistan Since The Days Of Amir Abdur Rehman*: Peshawar, unpublished PhD Dissertation, Area Study Centre University of Peshawar 2003, p.103

<sup>9</sup> Abdul Latif, *Judiciary In Afghanistan Since The Days Of Amir Abdur Rehman*: Peshawar, unpublished PhD Dissertation, Area Study Centre University of Peshawar 2003, p.p 8-24

clan of 20000 families.<sup>10</sup> The work has quoted some outside sources such as Mr. Wheeler who says,<sup>11</sup>

*“These laws may seem barbarous to Europeans but we must not forget that Orientals look at these things quite in different light”*<sup>12</sup>.

Despite such harsh laws of Amir, why the work justifies his administration of justice and miserable life of those alleged for some folly need to be further explored. Was it an act of atonement by the author to the Amir who helped him in his personal growth and monetary benefits bestowed upon him?

Faizullah Jan says, *“In the Foucaultian sense, a discourse regulates the way a topic can be talked about meaningfully in a particular culture at a particular time in history”*.<sup>13</sup> The discourse that justify and provide meanings to whatever happened in Afghanistan during the rule of Amir Abdur Rehman by the author further reflected in other parts of his work.

Another contradiction in the work under analysis is the author eulogizes the contribution of Amir Abdur Rehman towards growth of a constitutional Afghanistan by introducing legal reforms and new laws. The term ‘constitutional’ in modern language reflect a government where there is sufficient separation of powers in executive, legislative, judicial spheres and these are not concentrated in one hand and with defined parameters. Abdul Latif and Misal Zada in *“Judiciary in Afghanistan Since The Days of Amir Abdur Rehman”*<sup>14</sup> and in *“The Role of Afghan Loya Jirga In Law Making”*<sup>15</sup> respectively, portray how Amir Abdur Rehman took in his own hands judicial powers by exercising original jurisdiction in criminal cases. Even Abdul Latif, in his dissertation portray the moody Amir awarding two different punishments for the same crime to convicts as laws were not fixed and punishments not defined at that time.<sup>16</sup> He quotes a case, a wife seeking

<sup>10</sup> Abdul Latif, *Judiciary In Afghanistan Since The Days Of Amir Abdur Rehman*: Peshawar, unpublished PhD Dissertation, Area Study Centre University of Peshawar 2003, p.134.

<sup>11</sup> S. Wheeler, *The Ameer Abdur Rahman*: London, Federk & Co, 1895, p.89

<sup>12</sup> Sultan Muhammad Khan, *The Constitution And Laws of Afghanistan*: London John Murray 1900, p. 122

<sup>13</sup> Faizullah Jan, *Representing the Self and the Other: Discourse of Pakistan Based Militant Organizations*, PhD Dissertation, American University, Washington .D.C., 2016 , p. 14.

<sup>14</sup> Abdul latif, *Judiciary in Afghanistan Since The Days of Amir Abdur Rehman*: Peshawar, Area Study Centre (Central Asia) University of Peshawar, 2003, p.8 & 24

<sup>15</sup> Misal Zada *The Role of Afghan Loya Jirga In Law Making*: Peshawar, unpublished Ph.D. Dissertation. Peshawar: Area Study Centre University of Peshawar, 1998, p. 53

<sup>16</sup> Abdul Latif elucidate that the intensity of the punishment was dependent on the mood of Amir. There were no defined limits of punishments for the crimes. One individual was sentenced to death for a crime, the other person for the same crime was freed with a thrashing alone. Though in theory punishment for homicide, adultery and apostasy was death, practically the offenders on these points were treated with leniency (probably where expediency involved, kingdom interest, p. 21

divorce because her husband is toothless. The verdict handed over by Amir was to extract her teeth. Another case related to adultery, both, male and female, were ordered to live together till death as they both were fastened together back to back and were kept on a hill till death by starvation and exposure.<sup>17</sup>

Similarly, contrary to the views expressed in the work, horrible life of prisoners in jails is depicted by other sources such as, Abdul Latif, during Amir Abdur Rehman rule. Amir's son, prince Habibullah, was found guilty in sexual activities, especially he was a frequent visitor to Pari Khana (the fairy House).<sup>18</sup> Pari Khana, the female prison, where female were properly clothed and presented to Habibullah for sex. Thus, presenting a picture of Amir Abdur Rehman as perfect embodiment of law and justice seems a bit exaggerated by Sultan Muhammad Khan in the work. He portrays in the work that Amir Abdur Rehman was known for a strong network of spies in Afghanistan in the following way,

*“A strong and sound intelligence network was being operated by the Amir on the lines of Russian intelligence system which had impressed the Amir during his stay in Russia. Every fourth man in Afghanistan was believed to be a reportchee (spy).”*<sup>19</sup>

How could he remain ignorant in the presence of a well-organized intelligence mechanism, of his son indulgence in Pari Khan? Thus, we can conclude that the work is a wonderful intellectual contribution to Afghan political and socio-cultural literature, especially related to the subject of laws but a bit exaggerated so far portrayal of Amir Abdur Rehman character is concerned.

In Foucaultian sense the author under a discourse legitimizes the sitting Amir, Amir Abdur Rehman, by use of language and the knowledge the author has to legitimize his actions. All favorable sources and references are referred for the purpose in the work, such as, Wheeler, Lillias Hamilton and Alfred Grey, foreigners serving under the Amir, Lillias Hamilton, admires the peace and security prevailed in Afghanistan under Amir.<sup>20</sup> However,

<sup>17</sup> Abdul latif, *Judiciary in Afghanistan Since The Days of Amir Abdur Rehman*: Peshawar, Area Study Centre (Central Asia) University of Peshawar, 2003, p. 22

<sup>18</sup> The writer Abdul Latif writes that *Pari Khana* was female prison. Its incharge named as *Naib Kutwal* Sultan Abshar, used to offer female prisoners as gifts both to friends and male members of ruling family. These girls were well fed and well dressed and presented to prince Habibullah. Many girls lost virginity due to his this habit and committed suicide later on, p.23.

<sup>19</sup> Mir Munshi Sultan Muhammad Khan, *The Life Of Amir Abdur Rehman, VoII*: Karachi, Oxford University Press 1980 , p. 259.

<sup>20</sup> Lillias Hamilton is referred admiring Amir Abdur Rehman performance to bring peace and security to kingdom, something unseen before. *The Constitution and Laws of Afghanistan*, p. 123.

another work, the autobiography of Amir Adur Rehman, “*The Life of Abdur Rehman: Amir of Afghanistan*”<sup>21</sup> gives a picture of Afghan nation as very turbulent, difficult to control. The two dominant classes the tribal leaders, orthodox religious class and customary law are the main determinants in failure of establishing a centralized national political authority. Thus, in the second part of nineteenth century, Amir Abdur Rehman somehow tried to strengthen the power of the national government through a series of suppression of ethnic groups, tribal chief and later religious party.<sup>22</sup> Though there are other local sources as mentioned above which justified Amir Policies of harsh punishments and severe criminal administration for control.

One-fourth portion of the work is related to history of Afghanistan and the author borrowed from and depended on authentic European and Islamic sources. The work picks up the traditional Islamic discourse, the rule of hereditary succession of the eldest son, and the king’s right to nominate his successor, had been acknowledged in the work<sup>23</sup> to justify the nomination of prince Habibullah as future king nominated by Amir Abdur Rehman. Thus, nomination is legalized by constructing its meaning in a particular specific period of time through the use of language and it is linked to power, or maintenance of status quo as conceived by Foucault. Using the same old discourse also utilized in Europe, the work quote the king of England, Henry VIII (1207-1272), faced the issue of his successor when he was authorized to nominate anyone else as he was childless<sup>24</sup> Thus, there is lack of symmetry between the title of the work, ‘*The Laws and Constitution of Afghanistan*’ and the treatment of the text. The text is discussed in term of old discourse, using the language having terms with already constructed meanings, such as *darbar, jirga, Sardar, Khan, Mullah, shariat* etc.

Abdul Jabar Sabit has pointed out that in order to regulate affairs of the state, Amir Abdur Rehman enacted and enforced regulations, in the name of Muqararat. These were printed in leaflets and were not published in written forms. Thus, these documents were temporary and could not serve the character of any law.<sup>25</sup> Amir Abdur Rehman changed the system and instead put such laws in written form in two documents named *Dastoorul-Hukam Wa Zubat* and *Assosul-e-Quzat*<sup>26</sup> *Assosul-e-Quzat* was mainly based and

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<sup>21</sup> Mir Munshi Sultan Muhammad Khan, *The Life of Amir Abdur Rehman Amir of Afghanistan* (edited) Volume I & II: London, John Murray, Albemarle Street 1900, p.94.

<sup>22</sup> Muhammad Hashim Kamali, *Laws in Afghanistan a Study of the Constitutions, Matrimonial Law and the Judiciary*, Leiden E.J. Brill 1985, p.5.

<sup>23</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.19.

<sup>24</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. 20.

<sup>25</sup> Abdul Jabar Sabit, *Laws of Afghanistan*: Peshawar, Central Asia, No. 11, Area Study Center, University of Peshawar 1982, p. 107.

<sup>26</sup> Abdul Jabar Sabit, *Laws of Afghanistan*: Peshawar, Central Asia, No. 11, Area Study Center, University of Peshawar, 1982, p.107

derived from Muhammadan law (Sharia). The main subjects addressed in this document were treason, rebellion, embezzlement of state's fund, forgery and bribery on the part of officials. Sabit, argues that despite the establishment of many new institutions, courts, appointment of Nawabul Hukomas (a Viceroy type, overlooking a few Governors), provincial governors, and Hakims (the governors of provincial sub divisions) for controlling administrative affairs of the provinces. He also established the first court of appeals at Kabul with twelve members led by a chief named Khana-e-Uloom.<sup>27</sup>

However, authority of Amir Abdur Rehman was not restricted. In other words executive dominated judiciary by trespassing on its jurisdiction. However, a possible explanation for this situation is the longstanding traditions of executive domination of the judiciary in Afghanistan due to the nature of judicial authority in the constitutional structure of Islam. The leader or Imam exercising temporal power has the fundamental duty to administer the Sharia.<sup>28</sup> But at least even in Sharia there is due process of law but, in Afghanistan, it was up to Amir's mood to follow due process or decide the case. This reality is not highlighted in the work. Besides, how the robbers of Mazar e Sharif, were punished, is a case in point, in this regard.<sup>29</sup> Furthermore, being highest court of law, the Amir could reverse the decisions made by judges.

### **Summaries of A Few Important Chapters of the Work**

The first chapter of the book covers a brief history of Afghanistan from Mir Wais Hotak (r.1709-1715) to Amir Abdur Rehman (r.1880-1901). The chapter has also highlighted the advent of Islam in Afghanistan. It discusses characters and role of various Afghan rulers, decline of Ahmad Shah Abdali's (r. 1747–1772) descendants and the rise of Barakzais under the leadership of Dost Mohammad Khan (1793-1863). Timor Shah, son of Ahmad Shah Abdali made a blunder to divide the country into various territories among his sons. Besides, the legal reforms of Sher Ali Khan (1825-1879) with special reference to his faulty decision to fix head money for murder, led to more killing<sup>30</sup>. The same blunder of dividing territories among the sons was repeated by Dost Muhammad Khan (r.1826–1839&1845–1863) that led to many problems. During this time of change of dynastic rules, the title “King” changed to “Amir”. The title “Amir” was first

<sup>27</sup> Abdul Jabar Sabit, *Laws of Afghanistan: Peshawar, Central Asia*, No. 11, Area Study Center, University of Peshawar, 1982, p.72

<sup>28</sup> Muhammad Hashim Kamali, *Law in Afghanistan A Study of The Constitutions, Matrimonial Law and the Judiciary*, Leiden E.J. Brill 1985, p. 209

<sup>29</sup> Abdul jabar Sabit, *Laws of Afghanistan. Central Asia*, no. 12. Peshawar: Area Study Center, University of Peshawar, 1983, p. 73

<sup>30</sup> Amir Sher Ali Introduced several laws during his reign includes: establishment of military conscription, household taxation, the custom of blood feud or blood money.

adopted by Dost Muhammad Khan, having Islamic meaning of “the commander of the faithful”.<sup>31</sup>

## Chapter II: The Title of the Crown

It discusses the subject of crown and issue of the succession to the throne. Sultan articulates that the issue of succession is a big one in Muslim societies. In West, it is generally understood that Muslims societies like Afghanistan has lacked the system of succession. In East, the right of succession is decided through sword and strength. Sultan narrates further that though the laws in the East on the subject of succession of private property are fully explained but have little or nothing to say on the subject of succession to the throne. He has quoted the view of a writer in this connection, published in Edinburg review (October 1883). In Jews, Turkish Empire and Afghanistan, he quotes the example of Muhammad III, who massacred 19 of his brothers to get the throne.<sup>32</sup>

### Three Modes: Reasons and Difficulties<sup>33</sup>

Sultan argues that Muhammad (PBUH) left a republican government but when he died a question about who will succeed in the government of commonwealth raised. Mohammad had often indicated Ali as his successor, but he had not laid down definite rule for that. The Muslims difficulty is that religion and state were never separated. The qualifications which prevailed for a successor were:

1. Historically the right of the eldest son to the throne had been recognized before Mohammad from time immemorial. In Genesis it is mentioned that leadership in the house of Abraham, descended to his eldest son. He also quotes old Hindu culture, in the same way.<sup>34</sup> Hence there are ample examples in history, in Turkey, Iran and Afghanistan that the eldest son or nearest male relative to the succession of the office of headship, was observed. Even Arabs accepted the rule. The son of Abu Talib (Ali) was the chief of the family and hereditary prince of the city and temple of Mecca.
2. Election by the people, among the Arabs the chieftaincy is not hereditary but elective. There is rare principle of universal suffrage

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<sup>31</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. 7.

<sup>32</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.12.

<sup>33</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.14.

<sup>34</sup> Sultan Muhammad Khan. *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.14.

where all the members of a tribe have a voice in election of a chief. The election is made among the surviving male on seniority of the deceased sovereign. This custom was followed in the choice of successors of Muhammad.

3. Moawyah nominated his son, introducing hereditary principle to the chieftaincy in Islam. After this 14 ruler were nominated in this manner. Hence the rule of hereditary succession of the eldest son has ever since been observed.<sup>35</sup> The king's right to nominate his successor has always been acknowledge. Even in England up to the time of Henry VIII, the uncertainty of the succession to the throne was a continued anxiety to the nation.
4. Wish of the outgoing sovereign, or respect to the expressed wish of the deceased sovereign of Afghanistan:<sup>36</sup> In Afghanistan numerous kings, have successes to the throne when supported by chiefs of the country. But sometimes, a king nominated his son, although he was not the eldest or because his mother was the king favorite. But this nomination often resulted in civil wars. Hence a candidate has never faced difficulties if he was favored by three points: hereditary succession by primogeniture, nomination by his father and approval of the electorate. Amir Abdur Rehman did right thing that he nominated his eldest son.

#### **Comments/Analysis:**

- Among the Muhammadans no law is more complicated than the law of succession.
- In east, laws for private property are defined and explained but not law of succession.
- It is believed in the west that in Muhammadans right of succession is decided through sword and strength. Example of Muhammad III<sup>37</sup> who killed 19 of his brothers
- A civil war is the natural sequence of vacancy.
- Among the Muslims one difficulty is that religion and state were never separated. It frequently happened that a person, who was qualified for being the head of the state, has not been qualified of being the head of the religion.

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<sup>35</sup> Ibid., p.19

<sup>36</sup> Ibid., p.20

<sup>37</sup> Muhammad III (1566-1603) was Sultan of Ottoman Empire from 1595 until his death in 1603. Muhammad III was born at Manisa Palace in 1566 (Turkey), during the reign of his great-grandfather, Suleiman, the magnificent, a well known Ottoman Sultan. Muhammad III was known for notoriety to kill 19 of his brothers and half-brother in order to secure throne. They all were strangled.

### Chapter III: Prerogative of the Crown

The title of the chapter reflects the prerogative of the crown, or the king of the time. But before addressing the main idea, the author touches upon how the coronation and oath taking ceremony of a new sovereign is conducted. He began from the custom prevailed in period during the time of Muhammad (PBUH). In that time, Arab culture allegiance was generally received by placing the right hand on the right hand of the sovereign, as a token of allegiance, started first by Muhammad (PBUH).

But Amir Abdur Rehman changed this method and instead took the oath of allegiance and fidelity from his subjects by taking oath on Quran. Generally in Pakhtun Culture, still prevailing, the oath on Quran is stronger than any other commitment. Amir did this while he was intending to leave Afghanistan for England in 1891. He was trying to bind them tightly. The same oath was extended to all the subjects again in 1895.

Besides, as general custom in Afghanistan, during Dastar Bandi<sup>38</sup> i.e. coronation, the chief of the tribes would put the turban on the head of the new sovereign, then the chiefs would put their swords at his knee, a symbol of submission. Then the name of the new sovereign is put in Khutba or Friday sermon. Besides, his name is also put on coinage for the country and on the Royal Seal.

The author goes into the history of Islam as to how the republican spirit of Muhammad's short rule was changed from elective to hereditary Kingdom<sup>39</sup>. It was because of this change that war and blood was shed, and the system of succession banished.

The author has compared the prerogative of Muslim sovereign with Roman praetors. Here the author makes a very candid debate on how the Orientals ruled with impunity. How Muslim kings could not dispense with Muhammadan laws as they had the power of interpreting them. They made small changes in customary laws and they introduced laws on new points, not been mentioned in Muhammadan laws.

The author has articulated further that in reality, as depicted by many historians there is no limit to the powers of the sovereign in Oriental countries, their word is law and they have the power of life and of death. But exceptions were also there, it doesn't mean that all sovereign had ruled in autocratic way. It is in human nature that they want more power. Even in European history we get examples of Henry VIII, Charles I and James II. Thus the author has discussed the case of Afghanistan, particularly the role and rule of Amir Abdur Rehman, based on outside sources, to reform the legal system.

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<sup>38</sup> Crowning or placing the new turban (investiture of academic turbans)

<sup>39</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.26.



The founding father of Afghanistan, Ahmad Shah Baba was elected, but later, his sons broke down the democratic government into despotic one, resulting in anarchy.<sup>40</sup> The author has quoted Elphinstone<sup>41</sup> that in most Asiatic countries, there are no limits to the power of the crown except upon the endurance of the people. The king is removed only through a general resurrection.

### **Criticism:**

The author though quotes outside sources but in fact he tries to justify Amir Abdur Rehman rule and policies giving it a coating of legality.

In Afghanistan, the power of Durrani aristocracy along with other tribes is a main source of control of royal authority. It is also the source of peaceful maintenance of public privileges. But as they have no statutes law except that of Muhammadan Law and no public record of proceeding for their government, it was impossible that a regular constitution would have developed and grown among them. It is because of certain established customs and opinion which is mentioned here and justify crown powers. These are as follow: Privilege of coinage, privilege being mentioned in Khutba, the right and power to declare war and peace and can make treaties on his own authority.<sup>42</sup>

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<sup>40</sup> Sultan Muhammad Khan. *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.29

<sup>41</sup> Mountstuart Elphinstone (1779 – 1859) book *Account of the Kingdom of Cabul* first published in London in 1815 by M/S Longman Hurst, Rees, Orme, Brown and Murray is the product of his assigned visit to Afghanistan, of which he could only visit the eastern portion and most information was collected at Peshawar from February –June 1809. It took him five years to compose his data in *Poona* (India) and give the document a book form. His associations with Afghans could be counted to around six months. He entered the area beyond Indus (7<sup>th</sup> January 1809) and re-crossed Indus (20<sup>th</sup> June 1809). It is not mere oral collection of data on Afghanistan but is based on all then known oriental (Persian) and European books plus travel accounts. Chapter V Book V of Volume II of Elphinstone's work concerned with judiciary, the role of *Qazi* (judge), the *Mufti* (*Juriconsult*), *Amin-e-Mehkama* (in charge of department) and *Darogha-e-Adalat* (Reader). Mountstuart Elphinstone was a Scottish peer: his father John was Lt. Governor of Edinburgh castle, whose two sons James and Mountstuart joined the East India Company at very Young age. They earned political position being of baronial descent in the company services and Mountstuart appointed as a Resident at Nagpur. Here he learned both Sanskrit and Persian. He also visited Persia in between this period and was charmed by Persian poetry. Elphinstone in all served in India for 31 years (1796-1827) retiring as governor of Bombay. He was also offered the governor generalship of India later but he declined. Elphinstone remained bachelor, yet his house remained attached to India, his nephew was assuming the position of governor at Bombay and Madras. He died in 1859.

<sup>42</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.36.

## **Chapter V: The King in Darbar (Court) and Council**

The author compared the Afghan constitution with British constitution that grew slowly overtime. He says that if someone asks him to define the Afghan legislature, during Amir Abdur Rehman rule. I would just quote the well-known Greek poet Homer. Homer in the *Odyssey* as given in the Sir Henry Main work, the *Ancient Law*, says<sup>43</sup>,

“They have neither assembly for consultation, nor Themistes, but everyone exercise jurisdiction for his wives and his children, and they pay no regard to one another.”

The author however, argues that the present Amir improved the constitution by combining the old customs and laws of Afghanistan with modern additions both from India and western governments, especially from British constitution. He says that the court or Darbar of Amir comprised of three classes of chiefs, the Sardars, the Khans and the Mullahs. Sardars are like British hereditary peers, being members of royal clan. The Khans are representing the area or country while Mullahs are the representatives of religious class. The author explains that tribe in itself is a multiplication of a small family led by its own hereditary chief. Mostly tribes are dominantly unmixed and have their own independent territory. Each tribe branched into several divisions and each of this division is headed by its own independent chief. The name Ulas is used either to the whole tribe or sometime a branch of it. Each chief of the subordinate tribe is subordinated to the chief of Ulas known as Khan. Khan is always chosen from the oldest family of the Ulas. In most cases Amir has the power to remove a Khan at pleasure, appointing one of his relative instead. During Amir Abdur Rehman rule all cases of appointments of Khans could be made with approval of Amir.

In some Ulas, Khan is elected by the people. During the election preference is given on the basis of primogeniture, but more to age, experience and character. When Khan dies two or more of his sons or nephews try to make parties in the tribe and sometime this led to open war that causes great damage, as hostile tribes aligned against each other. Amir Abdur Rehman abolished this culture and now king nominate a new Khan without any loss of time.

The head of clans are always elected by people from the oldest family in it, except sub lower level where superior is always natural. The internal administration of tribe is run by a Khan and assemblies of the head of sub clans. These assemblies are called as jirga. In less important cases Khan always decide things himself, however, when a circumstance admits the sentiment of the whole tribes is ascertained. In rare cases the Khan serves in

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<sup>43</sup> The Greek poet Homer was born sometime between the 12th and 8th centuries BC, possibly somewhere on the coast of Asia Minor. He is famous for the epic poems *The Iliad* and *The Odyssey*, which have had an enormous effect on Western culture, but very little is known about their alleged author.

arbitrary manner without consulting jirga. His example is followed by clans. However, mostly the chiefs are neglected and every sub clan or family asserts itself through its own chief promoting its own interest.

### **Laws of the Kingdom:**

The general law of the Kingdom was Muhammadan which was also adapted to the civil subject of the people. However, their peculiar code, the only one applied to the internal administration of tribe, especially criminal justice, is Pakhtunwali. Pakhtunwali is the way of life of Afghans; a raw system of customary law. The Amir abolished those rough notions of law throughout the whole kingdom but retaining some reasonable customs at the same time.

### **Comments/Analysis:**

The author has accepted the notion that every man has right and duty to do justice to himself, to revenge his own injuries and take redress for wrong and punishment of crime into his own hands. If he cannot avenge his offender, his vengeance is afflicted on his relatives and in some cases on any man of his tribe. The author informed us that this practice has entirely been abolished by Amir Abdur Rehman.

### **Composition of Kingdom:**

Afghanistan, the common wealth is created by assemblage of all under a single sovereign into one state under a king. He was the natural head of the tribe of Durrani. The government of the whole country centered on the king, though he was supposed to consult the Khans, the Sardars and Mullahs.

## **Chapter X: Comments on Private Law**

In the last chapter of the work, the author informs the reader about the system of private laws prevailing in Afghanistan. He has compared the legal contributions of Amir Abdur Rehman with Napoleon (1769-1821) of France, the Justinian<sup>44</sup> and Peter the Great (1672-1725) of Russia, the world caliber leaders. Even Lord Curzon appreciates Amir Abdur Rehman services to reform laws.<sup>45</sup>

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<sup>44</sup> One famous Byzantine Emperor was Justinian I. Justinian ruled from AD 527 to 565. Justinian created a set of laws called the Justinian Code. This code said that the emperor made all of the laws and interpreted the laws as well. The Justinian Code was law throughout the empire. Many of our modern laws can be traced back to the Justinian Code.

<sup>45</sup> But his humble servant, who had the honour of enjoying his confidence for twelve years, as Lord Curzon (1859-1925) says, in one of his friendly letters to the author prefer to call the Amir the "Justinian of Afghanistan", which is a title worthier of him and yet has not been bestowed upon him by any previous writer. Curzon writing is as Follow:

*"My dear Mir Munshi, I congratulate you upon the honourable position that you occupy in the regard of H.H. the Amir who has evidently no more devoted servant than yourself..."*

The work under discussion compares, contrast and justify the laws practiced by Amir. The central theme is to explain the laws of Amir, Muhammadan and Customary law. The author summarizes that during Amir Period there were three laws, Islamic law, law of Amir, and the customary law of various Afghan tribes.<sup>46</sup> The writer held that Amir Abdur Rehman squeezed the three into two, the Fraiz (compulsory and unchangeable) i.e. those strictly lay down by Islam and the Koran and secondly, the laws of Amir and customs of the country. The second category was declared amendable and modified by the Amir to suit the socio-political circumstances of the country.<sup>47</sup>

### Comments/Analysis:

Amir could amend and change the customary law and he was the law giver in respect of local customs and traditions. The author justifies that according to Islam any law in clash with Koran, shall be subservient to it, but all the rest of laws are made by men.<sup>48</sup>

The author praised the reforms introduced by Amir such as introduction of engineering and mechanical industries. He justified Amir strong laws and strong arm method of ruling and cruelties due to the wild nature of Afghans. He refers to various laws introduced by Amir and which were so numerous that even a donkey could not be managed without a law by an Afghan. He refers to the codes dully sealed and signed by Amir for every office. According to Sultan, if someone denies that Amir did not frame any law; it is like an owl that does not see the light of the sun. He also refers to the cages Amir introduced for putting culprits or looters on the road from Peshawar to Kabul.<sup>49</sup> What Amir did, it was done with best intentions in his mind.<sup>50</sup> The author finds justification in the wild nature of people of hills.

### Amir Improvement

The author quoted Stephen Wheeler's work "The Ameer Abdur Rahman" (1854-1937) to explain how Amir administered laws. Amir used his sword and on spot justice himself. In Kabul, he used strong measures to

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*Wishing you all success in you distinguished career, I am, yours very truly, George Curzon."*

<sup>46</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.126.

<sup>47</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.127.

<sup>48</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. 127.

<sup>49</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.119.

<sup>50</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.120.

discourage lawlessness. He refers to Kabul Police code in detail, mentioned by Mr. Wheeler. Evil speaking in streets was forbidden. Evil speaking against the Sayyids (descendants of Prophet), a man of learning, or of a civic elder could be punished by 20 lashes, and a fine of Rs 50.<sup>51</sup> Punishment for dishonest tradesmen who cheat public with fake weights, or adulterate the food they sell, the gambler, the charm purveyor, person who misbehave in mosques, those forget to say their prayers or refuse to hold fast. At one place the author writes, "The man who kissed other people's wives had to be punish with 30 lashes and sending to prison for further inquiry".<sup>52</sup>

During Amir Abdur Rehman rule it was decided to take special cognizance of religious offences. If any free thinking Kabuli omitted to bend his head with due reverence at the hour of the prayers, the police would warn first and in case of continuous disobedience could force by police otherwise refer to Amir as last resort. Earlier, the powers of head of family and clan were enormous but Amir finished this practice. The laws of head of clans were in conformity with the law of Amir and Islam. Similarly, Sultan informed that before Amir Abdur Rehman, laws were recorded on loose papers. But in 1894, Amir introduced written books with each page stamped and number of pages counted as previously used sheets were relinquished and replaced.<sup>53</sup>

### **A Procedure was Adopted for Handling Violations**

At first stage the alleged person would be advised to be careful. After this, if violation continued, a guarantee of his good behavior would be obtained, the last stage was to put him in prison.<sup>54</sup> However, reports against the criminal or offender were to be proved. Mostly, the people were bound to report of a loose character person or criminals and they were arrested on spot. This practice of taking guarantee from near relatives or bonding people to report criminals was also in practice in China in old times. Due to this community involvement in pinpointing criminals a popular aphorism developed, that in Afghanistan there is no single house where there is no spy. Any official or courtier who exceeded his jurisdiction was severely punished. The purpose was the official might not misuse the power. Certain persons and places were more sacred, and wrong committed to them was severely taken, such as, offences against property of orphans, widows,

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<sup>51</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.121.

<sup>52</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. 123.

<sup>53</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.131.

<sup>54</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.136

judges, tax-collectors, and those committed to mosques or other sacred places.<sup>55</sup>

A severe issue pointed by the work is the issue of bribe in administration of justice. Before Amir Abdur Rehman, the greatest drawback in the administration of justice was bribery to officials, and use of false, borrowed or hired witnesses.<sup>56</sup> The issues was solved by creating a special law of evidence, requiring all evidence to be qualified by law and permitting cross examination, to put a check on false witnesses.

### **Comments/Analysis:**

There are many new harsh punishments formulated by Amir, not only highlighted in this work under analysis but also by other sources, but these have been justified by the author. He quotes even outside sources such as remarks of the Wheeler. Wheeler argues that these laws may seem barbarous to Europeans but we must not forget that Orientals look at these things quite in different light<sup>57</sup>. However, the author points out two major fault lines during this period in Afghan society and government. One is the system of torture for the purpose of extorting confession in criminal, political and revenue cases. The torture is so inhuman that can force a person to speak untruth due to pain. Secondly there is no limits to punishments.<sup>58</sup> The author rationalizes this brand of punishments which ultimately led to peace in the kingdom. He writes that the punishment reduced the killing rate as after 15 years of efforts there were only 5 murder cases in the whole kingdom against previous practice of almost 500 to 1000 in a clan of 20000 families.<sup>59</sup>

### **Amir's Contribution to Law<sup>60</sup>**

The author held that Amir Abdur Rehman was quite successful in retaining law and order and ensuring security in the kingdom but against it rebellions were raised by almost every tribe as interference in their internal lives by taking away from them the practice of homicide as well as the private war between the tribes. The tradition of self-revenge in Afghanistan,

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<sup>55</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.138

<sup>56</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.138

<sup>57</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.123

<sup>58</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. 131

<sup>59</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.134

<sup>60</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p.138

the author compares with old England during the time of Anglo-Saxons<sup>61</sup> as well as in Germanic laws<sup>62</sup> one find the idea of wrong to a person or his relative is still primary and that of offence against the common is secondary. The work points out the inherent reasons for all tribal traditions, such as, self-revenge, is because of peculiar Afghan culture.

### **Pushtoonwali**

Elphinstone has said that the general law of Afghan Kingdom was Muhammadan but their peculiar code and the only one applied to their internal administration of criminal justice was Pushtunwali. Pushtunwali or usage of Afghans is a raw system of customary law that prevailed before the introduction of civil government. Pushtunwali may be put in this way that it is every man's right and duty to do himself justice and revenge his own injuries. The author narrates that this still prevailed in Afghanistan. The right of society to restrict and take law in its own hand to redress offences and punish the wrong doers was still not accepted. Probably its roots were in the times when the government could not afford protection to individuals and in such circumstance it was considered beneficial and necessary to take root in Afghan culture. It is still lawful and even honorable to seek the self-revenge mode of redress rather than to leave it to government. The injured pray is entitling to strict retaliation on the aggressor, an eye for eye and a tooth for a tooth. If the offender is out of his power he may inflict on the relative and even tribe of the offender. If no opportunity occurs for revenge he may defer his vengeance for years. But it is disgraceful to neglect or abandon it entirely and it is incumbent on his relations or even tribe to assist him. In many cases retaliation excused lead to new disputes and in serious cases the fighting is often transmitted from father to son. This system encourages assassination and the chiefs of the society or officers of the state are trying to reduce it by levying some compensation to be given to the injured or to his relatives, as it is not thought that society is injured, or that it has any right to punish for the sake of example after the actual sufferer has been satisfied.

### **Comments/Analysis:**

To cut short the author highlights the procedure and point out two laws, Muhammadan and Pushtunwali prevail in afghan society. But in fact it is Pushtunwali, the rude customary law, the afghan usage that provide real procedure.

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<sup>61</sup> The Anglo-Saxon were Germanic tribes who inhabited Great Britain from 5<sup>th</sup> century A.D. They migrated from main European continent.

<sup>62</sup> Several Latin law codes of the Germanic peoples written in the Early Middle Ages (also known as *leges barbarorum* "laws of the barbarians") survive, dating to between the 5th and 9th centuries. They are influenced by Roman law, canon law, and earlier tribal customs

The dominate procedure is self-revenge, private responsibility to retaliate. One reason is clearly that civil society or government took a long time to assert its writ. Hence in the absence of any outside authority private system was necessary and beneficial to keep peace. Hence personal right stands above society. The author also refers to the work on situation of frontier tribes under the British sphere (by Warburton, Eighteen Years in the Khyber) Lord Hobhouse Speech in Annexure 11, throw light on the socio-political conditions of frontier tribes.<sup>63</sup>

### **Status of Woman:**

The author shed light on the subject of status of women. He argues that criminal law related to woman is similar both in west and east. The work ascribes the reason to the influence of Church in Middle Ages. As the religious law of Islam takes its origin from the Law of Moses<sup>64</sup> which is the foundation of Christian law also. The author quotes Amir Ali “Spirit of Islam Chapter XIII” it quotes even Athenians<sup>65</sup> where woman was a chattel, saleable.<sup>66</sup> As with the Romans, and among the Athenians, so with the Afghans, women were originally considered as chattels and part of property.

### **Conclusion**

Following the analysis of the work of Sultan Muhammad Khan in the light of the discourse theory as enunciated by Foucault, the work reflects use of discourse favorable to and justify Amir Abdur Rehman policies, ultimately linked to power and maintenance of status quo. As Foucault held:

“We must be very suspicious of any information which is produced, even when it seems most self-evidently to be adding to the sum of human knowledge, it may at the same time play a role in maintenance of status quo and the affirming of current power relations”<sup>67</sup>

Besides, the work is written in modern format with proper authentic citations, local, non-local, and under theoretical framework, in Foucauldian sense, Islamic one, in order to justify Amir’s son nomination and other related political subjects such as, king absolutism. A number of old civilizations are referred to have had passed through the same stages of development as Afghan society went through. Thus, whatever policies, laws

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<sup>63</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. 142

<sup>64</sup> The name assigned to the whole collection of written laws given through Moses to the house of Israel. The Law of Moses consisted of many ceremonies, rituals, and symbols, to remind the people frequently of their duties and responsibilities.

<sup>65</sup> Athens was a Greek city state and the people living in it are known as Athenians.

<sup>66</sup> Sultan Muhammad Khan, *The Constitution and Laws of Afghanistan*: London, John Murray 1900, p. p. 143-144

<sup>67</sup> Foucault Michel, *Critical Thinkers*, Routledge 11 New Filter Lane, London, 2003, p.60



and punishments were prescribed by Amir Abdur Rehman is somehow rationalized under a discourse as being the need of the hour.

Besides, this work if other two works edited by the same author, autobiography of Amir Abdur Rehman are analyzed it convince the reader that Afghanistan was really a turbulent country, a land of unruly independent tribes, inhibited by orthodox religious class and a society where death was lurking all the time. This fact is reflected in Amir Abdur Rehman work "The Life of Amir Abdur Rehman, Vol. I & II. published the same year make an interesting reading. It is an original depiction on the Afghan society witnessed by a person who was going to become a king.

Though in Foucaultian sense the work under analysis seem to be created in order to construct a positive picture of Amir policies but realities of Afghan land, if read the other works justify a strong hand in order to create a shape in the then prevailed anarchy. Reforms such as related to matrimonial life as highlighted by Muhammad Hashim Kamali, (1985), *Law in Afghanistan: A Study of the Constitutions, Matrimonial Law and the Judiciary*, Leiden E. J. Brill 1985, and crushing the strong role of tribal chiefs and religious leaders are contribution of Amir Abdur Rehman no one would deny. Though at what human cost, Amir Abdur Rehman introduced peace and calm is a question needed to be evaluated as a separate subject in future.

Hence, the work, *The Constitution and Laws of Afghanistan* by Mir Munshi Sultan Mohammad Khan, F.R.G.S. (Fellow of The Royal Geographical Society) Barrister-At-Law, Advanced student of Christ's College, Cambridge read in the 21<sup>st</sup> century may not make much transcending impression. As by now much had been known and written on Afghanistan and its public, yet one centuries back it was indeed a monumental work in a foreign language on laws and legal subject even knowledge on the Afghan constitutional in legal history with in India was limited.

Furthermore, after thoroughly evaluating the work and analyzing, the work shows the writer's originality. He was very relevant and trustworthy of Amir Abdur Rehman and was enjoying status, thus had access to important information. Being the confidante of Amir, this work and richness it reflects speaks of much the author knows about Afghanistan. He, most probably, knows about many things, the internal situation, external affairs and enjoy very personal intimacy to Amir Abdur Rehman. Due to these reasons he was deputed to remain with Amir during the most important historical event, the Durand Mission, in 1893, to discuss and demarcate borders between the British and Afghan kingdom. He was kept behind the curtain to listen to the talks of the British, translate it to the Amir in Dari.<sup>68</sup> Thus, the argument by a section of Afghan writers that he was British spy seems exaggerated. Moreover, after consulting other sources as mentioned above and in the bibliography the work seems to be more authentic and reliable and worth reading for those to understand the judicial administration and laws of Afghanistan.

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<sup>68</sup> Mir Munshi Sultan Muhammad Khan, *The Life Of Amir Abdur Rehman*(edit. Vol. II. London : John Murray, 1900, p.145

## **ANNEXURE: I**

### List of Verdicts (Original Text)

1. Two men charged for the rumour for the death of the Amir from cholera were cut in pieces. Their remains were exhibited in the markets for several days.
2. Mullah Abdur Rahim , leader of the Ulema of Kandahar, who supported Sardar Muhammad Ayub, against Amir Abdur Rehman, (whom the Mullah considered to be infidel for being a subsidy holder of the British government) was personally executed by the Amir to cause a deterrent effect on the other likeminded clergy men.
3. A Mullah, named Khishmash, once made a report against the Amir's own son. The charge was proved to be baseless. The poor (probably unwise) Mullah was blown from the mouth of gun.
4. Timur Shah Ghilzai, once deputy commander in Chief of Amir's forces, was stoned to death for taking part in a rebellion against the Amir.
5. After action against the Shinwaris, the Amir ordered that the heads of all those killed in the battle should be filed up in the shape of two big towers, one at Jalal Abad and the other at the presidential palace Shahmod who encouraged the rebellion.
6. During the first three years of rebellion, five thousand people were blown from guns and the army killed ten thousands. Eight captains were blown from guns for attempting coup against the Amir.

**Source:** Abdul Latif, Judiciary in Afghanistan since the Days of Amir Abdur Rehman, unpublished PhD Dissertation, Area Study Centre University of Peshawar, 2003, p. 19

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# POST 9/11 IMPACT OF TERRORISM ON EDUCATION SECTOR OF FEDERALLY ADMINISTERED TRIBAL AREAS (FATA) AND KHYBER PAKHTUNKHWA (2001-2014)

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## **Abstract**

*The North-Western Pakistan region (Tribal Areas and Khyber Pakhtunkhwa) has been caught up in militancy, conflict, terrorism, insecurity and instability for more than a decade. Militancy is a serious threat in the way of education and has affected the education governance in North-Western Pakistan. Also, the mental and psychological development of children in FATA and KP has been badly affected due to continuous attacks on educational institutions by militants. These terrorist activities and military operations have caused massive displacement of the local residents to different parts of Pakistan. Furthermore, Education has been overlooked by successive governments in FATA and many areas in KP where literacy rate is critically low. These areas already lag behind other provinces socially and economically. Poor governance, political instability and terrorism have resulted in illiteracy and deprived the students of their basic right to education. This paper underlines the status of education governance by analyzing the impact of militancy and instability on the education. Moreover, the paper is structured to show how these problems can be addressed through a more comprehensive strategy and programs of action by the government of Pakistan.*

**Key Words:** Education Governance, Tribal Areas, Khyber Pakhtunkhwa, Militancy, Education institutions, Literacy Rate, Military Operations, Schools, Colleges, Psychological.

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## Introduction

North Western Pakistan is among the underdeveloped areas of Pakistan and is the epicenter of instability and turmoil. According to the report; “*Poverty Profile of Pakistan*” 60% in FATA while 39% in KP are living below the national poverty line.<sup>1</sup> Following the US invasion of Afghanistan, the government of Pakistani deployed its arm forces on its border with Afghanistan to clear the area from militants. Military operations and drone strikes to target the militants initially did not succeed but it sowed the seeds of hatred in the area towards the Pak-Army. The reactionary elements took arms against Pakistani government and formed various militant organizations under different banners e.g. *Tahrik -e-Taliban Pakistan*, *Tahrik-e-Nafaze Shariat-e-Muhammadi* etc. They join hands and started a war against Pakistani government and targeted schools and colleges in FATA and Khyber Pakhtunkhwa.

The activities of the militants were initially on low scale but gathered momentum when Pakistan’s Army carried out major operations against terrorists like Operation *Al Maizan* (North Waziristan Agency, 2002-2006), *Operation Zalzala* (Spinkai, South Waziristan, 2008), *Operation Sher Dil* (Bajaur Agency, 2009), *Rah-e-Haq* (Swat Valley, 2007), *Rah-e-Rast* (Swat,2007-2009) and Operation *Rah-e-Nijat* (South Waziristan, 2009-2010).<sup>2</sup>

According to the Report of Human Rights Commission of Pakistan, 505 schools were damaged or destroyed in 2009.<sup>3</sup> The militants in tribal areas want to maintain their own social and religious agenda. For this purpose to destroy and dismantle the education sector is their main objective.<sup>4</sup> In 2012, about 97 boys’ and 188 girls’ schools have been blown up by the militants in Swat. On 9 October 2012, Malala Yousafzai, along with two other students was shot by TTP to name the few incidents.<sup>5</sup>

One such incident occurred on 16 December, 2014, when a group of Pakistani Taliban militants entered the auditorium and classrooms of the Army public school and fired indiscriminately that resulted in the killing of more than 140 children, in addition to burning books, class rooms and

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<sup>1</sup> Oxford Poverty and Human Development Initiative. “*Pakistan Country Briefing*”, *Multidimensional Poverty Index Data Bank*. OPHI, University of Oxford 2017. Retrieved from: <http://ophi.org.uk/multidimensional-poverty-index/mpo-2015/mpo-country-briefings/>. Accessed on 19/5/2016.

<sup>2</sup> Waqas M., *The Impact of Rising Terrorism on Socio-Economic Culture of FATA*. FATA Research Center 2010. Retrieved from: <http://www.frc.com>. Accessed on 15/4/2016.

<sup>3</sup> Elias, G., *The Pakistani Taliban War on Education*. 2014. Retrieved from <http://www.foreignpolicy.com>. Accessed on 7/7/2015.

<sup>4</sup> Pervez, H. *Education and the State: Fifty Years of Pakistan*. Islamabad: Oxford University Press. 2005, p.32.

<sup>5</sup> Bureau Report, Peshawar. “Militancy keeps 600,000 KP children out of school.” Daily Dawn, September 11, 2012, p.3.

human bodies.<sup>6</sup>

This paper is structured in two sections. The first section discusses the impact of militancy and instability on the education governance. While the second section discusses strategies of the government for the reconstruction of educational institutions in FATA and KP. Moreover, it frames recommendations to policy makers to develop and stabilize the region along with sustainable peace.

### **Objectives of the Study**

- To explore the status of education governance by analyzing the impact of militancy on education sector in North-Western (FATA and KP) Pakistan.
- To explore the intensity of the destruction of educational institutions caused by militancy and instability.
- To find out the impact of displacement on education governance of FATA and KP.
- To assess the status of strategies and efforts of the government for the reconstruction and reforms in the education governance in North-Western Pakistan.

### **Education Governance in North-Western Pakistan**

According to Article 25-A of the Constitution of Pakistan, the state is primarily responsible to root out illiteracy and make sure free and compulsory education for all citizens of Pakistan.<sup>7</sup> KP and FATA are far below in literacy rates than the rest of Pakistan. In Punjab, literacy rate is 64% while in Sind it is 56%. In FATA the total literacy rate is 17.42 percent. Before 9/11 literacy rate in FATA was 24% according to *Annual Statistical Reports of Government Schools in FATA*.<sup>8</sup> On the other hand, the overall literacy rate in KP is 50 percent. This shows the alarming situation of overall literacy conditions. Illiteracy is particularly higher among young men aged 15-30 that provides a huge resource for militant recruitment.<sup>9</sup>

The government has paid little attention to bring educational reforms in FATA and KP. The lack of modern schools, having no medical and engineering college or university, FATA is still in the dark ages. Many

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<sup>6</sup> Ismail, K. "Taliban massacre 131 school children: Principle among 141 dead in Attack on Army Public School." Daily Dawn, June 6, 2014, retrieved from Dawn News: <http://www.Dawnnews.com>. Accessed on 4/4/2015.

<sup>7</sup> Naeem, S. "Right to Education." Daily Tribune Express. Peshawar, June 7, 2015, retrieved from <http://www.expresstribune.com>. Accessed on 13/5/2016.

<sup>8</sup> Mureeb, M. "FATA prepares to boost Literacy Rates Through Enrollment Drive." Daily Tribune Express. Peshawar, June 14, 2015, retrieved from <http://www.expresstribune.com>. Accessed on 13/5/2016.

<sup>9</sup> Daily *The Nation*, Peshawar, May 9, 2013, 12.

children are unable to get access to education due to the fear of attacks on schools or the long distance to the nearest school. Many of them enrolled do not complete a full course of study; and those who do, suffer poor facilities and security threats, that negatively impact their education.

Lack of basic facilities including drinking water, fans, furniture, and maintenance work, lack of sufficient girl's schools, transportation, and lack of higher education are hurdles for educational institutions to cross. Moreover, it has also been reliably confirmed that most of the schools cannot be physically verified and that only exists on "paper".<sup>10</sup>

Such paper Schools are called "Ghost Schools", and most often these schools are used by tribal *Malaks* or local influential people as their business centers or personnel guest houses. A *Malak* is the representative of his tribe in the political administration controlling each agency of FATA. These *Malaks* are the blue eyed of the political administration and reap all benefits while hundreds of people are deprived even of their basic rights. Hence such a situation presents a grim state of affairs in FATA and KP in terms of education which is the key to development.

### **Instability and Education Governance in North-Western Pakistan**

Security situation got worsened when the Pakistani Taliban took refuge in FATA. There has been a violent trend to blow up schools at night in KP and FATA. The perpetrators used small, improvised devices controlled with remote or timers that rarely cause human casualties. Not only the government-run schools were targeted but also many private schools were damaged. Sometimes the responsibility of the attacks was claimed by *Tehreek-e-Taliban* Pakistan.<sup>11</sup>

Schools were frequently attacked as they are state-run institutions and they promote the type of education opposed by extremists and are therefore legitimate targets. This has triggered attacks on schools in FATA and KP. On the other hand, the camping of the armed forces in the schools has led to further the attacks by anti-state elements as happened in Bara Tehsil of Khyber Agency, and in North & South Waziristan. More generally, disrupting the education sector and destabilizing areas is part of a wider strategy adopted by the militants.

As mentioned earlier since 2004, Pakistan's Army carried out operations to eradicate militancy. The aim of military operations is to restore peace in FATA but due to ongoing militancy, peace is still a distant dream. As a result of these military operations the physical infrastructure and services

<sup>10</sup> Haq, R. "Round and Round: Higher Education in FATA still a Pipedream." Daily Tribune Express. Peshawar, September 8, 2014. Retrieved from Express Tribune: <http://www.expresstribune.com>, Accessed on 7/6/2015.

<sup>11</sup> Nazakat, A. "The Impact of Militancy on Education in FATA." *Tigah*, Islamabad: FATA Research Centre 2005. Retrieved from: <http://frc.org.pk/tigah/>. Accessed on 28/06/2015.

particularly education sector of FATA and KP have been significantly damaged.<sup>12</sup>

In 2014, the KP government took a decision of closing down the schools and holding back educational activities for some days due to rising insurgency across the region. The terrorist attacks and operation *Zarb-e-Azb* in North Waziristan, endangered the future of 85,000 students while leaving 955,900 people homeless in the tribal areas.<sup>13</sup>

The Taliban took the responsibility for attacking the International Islamic University in Islamabad on Oct 20, 2009, retaliating to Pakistani army offensive in South Waziristan. Two suicide attackers bombed a women's cafeteria and a faculty building at an Islamic University in Pakistan Capital, killing two people and wounding 20 others.<sup>14</sup>

In addition, there have been many attacks on school buses and teacher vans across FATA and KP as well. In September 2011, the militants attacked a school bus that was carrying school children home from Khyber Model School in Peshawar. When the target was missed, they opened fire with guns on the vehicle. A pupil aged 15, who was among the injured, said that, he tried to take some other students off the bus during the shooting. But they were shot at from the other side.

Moreover, Most of the attacks were carried out in the form of bombings. In an incident where a bus carrying disabled school children in Peshawar in May 2011, was bombed injuring 7 students.<sup>15</sup> In November 2013, the militants abducted 11 school teachers from Hira Public School in the Khyber agency because they had helped in a polio vaccination campaign meant for schoolchildren.<sup>16</sup> From Khyber Agency also Farida Afridi, director of NGO in Jamrud area, was shot dead On 4 July 2012 as she was providing education and training for women.<sup>17</sup>

On Dec 8, 2012, Zarteef Khan Afridi, the coordinator of the Human Rights Commission of Pakistan in Khyber Agency, who was working as a head teacher, was shot dead on his way to the school in Jamrud. He had received threatening letters by the Taliban for opposing them and supporting

<sup>12</sup> Khawar, G. "Military Operations Affected Education in FATA." *Daily Dawn*. Peshawar. April 4, 2013. Retrieved from <http://www.dawnnews.com>. Accessed on 17/06/2015.

<sup>13</sup> Soofi, A. *Legal Challenges to Military Operations in Pakistan: The Case of FATA*. New York: Georgetown University Press. 2014, 34.

<sup>14</sup> *Daily Dawn*, Islamabad, March 21, 2009 8. Retrieved from <http://www.dawnnews.com>. Accessed on 22/6/2015.

<sup>15</sup> *Global Coalition To Protect Education from Attack (GCPEA) Report*. 2015. Retrieved from: <http://www.protectingeducationfromattack.com>. Accessed 21/06/2015.

<sup>16</sup> Akhtar, H. "Teachers Shot Dead by Militants." *Daily Express Tribune*. Peshawar. May 15, 2014. Retrieved from <http://expresstribune.com>. Accessed on 20/6/2015.

<sup>17</sup> Bureau Report. "Women NGO Worker Shot Dead." *Daily Express Tribune*. Peshawar. June 2014. Retrieved from <http://expresstribune.com>.



women's rights.<sup>18</sup> In January 2013, five female teachers returning from schools near Swabi in KP province were gunned down.<sup>19</sup> Accessibility beyond primary schools is also a serious problem because there is one middle school for every nine primary schools.

In 2010, Taliban assassinated the vice chancellor Dr. Muhammad Farooq, of a supposedly liberal University in Mardan. He was counselling at a school that was set up by Pakistan's Army with the help of international donors where 150 boys who were liberated by military forces were reading. As per reports of the New York Times, 6 university professors and intellectuals including him, were murdered within one year.<sup>20</sup> On January 2014, a ninth grader Aitazaz Hassan Bangash bravely stopped a suicide bomber from blowing up his school in Hangu district at the cost of his own life.<sup>21</sup>

The city of Peshawar has often been targeted by the militant outfits because it is adjacent to FATA on three sides. The attack on army public school was a soul shaking tragedy and the most violent terrorist act in the history of Pakistan. Khalifa Umer Mansoor, the commander of Taliban, released a video message directly threatening Pak Army of slaughtering more children. The school, operated by the Pakistan Army, was an intended target. Responsibility for the massacre was claimed by the TTP; they said that they acted in retaliation for the army's Zarb-e-Azb operation and the killings of Taliban at the hands of Pakistani authorities.<sup>22</sup>

Not just the Taliban, a segment of the *Madrasah* establishment, too, opposes formal education provided by the government, looking on formal education as un-Islamic and believing that this system trains 'secular' generations-secular being thought of as a negative attribute by most Pakistani clerics and the Taliban. Taliban have claimed that they are deadly against secular and western education because Shariah law orders Muslims to be against it. All people must be trained for Jihad.<sup>23</sup>

During the last eight years of uncertainty and violence in the area children have suffered mentally, socially, emotionally, and psychologically. And now their academic career has been adversely affected by the

<sup>18</sup> Ibrahim, S. "HRCP's Coordinator Shot Dead in Peshawar." *Daily India Today*. New Delhi. June 5, 2012. Retrieved from <http://www.Indiatoday.com>. Accessed on 9/6/2015.

<sup>19</sup> Bureau Report. "Gunmen Kills Five Female Teachers." *Daily Tribune Express*. Peshawar. September 12, 2013. Retrieved from <http://www.Dailyexpress.com>. Accessed on 10/6/2015.

<sup>20</sup> *Daily The News*. Peshawar. October 3, 2010. Retrieved from <https://www.thenews.com.pk/archive/print/609018-vc-of-swat-varsity-shot-dead-in-mardan>. Accessed on 20/6/2015.

<sup>21</sup> Aitazaz Hasan. "Tributes to Pakistan Teenager Killed." *BBC News*. November 3, 2014. Retrieved <http://www.bbcnews.com>. Accessed on 14/6/2015.

<sup>22</sup> Tahir Khan. "TTP claim responsibility for Peshawar school attack". *Daily Express Tribune*. Peshawar. December 16, 2014. Retrieved from <https://tribune.com.pk/story/807574/ttp-claim-responsibility-for-peshawar-school-attack/>. Accessed on 21/6/2015.

<sup>23</sup> *The News*. (2012). Devastation: Bombing of Schools in KP and FATA. Retrieved June 17, 2015, from Dawn News: <http://www.dawnnews.com>

displacement. In the wake of military operations in FATA, majority of the children came with the complaint of depression, phobias, acute stress disorder, insomnia and post-traumatic stress syndrome. In 2009, about 97,000 psychiatric cases were reported from the violence-hit areas of FATA. The symptoms of psychological illness have been estimated to be carried by every sixth child. In 2011, approximately 90,000 patients were examined at a local hospital in FATA where about 50,000 people had suffered due to violence caused by militancy and military operations.<sup>24</sup>

KP has 2 million out of school children. Those who are already in schools are not learning to an acceptable standard. An estimated 7 million students are out of school in FATA. Due to the unavoidable circumstances created by militancy; around 600000 students have missed one or more years of their education.<sup>25</sup> These adolescents deprived of education can be easily exploited by the militants.

### **Destruction of Education Institutions in North-Western Pakistan**

The volatile state of affairs in FATA has affected higher education in the entire tribal belt. Almost all colleges in all parts of FATA have come under attack as the wave of militancy has swept not only Bajaur, Mohmand, Kurram, Khyber, South and North Waziristan agency but Darra Adam Khel, Bannu, Swat. The militants blew up 7 colleges and two hostels (Government Degree College Barkhalozi Baja, Government Degree College Nawagai and Government Post Graduate College, Khar Hostel in Bajaur Agency, Government Degree College Lakaray and a Girls Hostel Kandahari in Mohmand Agency, Government Degree College Dara Adam Khel and Government Degree College Ladah in South Waziristan Agency) have been raised to the ground by bomb blast (Syed, 2010). Mr. Ahmad Ali, lecturer and inhabitant of Khyber Agency claims: "The only two degree colleges in Darra Adam Khel and FR Peshawar have already been occupied by security forces and they are still in occupation of military forces."<sup>26</sup> List of fully damaged colleges is given below.

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<sup>24</sup> FATA Research Center [Seminar Report]. *Social and Psychological Consequences of Violence in Fata: Issues and Challenges*. Peshawar, FATA Research Center, September 17, 2013. Retrieved from <http://frc.com.pk/wp-content/uploads/2014/05/SPCV-in-FATA.pdf>. Accessed on 10/6/2015

<sup>25</sup> *Daily Dawn*, Peshawar. May 15, 2011. Retrieved from <https://www.dawn.com/news/629053>. Accessed on 23/6/2015.

<sup>26</sup> Ahmad Ali, Shinwari, Interviewed by author, FR Peshawar, FATA, Pakistan, June 30, 2015. He is a lecturer of Political Science at Government Degree College Barra, Khyber Agency, FATA.

**Table 1: Fully Damaged Colleges in FATA in the Year 2013-2014**

<b>Colleges Destroyed</b>	<b>Level of Damage</b>
Government Degree College Dara Adam Khel	Fully Damaged
Government Degree College Ladah in South Waziristan Agency	Fully Damaged
Government Degree College Nawagai in Bajaur Agency	Fully Damaged
Government Degree College Lakaray in Mohmand Agency	Fully Damaged
Government Post Graduate College Khar Hostel in Bajaur Agency	Fully Damaged
Girls Hostel in Mohmand Agency	Fully Damaged
Government Degree College Ladah in South Waziristan Agency	Fully Damaged
Government Degree College Lakaray in Mohmand Agency	Fully Damaged

**Source:** *Annual Statistical Report of Govt. Institutions in FATA.2013-2014*

During the years of 2013-14, 731 schools succumbed to militancy in FATA and Frontier regions. Among them South Waziristan received a major blow with the destruction of 27 schools while Khyber agency suffered the destruction of 112 schools. In Khyber agency 63 schools were destroyed that consisted 35 boy's schools and 28 for girls. At least 162 schools in Orakzai agency suffered the same fate.<sup>27</sup>The number of schools turned into wreckage in Bajaur agency is 85 of which 64 were boys and 12 girl's schools. In Mohmand agency the total number of demolished schools is 109 of which 81 were boy's schools.<sup>28</sup>

In addition, during the period of 2013-14, a total of 28 schools in the Frontier region of Kohat were sabotaged, where half of them were girl's schools. In FR Bannu, 5 boy's school, in FR tank 1 and in South Waziristan 9 schools received the brunt of terrorism. Out of 168, 92 schools were boys schools nearly 70 schools in Kurram agency bit the dust by militancy and flood of which 54 were boy's and 16 girl's schools.<sup>29</sup>

<sup>27</sup> Naqwi, Ahmad. A. *The Impact of Militancy on Education in FATA*. FATA Research Center, Islamabad. December 1, 2014. Retrieved from <http://www.frc.com>, Accessed on 22/6/2015.

<sup>28</sup> *Daily The Nation*, Peshawar, April 3, 2013, 12.

<sup>29</sup> Asad Zia, "Education woes: 551 schools in FATA, FRs devastated by militancy, floods in 2013-14." *Daily Tribune Express*. Peshawar, November 3, 2014. Retrieved from <https://tribune.com.pk/story/785218/education-woes-551-schools-in-fata-frs-devastated-by-militancy-floods-in-2013-14/>. Accessed on 23/6/2015.

Moreover, Khyber Agency is among the areas worst hit by militancy. Hundreds of government-run primary, middle, high, higher secondary and collages in Khyber Agency had been closed down either by the government due to conflict or due to militant attacks on schools. Miss Shazia contended that the causes of rapid dropouts are lack and inconvenient location of schools, poor teaching quality and poor parenting. Most schools are either overcrowded or still damaged.<sup>30</sup>

Before army was sent to this region in 2014, many of the schools and colleges were not functional as they were under the use of militants as their hideouts and training centers. Several schools and colleges remained closed for more than a year in Bara Tehsil of Khyber agency due to prolonged curfews. An alarming 64% of children quit school before reaching Class 10th. Due to mass displacement from Bara Tehsil of Khyber Agency, the dislocated children have been reading in tent schools now. Due to the poor financial status, youth in Bara remained illiterate which caused their joining militancy.<sup>31</sup>

Aftab Afridi, an inhabitant of Bara, opined that the government discriminates between schools of developed and underdeveloped localities by focusing expenditure on schools in developed areas. But at least 30 schools were opened in tents by the government to continue educational activities for children in Bara.<sup>32</sup> This portrays a very dismal picture of education in FATA and KP. The attacks on students and school facilities have a devastating impact on both education sector and society as a whole. A resource-poor province such as KP can ill afford to repair and rebuild schools following attacks of this nature.

According to Annual School Census Report of Government Institutions in KP (2012) released by Elementary and Secondary Education Department, More than 3400 schools were vandalized in Peshawar, Noshehra, Kohat, Hangu, Bannu, Lakki Marwat and in many other areas.<sup>33</sup> Many teachers are understandably reluctant to work in insurgency-hit districts due to lack of state protection. The teachers are hesitant to render their services in an area where even the state can't protect them. On February 11, 2014, three primary school teachers were killed in Hangu district when they were going home from school. After three months, two high school teachers were shot dead in the same district.<sup>34</sup>

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<sup>30</sup> Shazia, Interviewed by author, Landi Kotal, Khyber Agency, FATA, Pakistan, June 30, 2015. She is working at FATA Secretariat, Warsak Road Peshawar.

<sup>31</sup> Ibrahim, Shinwari. "Bara in a State of Ruin." *Daily Dawn*. Peshawar, February 1, 2015. Retrieved from <https://www.dawn.com/news/1160716>. Accessed on 24/6/2015.

<sup>32</sup> Aftab Afridi, Interviewed by author, Barra, Khyber Agency, FATA, Pakistan, June 10, 2015. He is a lecturer of History in Government Degree College Barra, Khyber Agency, FATA.

<sup>33</sup> Islamuddin, S. "Over 3000 Schools Destroyed in FATA." *Daily Express Tribune*. Peshawar, January 12, 2015. Retrieved from <http://www.expresstribune.com>. Accessed on 24/6/2015.

<sup>34</sup> Akhtar 2014

The most affected district in KP is Swat where 152 schools have been brought down. Charsadda comes after Swabi where militants destroyed 16 schools.<sup>35</sup> The militants destroyed 23 schools in Dir Lower and 22 in Dir upper districts respectively. Ten schools have been destroyed in Buner and twenty in Shangla. In July 2014, the education department claimed that 160 primary and secondary schools, including 13 in Peshawar, remained closed due to the activities of militant groups in KP.<sup>36</sup>

In KP militants were in control of Swat Valley in the beginning of 2009. They were hard-liner in their interpretation of Sharia Law and were deadly against female education. They outrightly banned girls schooling in January 2009, and forcefully closed 900 schools to stop enrolment of female pupils. In Swat district some 8,000 female teachers and 120,000 girls stopped attending schools. Though later on the area was regained by Pak Army but the female teachers and schoolgirls were too frightened to go back to their schools nearly a year after the military had gained the control. In Swat alone, around 200 educational institutions have been dismantled at the end of 2011.<sup>37</sup> Mr. Safiullah maintained that the rural schools in Swat are deficient in necessary equipment and lack resources such as science laboratories, computers and the unavailability of teachers to teach science subjects.<sup>38</sup>

After 9/11, many educational institutions have been occupied either by militants or security forces. This led to the deprivation of the children that lived in those areas. In 2009, most of the schools in Swat district were occupied by Pakistani military thus halted the education of around 10000 children in Swat district. Students had already suffered due to curfew and violence in FATA and after displacement, children had lost opportunities to continue education.<sup>39</sup>

Many students in north and South Waziristan, Kurram and Bajaur agencies could not continue their education and many left it all together due to the unavoidable circumstances of security threat and unleashed insurgency in the area...These schools were used by the militants as their

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<sup>35</sup> Islamuddin, S. "Over 3400 Schools Destroyed in KP." *Daily Express Tribune*. Peshawar, June 15, 2015. Retrieved from <https://tribune.com.pk/story/393911/over-3000-schools-destroyed-in-militancy-disasters-official/>. Accessed on 24/6/2015.

<sup>36</sup> Usman, Jalal. "Educational Institutions to Remain Closed." *Daily Dawn*. Peshawar, December 17, 2014. Retrieved from <http://thepeshawar.com/news-and-events/educational-institutions-to-remain-closed/>. Accessed on 14/6/2015.

<sup>37</sup> Asad Hashid. "The fight for education in Pakistan's Swat." *Aljazeera Online*. October 15, 2012. Retrieved from <http://www.aljazeera.com/indepth/features/2012/10/2012101516347715708.html>. Accessed on 23/6/2015.

<sup>38</sup> Safiullah, Interviewed by author, Mohmand Agency, May 11, 2015. He is School Teacher at Mohmand Agency, FATA.

<sup>39</sup> Asad Hashid. "The fight for education in Pakistan's Swat." *Aljazeera Online*. October 15, 2012. Retrieved from <http://www.aljazeera.com/indepth/features/2012/10/2012101516347715708.html>. Accessed on 23/6/2015.

hideouts before the military operations. After military started operations in the area, many schools and colleges suffered as a result of it. Govt. Degree College for boys Meeran Shah is such an example of the affected educational institutions. Missiles and mortar guns were fired at these buildings and since major parts of the buildings were destroyed, they couldn't be used for educational purposes. In the same way a girls degree college where about 200 girls were enrolled was rendered unsuitable in Meeran Shah as it was under the use of frontier corps. In 2012, similar cases were reported in all the other troubled Agencies.<sup>40</sup>

According to the Annual Statistical Report of Government Educational Institutions: 2013-2014 released by FATA Secretariat Directorate of Education, South Waziristan stands atop among the among the most suffered agencies with 427 dysfunctional educational institutions. It is followed by Khyber agency with 267, Orakzai 226, Kurrum 97, Mohmand 91 and north Waziristan with 4 dysfunctional institutions. Because of militancy 9 schools were declared closed in Bajaur agency. In frontier regions Kohat greatly suffered with the closure of 16 educational institutions for both boys and girls.<sup>41</sup>

During the years of 2013-14, 731 schools succumbed to militancy in FATA and Frontier regions.<sup>42</sup> Over 2499 educational institutions are completely closed due to worsening law and order situation.<sup>43</sup> Mr. Fazal Muhammad, a resident of FATA shared that the lack of middle schooling opportunities for girls has led to the discouragement of their parents to appreciate the value of primary school education. Enrollment rate is low but drop out is faster. He further added that this happens due to the perceived low economic value of education, poverty, improper school location, lack of involvement of the parents and above all the unavailability of staff and schools where they are needed the most.<sup>44</sup>

## **Displacement and Education**

Since 2008, a large population of FATA has been frequently displaced to other areas which severely affected the education of the children. Pakistan's unsteady economy shouldered the burden of almost 3 million

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<sup>40</sup> *Daily Dawn*. Peshawar, February 25, 2012, 12. Retrieved from <https://www.dawn.com/news/698333>, Accessed on 11/6/2015.

<sup>41</sup> Khawar, G. "Military Operations Disrupted Education in FATA." *Daily Dawn*. Peshawar, December 23, 2013. Retrieved from <http://www.Dawnnews.com>. Accessed on 26/6/2015.

<sup>42</sup> Islamuddin, S. "Over 3000 Schools Destroyed in Militancy." *Daily Express Tribune*. Peshawar. 23 June, 2012. Retrieved from Express Tribune: <http://www.dawnnews.com>. Accessed on 12/6/2015.

<sup>43</sup> Usman, M. (2014). Over 800 Schools destroyed in KP and FATA. Retrieved June 20, 2015, from *The News*: <http://www.thenews.com>.

<sup>44</sup> Fazal Muhammad, Interviewed by author, Bajaur Agency, FATA, Pakistan, June 16, 2015. He is a School Teacher at Bajaur Khar.

IDPS from FATA, Swat and other adjacent localities in 2008.<sup>45</sup>In 2009, about 3000 people fled their homes and left Waziristan to get settled in tank, DI Khan and other nearby places.<sup>46</sup>For about 105000 displaced children of FATA UNICEF set up temporary learning centers and were later handed down to the government to be transformed into permanent public schools. Today in and around the city of Peshawar more than 900000 people live in camps. Teachers, students and their families have shifted to safer places halting their studies for a long period of time. Military operations and drone strikes, which had depopulated Bajaur and parts of neighboring Mohmand Agency, with an estimated 300,000 people fleeing their homes.<sup>47</sup>

Children of the displaced families have been enrolled in cities or IDPs camps in all public, private or NGOs run schools. Most of the displaced population has chosen to take refuge in hosting communities within the neighboring province of KP.

In 2015, the latest wave of displacement has affected up to an estimated 310,729 families—around 2 million IDPs—of which around 70% are women and children.

The continued presence of IDPs is increasing pressure on the already stretched resources (particularly water, education, and health) of the hosting districts in KP. Pak army claims that they have cleared over 80 percent of the area of militancy. Nevertheless, no plan for the return of the displaced persons and families has been declared yet.<sup>48</sup> Mr. Muhammad Adil Wazir, a resident of FR Bannu, opined; due to militancy and military operations the families hundreds of thousands of students have fled the area resulting in the disruptions of the education of their children.<sup>49</sup>

A detailed breakdown of displaced families per agency/region in 2014-2015 is given in Table 2.

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<sup>45</sup> Waqas, C. *The Impact of Rising Terrorism and Military Operations on Socio Economic Culture of FATA of Pakistan*. Islamabad, FATA Research Center. 2014. Retrieved from <http://www.frc.com>. Accessed on 27/6/2015.

<sup>46</sup> UNICEF. “*Temporary Learning Schools for FATA Students*.” UNICEF, Islamabad: Pakistan 2012. (September 11, 2012). Retrieved from [https://www.unicef.org/pakistan/UNICEF\\_-\\_Annual\\_Report\\_2012\\_-\\_Version\\_8.0.pdf](https://www.unicef.org/pakistan/UNICEF_-_Annual_Report_2012_-_Version_8.0.pdf). Accessed on 22/6/2015.

<sup>47</sup> *Daily Dawn*. Islamabad, July 08, 2014, 8. Retrieved from <https://www.dawn.com/news/1117879>. Accessed on 1/7/2015.

<sup>48</sup> Government of Pakistan, FATA Secretariat. “FATA Sustainable Return and Rehabilitation Strategy.” March 2015. Retrieved <http://www.pk.undp.org/content/dam/pakistan/docs/CPRU/iidps2014/02-R&R%20Report%20Format.pdf>. Accessed on 2/7/2015.

<sup>49</sup> Muhammad Adil Wazir, Interviewed by author, FR Bannu, FATA Pakistan, June 20, 2015. He is a lecturer at Miran Shah College.

**Table 2: Breakdown of Displaced Families per Agency/Region in 2014-2015**

<b>Agency</b>	<b>Total registered IDPs</b>
Bajaur	86,407
FR Tank	2,256
North Waziristan	176,396
South Waziristan	94,096
Khyber	176,396
Kurram	56,122
Mohmand	48,954
Orakzai	48,656
Total	614,934

**Source:** *R&R Strategy Report.2014-2015. Elementary and Secondary Education Department.KP*

### **Government Strategies for the Education Governance Reforms**

Since inception of Pakistan, the FATA and KP has had the poor standard of basic education and recently the terrorism further deteriorated the Students' achievement level while the dropouts have gone up. Many large and small projects have been launched to overcome the hurdles and enhance quality of education. These programs include the construction of new buildings, the provision of improved textbooks and capacity building and infrastructure development components. As reported by the Economic Survey of Pakistan 2005-06, Pakistan spends 2.1 percent of GDP on education sector. Some encouraging steps have been taken like the new constitutional obligation to impart free and compulsory education to all children between the ages of five and sixteen.

Constant exposure to conflicts and disasters has further exacerbated this challenge by increasing the need for reconstruction and rehabilitation of schools. The government is taking ambitious steps to improve the service delivery. This includes reconstruction programs to increase the number of classrooms and up gradation of Middle to High Schools. The pace of progress on these reforms, however, has been a constant challenge. Out of total 29,037 government schools in the province in September 2013, 11786 were without electricity and 88, 94 were without drinking water facilities.<sup>50</sup>

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<sup>50</sup> Government of Pakistan, FATA Secretariat. Post Crisis Needs Assessment Khyber Pakhtunkhwa & Federally Administered Tribal Areas. September 2010. Retrieved from <http://lgkp.gov.pk/wp-content/uploads/2014/03/10.-Consolidated-report-on-the-Post-Crisis-Needs-Assessment-for-KP-and-FATA.pdf>. Accessed on 23/6/2015.



The government is concerned about raising the level of education in FATA that touches the lowest ebb in the whole country. The government is providing services and infrastructure to help achieve the stated goals and it has the responsibility to establish primary, secondary, higher secondary, undergraduate and postgraduate educational institutes in all tribal agencies. The government of KP has announced a new program to construct schools wherein 100 high schools will be modeled on global standards of education.<sup>51</sup>

Alternative temporary education solutions have been provided to IDPs for reactivating schooling of children in the surrounding areas, such as tents facilities. All efforts have been made to ensure that these temporary tent schools are safe from militant attacks. The government of Pakistan aims to ensure that all rehabilitated schools are made more resilient and provided boundary walls, better sanitary facilities and safe drinking water, etc. These rehabilitation and reconstruction efforts have been carried out in coordination with UNICEF, USAID and UNESCO. Basic foundations have been laid down across all Agencies and Frontier Regions of FATA to allow the IDPs of FATA to return home and have basic living conditions in their areas of origin so that the students of IDPs can continue their education.

The following table shows the ongoing educational programs of government.

**Table 3: Ongoing Educational Programs of Government of Pakistan**

1	Primary and Secondary Education
2	Up gradation of one High School to Higher Secondary Status in Mohmand Agency.
3	Up gradation of Two Middle Schools to High Status in Mohmand Agency
4	Up gradation of Eight Primary Schools to Middle Status in Mohmand Agency
5	Reopening of Functional Community Schools in Mohmand Agency
6	Establishment of 4 Primary Schools in Swabi.
7	Construction of buildings for 09 Community Schools in Mohmand Agency
8	Rehabilitation/Reconstruction of damaged educational institutions in Mohmand Agency
9	Up gradation of 18 existing Education Facilities in Khyber Agency. (GGPS = 7, GPS = 8)
10	Construction of Additional Class Rooms in existing Educational Institutions in Khyber Agency
11	Establishment of 10 Primary Schools (04 GPS & 06 GGPS) in Khyber Agency

<sup>51</sup> *Daily The News*. Peshawar, February 12, 2015. Retrieved from <http://www.thenews.com>. Accessed on 24/6/2015.

12	Rehabilitation, Improvement and Maintenance of 60 existing schools in Peshawar
13	Up gradation of GHSS Sama Badahber to Degree College in FR Peshawar.
14	Up-Gradation of 2 High Schools to Higher Secondary Status in Swat. (1 Girls and 1 Boys)
15	Construction of Additional Class Room/Labs/Admin: Block & Canteen at Parachinar Public School in Kurram Agency
16	Establishment of Islamia College University at Parachinar&Sadda Kurram Agency.
17	Regularization of 5 Community Schools in Orakzai agency
18	Re-construction Damaged Schools in Orakzai Agency.
19	Construction of 100 cadet hostel, two staff residences, enlarging/levelling of sports and assembly ground in Cadet College Razmak, NWA.
20	Construction of Hostel at Hazar Public School, Miranshah, N.W. Agency.
21	Establishment of Government Degree College (Boys) in Bannu FR

**Source:** *Annual Development Plan.2013-2014. Directorate of Education. FATA Secretariat.*

The KP government has announced to build top 100 standard schools to be completed during the year of 2015 while the chain of such schools will be extended and funded to make them models of standard and quality and all the new educational institutions are built on this pattern in future. The key challenge for the education system is to bring out of school children into schools and retain them longer to learn more and better, besides provision of adequate number of classrooms and basic facilities to those already enrolled in schools.<sup>52</sup>The government of KP has allocated a fund of 108 billion for primary and secondary level education sector and the Higher education budget has been increased from 13 billion to 15 billion in the budget of 2015-2016. Rs.472 billion has been provided for security of schools, colleges and universities. Construction of Government Girls Degree Colleges in Haripur and Nowshera and construction of buildings for Colleges and major repair of existing colleges is under construction.<sup>53</sup>

Since November 2013, 35 Degree Colleges including 23 for boys and 12 for girls and 3 post graduate colleges have been established for youth in

<sup>52</sup> Bureau Report, "Call for Rebuilding Ruin Schools in FATA." *Daily The Nation*. Peshawar, February 7, 2014. Retrieved from <http://nation.com.pk/07-Feb-2014/call-for-rebuilding-ruined-schools-in-fata>. Accessed on 25/6/2015.

<sup>53</sup> Webdesk, "KP Government Allocates High Funds to Education Sector." *Daily The News Tribe*. Peshawar, June 14, 2015. Retrieved from <https://www.thenewstribes.com/2015/06/14/kpk-govt-allocates-high-funds-to-education-sector/>. Accessed on 22/6/2015.

FATA to extend opportunity of higher education in FATA. In KP Construction work on public libraries in Kohat and Chitral had completed in June 2014 while the library in Lakki Marwat is also under construction.<sup>54</sup> Staff and student hostels, examination halls, additional classrooms, library blocks, boundary walls, furniture, machinery and equipment are also being provided to strengthen existing infrastructure of colleges. Moreover, financial support has been provided to ten universities along with development of their existing infrastructure. Construction work is under process on campus of Abdul Wali Khan University, Mardan. Sub Campuses of Universities at Haripur, Swabi, have been upgraded to full fledged Universities for which financial support has been provided by Provincial Government. In the case of fully damaged schools, temporary learning Centers have been provided to ensure reactivation of education services in the region.<sup>55</sup>

## Conclusion

The overarching conclusion that emerges from the analysis is that attacks on education infrastructure have been a feature of armed conflict in FATA and KP. Since 9/11, the region has witnessed unprecedented instability. Today the North-Western Pakistan region is passing through the most crucial stage of its history. A long term developmental strategy needs to be planned in order to establish peace and security, ensure stability and restore hope of the people. Despite the impact of the conflict, a very small percentage of funds are allocated for education. This prevents the education sector from responding swiftly during periods of intense conflict. The threats of terrorism and militancy can be removed by providing better education to the students of this region.

Many of the schools and colleges in the conflict hit areas are still closed. To discourage education, militants have adopted the policy of both attacking the schools and targeting the teachers. The government needs to invest more in education sector and increase its funding in order to save the nation from the negative impacts of illiteracy. This deteriorating status of education has further given rise to militancy and insurgency in the region and is a potential threat to the whole nation.

The Taliban's war on education and schools has two important motives. They want a system of education based on Sharia Law and second, they allege that military forces use these schools as their operating bases. Their attacks on education institutions have disrupted children's education in KP and FATA. These attacks have psychological impacts on the students and

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<sup>54</sup> *Daily The Nation*, Peshawar, June 18, 2014.

<sup>55</sup> Government of Khyber Pakhtunkhwa. "KP Higher Education Department Presents its Achievements." Retrieved from <http://hed.kp.gov.pk/>. Accessed on September 12, 2014.

affect their ability to learn if the school remains open. It has created an atmosphere of fear in the area that any school can be attacked.

A deep crisis prevails despite of minor improvements in education sector while major work is needed to improve the quality of education. The government must increase the funding available to the education sector as lack of education will have a negative impact on the nation. Lack of education has led to a rise in intolerance in society. Therefore, an effective and efficient system of checks and balances should be installed in all the educational institutions otherwise our aim to become an enlightened nation will never be realized.

## **Recommendations**

The paper proposes recommendations for the concerned policy makers and opens new vistas for further research.

- ❖ Education in KP and FATA must stand atop on government's priority list. Stability and prosperity can be ensured only in educated society.
- ❖ Government should rebuild the destroyed schools in the militancy hit areas and it should make sure its safety and security. To increase literacy rate, the building of new schools is inevitable.
- ❖ The Government should take immediate measures to address the issue of teachers' postings in schools and ensure the availability of teaching staff. The teachers need to be encouraged and motivated to perform their duties in their concerned area.
- ❖ There is need of makeshift arrangements for the students of militancy struck areas and they should be provided with facilities like tent and other necessary services e.g. chairs, desks and books, wherever needed.
- ❖ To continue education process and rebuild the destroyed schools the government needs to allocate specific budget for this purpose.
- ❖ The government should devise curricula that truly represents the spirit of Islam and can convince the militants that in these schools no 'anti-Islamic' education is imparted.
- ❖ Universities must be built in FATA to promote higher education. Government should provide basic facilities to schools and infrastructure should be renovated.
- ❖ In order to save the future of internally displaced students of FATA and KP, an alternative education system should be introduced on an urgent basis.

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