

Judicial System of the Swat State in the Regime of Wali Swat and its Appraisal in the Light of Islamic Law (*Shari'ah*) (1917-1969)

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Abstract

The Judicial system in *Yūsufzai* state of Swat (1917-1969), being one of the prominent justice system, in the whole subcontinent; evolved in short interval of time owing to its cheap and speedy justice dispensation. In this study, the judicial system of former state of Swat, with primary focus on procedural law, had been examined critically from perspective of Islamic law; meaning thereby whether that law was in compliance with *Shari'ah*. While carrying out this probe, the content analysis technique of qualitative research had adopted. In the course of investigation, it was revealed that *Yūsufzai* court had incredible similarities with the *Maḥkamah-e-Qaḍā* (Islamic Judicial System) in many facets. It was found, too, that *Jirga* used to rule in the Swat state, due to the absence of formal justice system. The formal courts, simple and brief, were established in the early 30's (thirties); however, towards the end of second decade the formal courts were deep rooted, settling cumbersome issues with its complex hierarchal and prevailed set-up. Study reveals, with solid evidences, that the appointment of *Qāḍī* by the ruler himself or with consultation from '*Ullamās* and hiring of *Vakīl* by the parties, were, primarily, *Shari'ah* based. On the same way, suit institution, summoning defendant by plaintiff himself or Policeman, *Shahādah* on the allegor of fact, swearing on defendant and oral or written pronouncement of judgement and etc. Were entirely *Shari'ah* based.

Keywords: *Qaḍā*, *Wālī ṣeb*, Islamic law, Procedure, Judicial, *Bāchā ṣeb*, *Shari'ah*, *Qāḍī*, *Maḥkamah*, *Yūsufzai*, '*Ullamās*.

Introduction:

"Rome was not built in a day",¹ an old age proverb, which may possibly apply to the gradual process of evolution, from start of civilization² to present Judicial systems. Its endless journey, through the leaves of history, embarked from the time unknown and would run until the end of time, mainly, for the betterment of human race, prevailing serenity among

themselves and for thriving un-interrupted peace. Historically, this institution had gone through the hard times, when justice was dispensed through violence until the end of 12th century, the ways for example, '*the trial by ordeal*'³, and till the beginning of 19th (Nineteenth) century, '*trial by combat*' was an option in the Judicial system of United Kingdom. Some regions took ages to know their real dispute resolution necessity: others evolved such institution rapidly in the scores of years.

Like above, the *Yūsufzai* state of Swat⁴ (1917 to 1969) like other princely states, with the passage of time, had established its various institutions for the provision of relief to its inhabitants i.e. *Yūsufzais*⁵, in particular and others, in general. Besides executive and cabinet of Vazeers (minister), *Bāchā Šeb*,⁶ had introduced a prominent judicial system. Prior to this, the region lacked well-ordered judicature for the settlement of disputes and matters of numerous natures.⁷ The institution of justice was established on three levels: firstly, at village level where appeal lied to the court of *Taḥṣīl*; secondly, at *Taḥṣīl* level where verdict was appealable in the court of *Ḥākim* (literally means ruler); could be rightly called High court of that time. Above all, the court of chief *Qāḍī* (Judge in Islamic law), who besides his original jurisdiction of state level matters, had to adjudge the appeal of aggrieved from *Ḥākim* court.⁸ The Justice system in *Yūsufzū* (pushto dialect of *Yūsufzai*) state of Swat, as discussed above, was not only externally well-organized but also internally well mechanized. The exhaustive study of the diverse literature on the subject indicates that procedure of '*Adālat* (court) was systematized to the possible extent; from power of attorney to implementation. There was, for instance, no need of written *Wakālat Nāma*⁹ (power of attorney); nevertheless, one could become *Wakīl* (advocate) by a verbal contract; elaborating the *Rewāj* (custom) and perspective of *Sharī'ah* (Islamic law) (with or without consideration) to the court.¹⁰ *Dāwa* (the plaint) or '*Arzi* (petition) used to be filed on specific forms of worth *Pinza Paisi* (five paisas), issued from *Khazāna* (exchequer); having official seal of royal fortress of Swat with given specimen. *Sarkāri Mirzā* (government petition writer) was employed for this purpose who did not charge people for his services.¹¹ The mechanism for evidence, for instance, was to do *Tazkiyyat al-Shuhūd*¹² before considering a person to depose, followed by their statement and *Qāḍī* was to pen it down and cross examine, if circumstances necessitated.¹³ The trials did not involve delaying tactics but were swift and the law enforcement agency was there for in time execution of the decision.¹⁴

The mechanism and proceedings of the former Swat State, being discussed above, were, predominantly, in line with procedure of *Qāḍā*, elaborated by *Sharī'ah*. For instance, Islāmic law affirmed the concept of *Wakālat Nāma*¹⁵; and the same was followed by the *Yūsufzai* court in the beginning of any case or petition. For scribing *da'wa*, identical to *Sarkāri Mirzā*¹⁶ in courts of *Wāli Šeb*, there used to be a *Kātib* (Scriber), who used to jot down the *da'wa* or '*Arzi*. The same concept of *Kātib* had elaborated by *Imām Thamarqandī* narrates in his famous work '*Tuḥfah al-fuqahā*'.¹⁷ On the same token, the concept of '*Tadhkiyah al-Shuhūd*', an integral part of Islamic law of evidence,¹⁸ was, too, borrowed from Islamic law. Moreover, *Shahādah* (the evidence), as per principles of Islamic law, had to be written down by *Qāḍī*¹⁹ or someone who was asked by the him. The same was adopted by a judge of the Swat state. The brief procedure discussed hereinabove, clearly pictured the aims and goals of this research paper. The most important among these was to have deep insight of the judicial system of the *Yūsufzai* state of Swat (1917-1969), followed by a deep probe of the procedure

and mechanism adopted therein. Another objective was to investigate whether that system was really *Sharī'ah* based or its compliant or entirely different. Finally, to know whether that judicial system's principles could be incorporated in the present judicial system of Pakistan, primarily, the one existing in *Pukhtūn* belt.

This study is limited, mainly, to the judicial system of former state of Swat at the time of *Wāli Şeb* and his predecessor. At that time the state of Swat was comprised Swat (the existing one), Buner, Shangla, Kohistān Lower, and Kohistān Upper. The other contiguous states, for example: State of Chitral, State of Amb and Dir (now called Upper Dir and Lower Dir) state, also had their own system of governance and institutions of justice; however, these are not covered by the present work. Moreover, the *Sharī'ah* appraisal of the judicial system of Swat at the time of *Wāli Şeb* and his predecessor has been carried out, predominantly, in the light of the *Ḥanafī* School; due to overwhelmingly dominant adherents of the same school in that said region.

Methodology:

This research has been conducted while using the method 'discourse analysis'; interpreting the words within a sentence, taking the context into consideration, removing the opaqueness of debates and discussions. This, being an effective and efficient methodology in social sciences, has been utilized at length with possible rationale. To prove a viewpoint or elaborate it, work of the classical Muslim jurists has been used resorted – for bring more reliable and authentic. Moreover, the secondary data has been collected for books, reputed journals (both on line and printed), relevant websites and etc. In case of journals, only the relevant ones to the field are resorted. To prove authenticity of the present research endeavor, some people, primarily, those having knowledge regarding the former Swat are interviewed. Even decedents of the Wali Swat are approached for the authentication of the data collected. Shortly, in finding a reliable data, no stone has been left unturned in consulting sources of authenticity. As the present work is purely related to the critical analysis of the judicial system prevalent in the ancient Swat State from the perspective of Islamic law, therefore, due care is made to be remained impartial and unbiased – a prerequisite of the qualitative research. Being followed in the entire region of Swat, the *Ḥanafī fiqh* is used more comparatively to other school of thought during the process of critical analysis.

Judicial system the former State of Swat – A Historical Approach:

Throughout the history, from the beginning of civilization to the contemporary nation state system, rulers of all kinds had adopted some arrangement for justice of their own. Following this, they established various institutions for dispensing justice to their immediate subjects. Swat, like other *Pukhtū* (Pushto) speaking areas of present day (I.e. Khyber Pakhtunkhwa as well as erstwhile FATA²⁰-cum-Khyber Pakhtunkhwa, *Pushtūn* belt of Baluchistan and Afghanistan), had informal mechanism for the resolution of disputes among the people. '*Jirga*'²¹ could be cited as it typical example. This institution, being informal justice system, had exclusive jurisdiction over matters of diverse nature i.e. criminal, civil, revenue, tort related conflicts and etc.

'*Da Yūsufzu* state of Swat', after coming into being, there was no proper judicial mechanism that could ensure provision of justice to the people of Swat. In this regard, Fakhr-ul-Islam²²,

a renowned historian, stated in his profound work, there was neither treasury nor regular army nor any basic civil structure". This statement indicates, though to some extent, that there were no formal institutions for the provision of justice. The only alternate system, previously in practice, in the local hamlets and villages was, of course, *Jirga*. Until the mechanized system started to work effectively with its follow up, i.e. execution of courts' verdict, the same system worked efficiently.²³ According to Muftī Moḥammad Wahāb Manglawari, after the arrival of state owned judicial system in early 30's (thirties) of 20th (twentieth) century, the informal way of settling dispute and conflict, apparently, obtained secondary value right after courts.²⁴ He further elaborated that *Qāḍīs* were hired in every hamlet to save people from travelling to '*Tāsīl*' or a *Qāḍī* in '*Ḥākim 'Adālat*' or '*Dārul-Qaḍā*'²⁵

As the institution, mentioned above, evolved periodically; but the legal system and sources of law, however, kept on changing - time and again. '*Da Qānūn Nizām*' (the legal system), according to Ghazala Rafi, throughout the state had switched on from a secular to areligious nature and vice-versa.²⁶ She further explained that secular was not meant, under any stretch of explanation, statutes identical to the one of Britishers. Laws were, however, three-folded in nature: *Rewāj* (local customs), *Sharī'ah* and few secular laws of colonial power. On the same token, the sources for *Jirgas*, before the formal Judicature in Swat, were *Narkh*²⁷ and pure *Naṣṣ* (text) of Islamic law.²⁸ After formation of courts, almost same sources were adopted as of *Jirga*, notwithstanding, *Zarri Prikri* (previous decisions or Judicial precedents) were also made a part, whenever deemed fit. It is pertinent to mention, at this very point, that *Bāchā Šeb* used to set up a legislative committee for newly conquered area, comprised of local *Masharān* (elders), for example: *Malaks* (politically leading people), '*Ullamās* (religious scholars) and *Spin giri* (grey bearded old men: revered by *Pukhtūns* at large), for devising laws.²⁹ On the other hand, as *Sharī'ah* was one of eminent sources of law, therefore, on the wishes of *Bāchā Šeb*, a compendium of Islamic law in Pushto language i.e. *Fatāwa Wadūdiyyah*³⁰ was authored. Such book was consisted of two volumes:³¹ '*Ibādāt* (matters concerning worship) and *Mu'āmalāt* (worldly issues or problems).

Structure of the Judicial System and Procedure at the time of Wali Swat:

Everything, in order to be productive and sustainable, needs to be systematically disciplined. The same analogy could be applied to the institutions of state. A well marshalled and dynamic Judiciary, for example, would retain a space in the minds of people, eternally. Due to its straightforward, expedient, swift and efficient procedural tools, the justice system of Swat had a nostalgic feeling in the minds of its subjects-cum-inhabitants and those who read it.³² It could be understood that such procedure was adopted to make the judicial system uniform, as well as, organized. It had been noticed, on few occasions, that administrative rulers of numerous stages had done justified abuse of power; deviating from or altering the rules subjectively due to their discretionary powers, if situation demanded.³³ Despite the miniscule number of disregard of law by judicature, the general mechanism, i.e. procedure, execution and appointment of *Qāḍī* remained resolute and unchanged in the entire judicial system across the swat state.

The mechanism of judicial system of the *Yūsufzai* state of Swat' could be divided into three main categories,³⁴ i.e. the external matter of court, i.e. appointment of *Qāḍī*, the internal

matter of courtroom i.e. Procedural law inside the court, and, lastly, the public level, i.e. execution of the verdict or judgement.

Appointment of *Qāḍī* in the *Qadā* of Wali Swat:

As far as the selection of the *Qāḍī* is concerned, *Bāchā Šeb* had not mentioned anything expressly in his book '*Tārīkh-i-Swat*'.³⁵ Most of the researchers, as well as, common people are of the view that rulers of Swat had never delegated this power to any person or committee but to themselves. There is no denial of this fact that final authority lied with the *Wālī*, notwithstanding, he had always consulted '*Ullamās* in selection of *Qāḍī*. This could pertinent to mention that he selected graduate of top *Ḥanafī* Madrassahs, including, *Dar-ul-'Ulūm Deoband*, *Madrassah Mazhar-al-'Ulūm* (Saharanpur) and *Madrassah Shāhi Fateh Puri*, for selecting them as *Qāḍīs* until 1945.³⁶ Moreover, every decision of *Maḥkamah 'Āliya*, after its establishment, was subject to the confirmation of a committee of '*Ullamā* from *Dārul-'ulūm 'Islāmiyah al-Ḥaqqāniya*,³⁷ Saidu Sharif. In 1943, when *Bāchā Šeb* felt need of more *Qāḍīs*, due to expansion of state and scarcity of aforementioned prestigious *Madrassahs*'s graduates, he decided to inaugurate an institution from where he, with the consultation of '*ullamās*, could pick judges for his courts.³⁸ In 1950 a committee for religious affairs was formed, formally, headed by chairman of Faqir Khan Bahadur Martungi³⁹ and others⁴⁰ from the mentioned institutions. Those, probably, were the '*ullamās*, who he was consulting while the selection of his judges⁴¹.

Matters concerning the courtroom:

Those were the matters related to the appointment of attorneys or *Vakīls* (Advocates) to represent them before the court of law.

Hiring *Vakīl*; was the Written *Wakālat-Nāma* necessary?

The second category was internal affairs of court room, after the appointment of *Qāḍī* as per the abovementioned way. The appointment of *Wakīl* or *Mukhtār* was uncommon, and attorney was only hired only in exceptional cases. An eye witness stated that only *Malak*⁴² (local chieftain or kingpin of tribe) or '*Ālim*⁴³ (religious scholar) was, sometimes, sent to the court for representing a party, however, there were no concept of written deeds, like, *Wakālat Nāma* (power of attorney).⁴⁴ It could be, therefore, inferred from the above discussion that criteria for representing someone was not a professional degree of Law, notwithstanding, being credible or important member of the society, such as *Malak* or '*Ālim*, who could speak for people, was essential.

Proceedings of the Courts in the former State of Swat:

The procedure of the courts was not hundred percent uniforms in all *Tāsils* of the state. It is, however, evident that proceedings of various *Tāsils* were brought together the mainstream. At this stage harmonization of the proceedings was started – though to a minute level. The proceedings were twofold; first the minor cases and the other regular cases and suits. The former kind, according to Shah Salam Khan's view, was the diminutive and petty matters. These matters were heard verbally and resolved, thereby, by *Tāṇradār* (*Thānedār*: station house officer) in the very early possible time, otherwise, it had to go to the court, as well. This

set up more seems like modern summary trials⁴⁵ or DRC (Dispute Resolution Council) existing in Police of Khyber Pakhtunkhwa.⁴⁶

On the similar token, the regular petition was written on a paper issued from the office of ruler on *yawa paisa* (one penny) and later on reached to the price *pinza* (five) *paisa*. Such sort of official paper was available with *Tāsildār, Hākim, Hākim A'lā, Nā'eb Mashir, Mashir, Wazirs, Sipāh Sālār, Walī 'Ahad* and *Wālī*. The *Qādī*, therefore, could not take cognizance of its own as *Suo Motto* until the administrative head referred.⁴⁷ Moreover, there was no particular specimen for summons; however, in matter of small causes, the plaintiff was given the same petition and he, with his application, would ask defendant to report to the court. In serious matters the police personnel were sent to apprise the defendant orally.⁴⁸

The prevailing official language of almost all other *Pukhtūn* areas was Persian, notwithstanding, the first ruler selected Pushto as official language and, therefore, it became the language of court.⁴⁹ The evidence in shape of witnesses or any other document was to be produced by the one who asserted the fact, however, in default of such evidence, in order to clear himself, the defendant had to swear.⁵⁰ As per view of Sultan-i-Rome, a historian from the valley of Swat, 'Munsifān Riyāsat-e-Swat' and 'Kitāb Munsifān', was the team of *Munsifān* (mediators), who used to visit the spot and would narrate the actual scenario to the ruler.⁵¹ It seems like the blend of present day mediators⁵² and commission⁵³ mentioned in CPC (*Civil Procedure Code, 1908*). In addition, decision used to be announced orally in the presence of both parties while judgement had to be recorded in a register.

The Post proceedings Affair or Public Level: Execution of the Judgement:

Following the internal procedure, execution was third category where effective implementation was ensured. The subjects were rural people, having honesty, loyalty and obedience in their blood, so, every judgement was, therefore, considered sacred. The strong execution of judgements, probably, was due to the exemplary law and order situations.⁵⁴ There were two main reasons behind this effective implementation i.e. the influence of 'Ullamās on people in execution, and strong law enforcing agency. In default of obedience of judgement, the matter used to be referred to *Tāsildār* who, as the historian mentioned, used to send police, generally, for arresting and jailing them, or they would have to stay at *Hujra* (guest house) of judgement debtors, in case of money or crops etc. until the decree was satisfied.⁵⁵

Sharī'ah Appraisal of Historical Qadā of the Yūsufzai State of Swat:

The world suffered, of course, the deepest wound of injustice and lawlessness in the absence judicial discipline and the inextinguishable scars of biasness and prejudice did not heal even after the period of enlightenment.⁵⁶ Every religion, especially *Madhāhib-us-Samāwiyyah* (the heavenly religions) asked its followers to do and deliver justice, no matter what profession they choose and where in life they are. Islam, on the same way, not only asked the Muslims to be just but also to establish comprehensive principles of justice; practically proved them to be more practicable, efficient and result oriented than any other justice system found or evolved, so far, anywhere in the world. The *Yūsufzai* state of Swat, astonishingly, had reasonably the same results. *Fatāwā Wadūdiyyah*, as mentioned earlier, was the living example of ruler's (wali Swat) priority of Islamic law over other laws.

Shari'ah Appraisal of Historical Appointment of Qāḍī in the Regime of Swat:

As mentioned earlier, the appointment of *Qāḍī*, if analyzed thoroughly, in Swat state, was based on several requisites. One primary requirement, although unwritten, was the deep understanding of *Shari'ah*, for which the term '*ilm*'⁵⁷. The same term could be found in the books of classical *fuqahā* of *Madhāhib-i-'Arba'ah* (jurists of four schools), especially, in *Hanafi* school of thought.⁵⁸ After studying the judges of judicial system of the former swat state, it could be said that other basic requirements of *Shari'ah*, for example, '*aqal*' (sound reason), '*Bulūgh*' (age of majority), '*Islam*', '*Ḥurriyyah*' (free and not slave), '*al-Baṣr*' (eye sight), '*al-Nuṭq*' (speaking) etc.⁵⁹ were also present in them. Another similarity could be noticed that the ruler of Swat either himself used to choose, or would ask the experts, as we analyzed, earlier, that he used to ask '*Ullamās*'⁶⁰ to help him in selecting the *Qāḍī*. *Al-Mousū'at ul Fiqhiyyat ul Kuwaitiyyah* discussed these two cases of appointment while citing some classical books.⁶¹

"وَإِذَا أَرَادَ وَلِيُّ الْأَمْرِ تَوْلِيَةَ قَاضٍ فَإِنْ كَانَ لَهُ خِبْرَةٌ بِالنَّاسِ وَيَعْرِفُ مَنْ يَصْلُحُ لِلْقَضَاءِ وَلَهُ ، وَإِنْ لَمْ يَعْرِفْ ذَلِكَ سَأَلَ أَهْلَ الْمَعْرِفَةِ بِالنَّاسِ ، وَاسْتَرْشَدَهُمْ عَلَى مَنْ يَصْلُحُ ، فَإِذَا عَرَفَ عَدَالَتَهُ وَلَهُ ، وَيَكْتُمُ لَهُ عَهْدًا بِمَا وَلَاهُ يَأْمُرُهُ فِيهِ بِتَقْوَى اللَّهِ ، وَالتَّيَبُّتِ فِي الْقَضَاءِ وَمُشَاوَرَةِ أَهْلِ الْعِلْمِ ، وَتَصَفُّحِ أَحْوَالِ الشُّهُودِ وَتَأْمُلِ الشَّهَادَاتِ ، وَتَعَاهِدِ الْيَتَامَى ، وَحِفْظِ أَمْوَالِهِمْ وَأَمْوَالِ الْوُقُوفِ ، وَغَيْرِ ذَلِكَ بِمَا يُجْتَازُ إِلَى مُرَاعَاتِهِ"⁶²

The above citation meant that when a ruler wanted to appoint the *Qāḍī*, if he had the idea of people and he knew that who is good for *Qadā'*, he would appoint by himself. However, in the absence of such knowledge he would ask experts for guidance. Upon successful procedure, he would write a contract, whereby he (the newly appointed *Qāḍī*) would pledge for what he is appointed. Moreover, he (Ruler) would ask him to fear Allah, to be steadfast in *Qadā'* and ask those who know ('*ahli 'ilm*'), investigate into the life of witnesses, mediate over the evidence, ensure the property of *Waqf* (trust) and orphans are not misappropriated etc..

Before the actual proceedings, sometime *Wakīl*, being '*Ālim*' or '*Malak*', was sent to the court for speaking on the tribe's or party's behalf with or without written power of attorney. *Shari'ah*, on the other hand, agrees to the large extent with this, legitimizing conferment of verbal and written power of attorney both.⁶³

Another predominant similarity could be pointed out in the matter of *Da'wa* and '*Arzi*' that was written by a judicial officer called '*Mirzā*'. This *Da'wa* and '*Arzi*' were used to be written on a specific blank paper, issued from the central office of the ruler in capital. Islamic law, on the other hand, had offered the same method for *Da'wa*. In this regard 'Imām al-thamarqandi, a renowned jurist of the Hanafi school, stated:

"In our times the scribe (in the court) used to write down plaint in the register of plaints and would leave the date slot (unwritten). Moreover, the written statement was not written (therein), followed by the name of witnesses. Then a blank space was left between two lines. When this plaint was instituted to the court, the *Qāḍī* would write the date himself, and the written statement would be written on the predetermined page."⁶⁴

The above excerpt clarified that a specific judicial officer was appointed for the purpose of scribing, although. His entitle of the job might not be same as of *Yūsufzai* state's '*Mirzā*', but the job was almost identical. Like '*Mirzā*', the *Da'wa* and '*Arzi*' were written in a special register that had been issued, occasionally and as per need, by state. Astonishingly, the evidence system of the state, almost in its entirety, was Islamic as one had to provide evidence of what

fact he alleged, otherwise, the opponent had to swear by God. The same process of evidence, as of swat state, is elaborated by scores of *fuqahā* in their classical literature, bolstered by *Hadīth* offered the same in a legal maxim as, "الْبَيِّنَةُ عَلَى الْمُدَّعِي، وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ", "the onus to prove (evidence) is on one who alleges the fact, and the *Yamīn* (swearing) is on one who denies the fact".⁶⁵ Evidence was further, in the former Swat state, used to be preserved in written form. Islamic law, on similar lines, put emphasis on reducing the *Shahādah* (evidence) into writing to ensure the justice.⁶⁶

There were some more similarities within the procedure, apart from abovementioned. The official language of the courts in Swat state was Pushto. As far as the court language is concerned, *Sharī'ah* had never made Arabic language essential for the process of court. It had been noticed from the exhaustive work of classical *fuqahā* that languages other than Arabic, for example, Persian etc. also remained official languages.⁶⁷ Therefore, could be said that Pushto, being procedural language of Swat state's courts, was in line with *Sharī'ah*, This conformity could also be proved on the basic '*Uurf wal 'Āddah* (custom and habit) – a recognized source of Islamic law. Another similarity surfaced in the concept of *Munsifān* of *Yūsufzu* state of Swat which, predominantly, was analogous to the notion of *Hakam* or *Hākim* in the process of *Tahkīm*⁶⁸ (mediation).⁶⁹ Moreover, like Islamic law, verdict used to be declared both in written and oral form.⁷⁰

Execution of the decree in former Swat state: *Sharī'ah* appraisal:

As previously mentioned that secret behind good law and order situation in *Yūsufzu* state was its strong law enforcing agency. This strong enforcing body, indeed, compelled a judgement debtor to do or pay what he owed. Moreover, execution of small cases was the responsibility of *Tānradār* while execution of the complex cases was responsibility of the court's assistant Islamic law, on the other hand, made '*al-quwwah*' (the force) as an indispensable tool for the enforcement of courts' decision.⁷¹

Implications of Research:

The present piece of work elaborates, with solid evidences, the historical judicial system of former *Yūsufzu* state of Swat and its *Sharī'ah* appraisal. This institution, of course, occupied a prestigious position and, therefore, had been enjoying a distinguished place in the hearts of the people. . Owing to this fact, that judicial system could be still applied in the country in general while in the region of swat in particular.

Social Implications:

This research endeavor would, no doubt, have remarkable implications on the common people, as well as, on scholars and researchers. If this simple procedural law (which was existing in the valley of swat) is implemented, particularly in the rural areas of KP, the people would feel nostalgic about the law. Moreover, it would be more acceptable for the people as it would entirely rely on their old *Rewāj* (custom). By the same token, this paper would be very helpful for those researchers who are investigating various issues related to customary laws. It would also open new avenues for the students of Islamic law to study local justice system of different localities i.e. *Jirga*, *Panchāyat* etc. and their *Sharī'ah* appraisal as well.

Institutional Implications:

Implementation of the historical judicial system, prevailing in the typical valley of Swat, would not only display benefits on society but would also bear fruit in the shape of institutional reforms. To unburden the Pakistani Judiciary, a duty falls on the shoulder of Police who should settle disputes. Semi-judicial role, of *Tāṇradār*, as was in *Yūsufzu* state of Swat, can be reactivated at police station. In addition, the judicial set-up from *Kachehri* (Tehsil courts) up to highest level, for the Pukhtūn belt of Pakistan, may be kept in line with the judicial system of the former Swat state. Furthermore, the procedural law, provided by *Sharī'ah*, must be taken into account in the process. Taking such steps would rule out the probability of vexatious and frivolous cases; which has over-burdened the work of judicial system of Pakistan.

Conclusion:

Necessity is the mother of invention, is fairly true to the judicial institution of world; for the reason of emerging conflicts among the people from Stone Age to this modern arena. The primary focus of present research was, in first place, to investigate introduction of judicial system to former *Yūsufzu* state of Swat (1917-1969); by probing into detailed procedure of the court, from perspective of history. The comparison of such system was also made with the *Qānūn-al-'Ijrā'āt* of *Sharī'ah* (Islamic Procedural law). History narrates that in the first decade of the former Swat state, the formal judicial institutional structure was absent and, therefore, the disputes had to be settled through ancient, informal but very effective justice system known as *Jirga*. In the second decade (of the state), the institution emerged and by the end of the same period it had got into shape. After establishment, the law kept wobbling between religious and neutral, however it ended up in the threefold system: *Kali Rewāj* (local custom), *Sharyat* (*Sharī'ah*) and few of the laws of colonial powers. Moreover, *Zarri Prikri* (Judicial and *Jirga* precedents) were also considered primary source for the purpose of adjudication. When a new area was conquered, *Bāchā Šeb* (first ruler) used to form local legislative committee (*Jirga*) for legislating according to the injunctions of Islam. For solving the issues of public, *Fatāwa Wadūdiyyah* (a complete set of Islamic law) was issued - both at individual level and state level. The Judicial mechanism, besides some immaterial irregularities, was uniform throughout the state which, through this research, had been divided into three categories i.e. external, internal procedure and post proceeding affairs. The final authority of choosing a *Qāḍī* was with *Wālī šeb*. However, it could be pertinent to mention that he used to consult *Ullamāto* choose best graduates for nominating them as *Qāḍī*. The graduates of the top Islamic institutions of *Ḥanafī* school, for example, Dar-ul-'Ulūm Deoband, Maẓhar-al-'Ulūm (Saharanpur) and Madrassah Shāhi Fateh Puri were always preferred during the process of appointment. After 1945, the judges were, however, chosen from domestic and self-established (by the Ruler) institution *Dārul-'ulūm 'Islāmiyah al-Ḥaqqānia*⁷², Saidu Sharif and etc. Later on in 1950, a committee for religious affairs was also formed, perhaps, for the same purpose. The second category that was comprised of hiring advocate and Internal affairs of courtroom were quite uniform in the historic justice system of Swat. The *Malak* and *Ālim* or such other representative could represent his tribe or fraternity. For that purpose, a *Wakālat Nāma* (written deed) was not obligatory; as there was no burden on the court for hiring *Wakīl* or *Mukhtār*. The proceedings could further be divided

into two parts i.e. the summary trial and elaborate procedure. In the former, no stringent procedure was observed; although, issue used to be settled, amicably, by *Tānradār*⁷³ while using his authority. However, all that in small cases. The ordinary suits and the unresolved disputes from *Tānradār* used to be instituted to various administrative figures on a special stamp paper. Moreover, no specimen was followed in writing 'Arzis (plaints and petitions). The plaintiff used to serve the oral summons himself, notwithstanding, in criminal or in high profile civil matters policemen were dispatched for the same purpose. Being official language, all oral and written proceedings were held in *Pukhto*, even in major circuits of Kohistan including Dubair, Kandīā, Pattan, Dāsu and Bahrain. *Munīṣfān* was another prominent feature of *Yūsufzai* courts, used to work as mediator. The third category, being post proceedings affair, was execution which the judges would do immediately of petty matters. Other executions were, however, the responsibility of the law enforcing agency i.e. Police of *Wālī*. An exhaustive study proves the resemblance of *Yūsufzai* procedural law with the one of *Sharī'ah*. Islamic law agrees with the consultation process of the ruler with eminent 'Ullamās in appointing the judges; *Wālīyāni* (both rulers of) Swat used to do. *Sharī'ah* agrees with their (rulers) way of appointment of *Qāḍī* by themselves (when they have knowledge) or with consultation from 'Ahli 'ilm if they do not have a good idea. On the similar token, the former Swat state used to appoint *Vakīl* with or without *Wakālat-Nāma*, which had not broken any principle of Islamic law. Writing of suits, in the former state of swat on specified stamp paper, was also in line with *Sharī'ah*. *Fuqahā* had used the word 'Kātib' for *Mirzā* in their classical work. Instead of writing on stamp paper, however, they used a term *Ṣafḥah-tu-al-Kitāb al-da'wā* - a concept that was almost identical to that of stamp paper. The practical procedure of evidence in the *Yūsufzai* court seemed to be entirely borrowed from *Sharī'ah*. The number of witnesses for each crime, *Tadhkiyyah-tu- al-Shuhūd* and, above all, *Qā'edah al-Fiqhiyyah* (Islamic legal maxim) "وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ" ⁷⁴ "النَّبِيَّةُ عَلَى الْمُدَّعِي، وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ", predominantly, seemed to be used practically in the courts of swat. As far as the language was concerned, Islamic law did not bind nations to any particular language to be made official language; therefore, making *Pukhto* as official language was not against *Sharī'ah*. Yet another semblance could be noticed on the concept of *Munsifān*, seemed to be borrowed, too, from *Sharī'ah*. Islamic law also offered *Tahkīm*, and the same was followed in the former state of swat. Similarity could also n be seen between *Sharī'ah* and *Yūsufzu 'Adālat* (court) at the stage of post proceedings affair where function of *Tanfīdh* (execution) took place. As the judge in *Wālī's* court used to execute himself his decision or would assign the same to Police personnel for lengthy execution. The same concept could be found in *Sharī'ah*.

References:

¹ Wright, Arnold, ed. *Twentieth Century Impressions of Ceylon: Its History, People, Commerce, Industries, and Resources*. New Delhi, Asian Educational Services, 1999, 16.

² First law on earth, in preliminary era, was, "Might is Right". ... Redbeard, Ragnar. "Might Is Right: Survival of the Fittest." (1999): 99-138. Available at ... <https://archive.org/details/might-is-right/page/n99> (accessed on Sep 3rd, 2019).

³ Trial by ordeal was the way in which accused was supposed to pick up red hot iron bar or he had to pluck a stone from a big vessel wherein water was being boiled, or any such identical process which involved hardship. Their hands had to start healing in three days or they would be considered as

convicted. Similarly, another way of ordeal trial was that accused used to be entirely tied and thrown into the lake, to see if he sinks, if sunk would be innocent. ... United Kingdom, Judiciary, *History of the Judiciary* [Internet]; for elaborate discussion on the subject, visit website ... <https://www.judiciary.uk/about-the-judiciary/history-of-the-judiciary/> (accessed on Aug 2nd, 2019)

⁴ The *Yūsufzai* state of Swat situated to the north of present day Khyber Pakhtunkhwa. The state came into being in 1917, when *Qabāili Masharān* (Tribal Chiefs) of Swāt and Buner sensed the peril of World War-I, internationally and subjugation from Nawāb Dir, locally. They gathered in Kabal ground, selecting their first ruler Miyāngull ‘Abdul Wadūd, locally known as *Bāchā Šeb* to save Swat for upcoming generations. (Bakht Taj Mingora, *Tārikhi Swāt* (Mingora, Tāj company Ltd. 2015): 112-113.) He ruled from Sep, 1917 to Dec 12th, 1949; and was succeeded by his son Miyāngull ‘Abdul Haqq Jahān Zeb, locally known as *Wālī Šeb*, (who was known as *Walyāt Šeb* in Pushtu which originates from Urdu, Persian and Arabic word ‘*Wālī ‘Aḥad Šāhib*’), ruled from Dec 12th, 1949 to Jul 28th, 1969. The population of this princely state was estimated as half million.... The original text of the book runs as:

"طویل عرصہ میں بانی سوات اپنے محکم عزائم..... پانچ لاکھ انسانوں کی کشتی حیات کا یہ خدائی امتحان سہتے رہے۔"

"In his strong intentions founder of Swat in long terms..... he bore the hardships of boat of five lac people."

... Mufti Shāh Hussain Shāmzai, *Wādī Swāt kay ‘Ānsū* (Lahore, Nadīm Yūnus Printers, 2014): 36

⁵ In Sixteenth century *Yūsufzai* people came to Peshawar. Actually, a man named *Manday*, had two sons: *Yūsuf* whose descendants were called the *Yūsufzai* tribe; ‘Umar whose son *Mandanr* became father to the one of prominent tribes, known as *Mandanr Khel*... Qāḍi Aḥmad Jān Šeb, *Yūsufzai* [<https://www.khyber.org/pashtotribes/y/yusufzai-p.shtml>...Original text flows as under:

"پہ شپارسمہ صدی کیں یوسفزی خلق د کابل نہ پینور تہ راغلل. پہ دی ورخو کیں د دوی دوه قامونه وو. د یو نوم یوسف زی و د بل نوم مندنر. اصل کیں دا تول قام د مندی اولاد دی. د مندی دوه زامن وو. د یو نوم یوسف وو او د بل عمر. د یوسف د اولاد نوم یوسف زی شه او د عمر یو زوی وہ چه د هغه نوم مندان وه نو د هغه د اولاد نوم مندنر شه" ...

⁶ Miyāngull ‘Abdul Wadūd ali (*Bāchā Šeb*) was grandson of Ḥaḍrat ‘Abd-al Ghafūr ali (Saidu bābā), to whom title of Akhund Šāḥeb was given, (a great religious leader and reformer), who founded the modern state of Swat... For further details, see ... <http://www.visitswat.org/History.html>

⁷ Sultan-I Rome, "Administrative system of the Princely State of Swat." *Journal of the research society of Pakistan* 43, no. 2 (2006): 2

⁸ Khan, Muhammad Asif. "The Story of Swat as told by its Own Founder Miangul Wadood Badshah Sahib." *Peshawar: Ferozsons Ltd* (1963), p. 124

⁹ Due to simplicity of process of the court, *Wakīl* was nominated verbally, considering enough for a suit or case.

¹⁰ The researchers met with Qāḍi Ghufrān ud Din (locally known as *Da Kokārai Qāzi*, Qāḍi of *Kokārai*) who was *Nāzim-i- Quḍāt* in the judicial system of Swat, As per his opinion beside being Qāḍi, once he became advocate and, thus, presented a case.

¹¹ The original text goes as under:

"ریاست سوات کے عوام کو کورٹ فیس وغیرہ کے دھندوں سے آزاد قرار دیا گیا۔ عدالتوں میں درخواستوں اور استغاثوں کے لیے باقاعدہ چھپے ہوئے اپنے خاص فارم ہر تحصیل اور عدالت اور عدالت کو مہیا کیے جاتے تھے جو کہ صدر مقام سیدو شریف کے خزانے سے یہ فارم اور تمسکات دیے جاتے تھے۔ ان فارموں اور تمسکات کے لئے گورنمنٹ چھاپ یعنی ہر شاہی قلعہ کی تصویر بنی نشان قرار دیا اور نیز قلعے کو ریاستی نشان (جھنڈا) بھی قرار دیا گیا۔ پانچ پیسے کے مروجہ فارم ہر عدالت اور تحصیل میں مستغیث اپنی شکایات لکھوا کر پیش کر سکتا تھا۔ ایک سرکاری محرر بطور عرض نویس ہر تحصیل اور ہر عدالت میں مقرر کیا گیا تاکہ لوگوں کی عرضیاں مفت لکھیں۔"

"The state of Swat was free of all court fee etc. The special forms, issued from capital Saidu Sharif, were used for writing complaints and petitions. Every form, worth five *paisās*, could be presented before the court after writing plaint and petition on it. Petition writer was appointed by the government to scribe the petition free of cost for the people."...Muḥammad ‘Āṣif Khān, *Tārikh Riyāsati Swāt* 2nd Edition (Peshawar, new Rāhīl printing press, 2001): 225-6.

¹² Investigation of a witness whether he is a habitual liar or not or he has committed major sins or not in his daily life.

¹³ Sardaraz Faizy, *Riyāsāt-i-Swāt kay Daur may Kohistān Kā ‘Adālti Nizām...* Please visit for further details ... <https://swatnews.com/story-37391/>

¹⁴ Sultan Rome. "Crisis and reconciliation in Swat." *Pakistaniaat: A Journal of Pakistan Studies* 3, no. 1 (2010): 57

¹⁵ The Original text flows as under:

... يَكُونُ بِتَسْجِيلِ الْوَكَّالَةِ فِي الْمَحْكَمَةِ الَّتِي يُفَعَّتْ إِلَيْهَا الدَّعْوَى أَوْ بِتَسْجِيلِهَا فِي مَحْكَمَةٍ أُخْرَى وَتُبْرَزُ لِلْمَحْكَمَةِ الْحُجَّةُ الشَّرْعِيَّةُ الْمُخْتَوِيَّةُ عَلَى صُورَةِ التَّسْجِيلِ وَالْمُصَدِّقَةُ مِنْ دَائِرَةِ الْفَتْوَى."

‘Ali Ḥaidar Khwājā Amīn Afandi, *Durar-ul-Ḥukkām Fi Sharḥ Majallatil Aḥkām*, 1st ed., (Beirut, Dārul Jail, 1991), 3:634.

¹⁶ It is a name of Persian origin, written as, ‘*Mīrzā*’ which literally means prince or a high nobleman. Here, in the context of Swat state’s judiciary, it was a person who used to write the complaints and petitions. In conventional judicial system one is called ‘Petition writer’.

¹⁷ Moḥammad bin Aḥmad bin Abi Aḥmad alias ‘Imām al-thamarqandi, *Tuḥfah al-fuqahā*, 2nd ed., (Beirut, Dār-al- Kutub al-‘ilmiyyah, 1994), 3:373.

¹⁸ The Original text flows as under:

... إِذَا طَعَنَ فِي الشُّهُودِ مِنْ طَرَفِ الْحُصْمِ فَتَجِبَ تَرْكِهُنَّ بِإِلَّا خِلَافِ وَكَوْنِ الْحُكْمِ بِدُونِ التَّرْكِيكِ غَيْرَ صَحِيحٍ ... Kuwait, *Al-Mousū’atul Fiqhiyyatul Kuwaitiyyah*, 2nd Ed., (Kuwait, Dār ul Salāsīl, 2004), 24:289.

¹⁹ The Original text is as under

"وَيُنْبَغِي لِلْقَاضِي إِذَا شَهِدَ الشَّاهِدُ عِنْدَهُ أَنْ يَكْتُبَ شَهَادَتَهُ"

... ‘Ibrāhīm bin ‘Ali bin Moḥammad alias Ibni Farḥūn, *Tabṣīrah al- Ḥukkām Fi ‘Usūl al-Aqḍiyya wa Manāhiḥ al- Ḥukkām*, 1st Ed. (Cairo, Maktabah al-Kulliyāt al-Azhariyyah, 1986) 1:56.

²⁰ Federally Administered Tribal Areas

²¹ A local institution, settling disputes keeping *Riwāj* (customary law and rituals) in view, chaired by *Spin Giri* (grey bearded elders), deciding the issue as a bench in modern times, binding on its *Pariqayn* (parties). ... Ali Wardak. "Building a post-war justice system in Afghanistan." *Crime, Law and Social Change* 41, no. 4 (2004): 326

²² A renowned researcher and author of history, who wrote many books and published several articles on Swat, in particular, and on Pakistan in general. He can be reached through ... <http://www.uop.edu.pk/departments/Teaching-Faculty/?r=673&q=Prof-Dr-Fakhr-ul-Islam>

²³ Khān, *Tārīkh Riyāsati Swāt* (Peshawer, New Rāhīl Printing Press, 2001): 224.

²⁴ Muftī Moḥammad Wahāb Manglawari, "*Riyāsti Maḥkama-i-Qaḍā Aur Dārul-‘ulūm ‘Islāmiyyah Saidu Sharīf*." *Al-Tansīq: Tadhkira ‘akābir wa Mashā’ekh wa Dārul-‘ulūm* (2019): 44

²⁵ It was also known as *Maḥkama-e-‘Ālia* (Superior court).

²⁶ Ghazala Rafi, "The Fall of Swat Valley to the Taliban: Reflecting on Immediate and Long Term Causes." *Pakistan Journal of Criminology* 9, no. 2 (2017): 39

²⁷ An unwritten code that was strongly embedded *Pukhtūns’* minds. For further explanation of the term, see ... Sherzaman Taizi, *Jirga System in Tribal Life*, (Area study Centre, Russia; China; and Central Asia, 2007), 5.

²⁸ Hassan M. Yousufzai and Ali Gouhar, *Towards understanding Pukhton Jirga*, (Peshawar, Just Peace International, 2005), 20

²⁹ Khān, *Tārīkh Riyāsati Swāt* (Peshawer, new Rāhīl printing press, 2001), 225.

³⁰ In such book the sources were mostly taken from *Ḥanafī* school including, not exhaustively, *Hidāya*, *Durr Mukhtār*, *Radd-al-Muḥtār*, *Fatāwa Ālamgīri*, *Fatāwa Qaḍī Khān*, *Baḥr-al-Rā’eq*, *Mabsūt*, *Majma’-al-Anhurr*, *Kanz-al-daqa’eq* and many other books,

³¹ About the two volumes of this book and its nature there was a common misconception even among researchers that the first volume had related to *Mu’āmalāt* and the second one to *‘Ibādāt*. However, *Al Khadim Research Journal of Islamic Culture and Civilization*, Vol. III, No. 2 (April – June 2022)

factually, the author wrote the second volume first (*Mu'āmalāt*) and first volume (*Ibādāt*) afterwards. This fact had clarified by the author in the foreword of book. The same method was followed by the classical *fuqahā*, too, in their scholarly work..

³² Rome, "Crisis and reconciliation in Swat." 57.

³³ After thorough interview from many learned local elders, who either were employees in or witnessed various courts of different circuits, researchers came to know that the stringency in adherence with the procedural law was not observed in *Stricto Senso* (Strict sense). However, the provision of prompt justice was the actual purpose.

³⁴ Appointment comes under the preview of executive law while process of the court falls under procedural law and implementation comes under the ambit of substantive law.

³⁵ See for example: Khān, *Tārīkh Riyāsati Swāt* (Peshawar, new Rāhīl printing press, 2001).

³⁶ Manglawari, "*Riyāsti Maḥkama-i-Qaḍā*," 44-46

³⁷ Dārul-'ulūm 'Islāmiyah al-Ḥaqqāniya was established on Jan 15th, 1945. Firstly its it was situated near Central Hospital. Later on it was shifted to Mingora.

³⁸ Mufti Abu al-'ashkāb aḥrār, "*Yūsufzai 'Afghān May 'elmi wa tadrīsī 'Irtiqā Aur Dārul-'ulūm 'Islāmiyah ki Tāsīs*" *Al-Tansiq: Tadhkira 'akābir wa Mashā'ekh wa Dārul-'ulūm* (2019): 36

³⁹ He was *Ṣadr* (president) of the Dārul-'ulūm '*Islāmiyah al-Ḥaqqāniya*

⁴⁰ Other members of the committee were consist of 'Abdul Majīd Bazārgwi alias Bazārgai bābā; 'Abdul Haleem Hodigrāmi (from odigram), Moḥammad Nazīr Chakesari, 'Ināyat ullah Chakesri, 'Aziz ur Rahman Qambar (he was also teacher of Walī 'Ahad (crown prince) Moḥammad Aurangzeb Khan) and etc...Moḥammad 'Ibrāhīm Bunerī Bazārgwi, *Fatāwa Wadūdiyyah*: P.0

⁴¹ The judges of 'Adālat-i-'Āliya in 1950 were consist of *Qāḍī-al- Quḍāt* (chief justice) i.e. 'Abdul Khālīq Kotkay ghwarband, Moḥammad Sher Zāda Mingora, Muḥibbullāh Qambar and Moḥammad 'Ālam Gul Saidu Sharif. This court used to hold its session at *Jāmay' Masjid Saidu Sharif*. ...Moḥammad 'Ibrāhīm Bunerī, *Fatāwa Wadūdiyyah*: p.0

⁴² *Malak* used to speak for his tribe, sometimes without getting any pay or sometimes ha had to be paid.

⁴³ 'Ālim used to go when the matter involved crucial points of *fiqh* or *Usūl fiqh* (Islamic Jurisprudence).

⁴⁴ Researchers interviewed Shah Salam Khan (Advocate Supreme Court) who at the time of Swat state, visited local court of *Chail* (a town of Swat near to Bahrain) and others. He also investigated the judicial system of Swat with minute details.

⁴⁵ In this kind of suits, instead of the lengthy procedure, short procedure was used to be followed on the principle i.e. "*Justice delayed is Justice denied*". See *The Code of Civil Procedure, 1908*, Order. XXXVII... The original text runs as: "*SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS*"

1. This order shall apply only to the High Court [to the District Court and to any other Civil Court notified in this behalf by the High Court.]

⁴⁶ The detail on Khyber Pakhtunkhwa Police's DRC can be traced through the web link ... <http://kppolice.gov.pk/drc/>

⁴⁷ Rome, "Administrative system of the Princely State of Swat.", 8-9.

⁴⁸ Shah Salam Khan (Advocate Supreme court), while narrating his story, said that a shopkeeper had brought the petition against him regarding a debt in his account register, whereby he served oral summons himself upon Khan.

⁴⁹ The Original text flows as:

"زہ چی د سوات حکمران شوم نو بیا خہ مودہ پس زہ په دی نتیجی ورسېدم چې هرې علاقې او هر قام د پاره خپله ژبه خپلول ښه وي - خپلې ژبې او خپل تهذيب ته په سپک نظر کتل ده پرېوتې غلام ذهن کار دے - او د خپل قومي وقار او د قومي غېرت سره د ښمني کول دي نو ما دخپل ریاست د فترې او عدالتي ژبه پښتو مقرر کړه - سرکاري فارمونه، استامونه، کتابونه دا هر خہ می پښتو کښی چاپ کړل -"

Meaning thereby, "When I became ruler of Swat, I reached to the conclusion that every nation and area must adopt their own language. Humiliating its own civilization and language is sheer slavery. And it's (like) being in antagonism with one's own honor. I, therefore, selected Pukhto as official language.

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Government forms, stamp papers, books and etc I have published in Pukhto." ... Muhammad Asaf Khan, *Tarikh Riyasat-e-Swat wa Sawanih Hayat Bani Riyasat-e-Swat Miangul Gul Shahzada Abdul Wadud Khan Bacha Sahib*, n.p., 1958, .357,358.

⁵⁰ Sardaraz Faizy, *Riyāsāt-i-Swāt kay Daur may Kohistān Kā ‘Adālti Nizām* [Internet]; See for example ... <http://kohistantv.com/?p=315>

⁵¹ Rome, "Administrative System of the Princely State of Swat.", 8.

⁵² Mediation law is not mandatory to be followed, notwithstanding, it depends on parties consent to opt it. For more explication of the term visit ... <http://www.pma.org.pk/mediation-laws/> (accessed on Aug 2nd, 2019)

⁵³ *The Code of Civil Procedure, 1908*, S.76, The original text runs as: "1. Any court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it..."

⁵⁴ Shirazi, Nasim Shah, and Hafiz M. Yasin. *Fiscal structure, social welfare program and infrastructure development in the former state of Swat (Pakistan): a case study with implications for Muslim countries*. No. 1433-8. 2015.

⁵⁵ Faizy, *Riyāsāt-i-Swāt kay Daur may Kohistān Kā ‘Adālti Nizām* [Internet]; the whole article could be traced from... <http://kohistantv.com/?p=315> (accessed on Aug 22nd, 2019)

⁵⁶ See for further details: United Kingdom, Judiciary, *History of the Judiciary* [Internet]; ... <https://www.judiciary.uk/about-the-judiciary/history-of-the-judiciary/> (accessed on Aug 2nd, 2019)

⁵⁷ The word ‘ilm, as per the literature of *fuqahā* means "knowledge"

⁵⁸ See for further details... Mohammad bin Ahmad bin Abi Sahl Shamsul Aimmah al-Sarakhsi, *Al-Mabsūt*, (Beirut, Dārul Ma'rifa, 1993), 15:71; Shams ud Din Mohammad bin 'Abdullah al-Zarkashi al-Miṣri al-Hanbali, *Sharh al Zarkashi*, (Saudi Arabia, Dārul 'Abikān Riyād, 1993), Vol. 7, 236; Abu bakr bin Mohammad bin 'Abdul Momin bin Hariz bin Mo'allā al-Hussaini al-Hasni, Taqī ud din al-Shāfi'i, *Kifāyatul Akhyār Fi Ḥalli Ghāyatil Ikhtisār*, First ed. (Damascus, Dārul Khair, 1994), 1:550; Abu al Walīd Mohammad bin Ahmad bin Mohammad bin Ahmad bin Rush al-Qurtabi al-Undulusi al-Shahīr, *Bidāyat ul Muḥtāhid wa Nihāyat ul Muḥtasid*, First ed. (Lebanon, Dār Ibni Hazam, 1999), 1:768.

⁵⁹ The original text flows as ...

"وَأَمَّا بَيَانُ مَنْ يَصْلُحُ لِلْقَضَاءِ فَتَقُولُ: الصَّالِحِيَّةُ لِلْقَضَاءِ لَهَا شَرَايِطُ (مِنْهَا): الْعُقْلُ، (وَمِنْهَا) الْبُلُوغُ، (وَمِنْهَا): الْإِسْلَامُ، (وَمِنْهَا): الْحُرِّيَّةُ، (وَمِنْهَا): الْبَصَرُ (وَمِنْهَا): الْتَطَلُّقُ..."

...Alāudin abu bakr bin Mas'ūd bin Ahmad al-Kāsāni, *Badāi' al-Sanāi' Fi Tartībī-al-Sharāi'*, 2nd ed. (Beirut, Dārul Kutub-ul-'ilmiyyah, 1986), 7:3-4.

⁶⁰ Before 1945, there was no formal body but afterwards. However, later on, a committee for religious affairs was established, headed by chairman of 'Dār-al-'Ulūm al-'Islamiyyah al-ḥaqqāniyyah, Saidu Sharif and other members; being *Ullamās* and Mudarrisin. Such committee had to confirm the death penalties passed by *Maḥkama 'Āliyya*.

⁶¹ See for example *Faṭḥul Qadīr* by 'Ibn al-ḥammām, *Adab al-Qāḍi* by Māwardi, *al-Mughni* by 'Ibn-i-Qudāma and many others.

⁶² *Kuwaitiyyah*, 33:297.

⁶³ Afandi, *Durar-ul-Ḥukkām Fi Sharḥ Majallatil Aḥkām*, 3:634.

⁶⁴ ... The original text flows as:

"وَفِي زَمَانِنَا الْعَادَةُ أَنَّ الْكَاتِبَ هُوَ الَّذِي يَكْتُبُ كِتَابَ الدَّعْوَى وَيَتْرَكُ مَوْضِعَ التَّارِيخِ وَلَا يَكْتُبُ جَوَابَ الْخَصْمِ وَيَكْتُبُ أَسْمَاءَ الشُّهُودِ بَعْدَ ذَلِكَ وَيَتْرَكُ فِيمَا بَيْنَ الْخَطَيْنِ فُرْجَةً فَإِذَا رَفَعَ الدَّعْوَى عِنْدَ الْقَاضِي فَيَكْتُبُ التَّارِيخَ بِنَفْسِهِ وَيَكْتُبُ جَوَابَ الْخَصْمِ عَلَى الْوُجْهِ الَّذِي تَقَرَّرَ

...Imām al-thamarqandi, *Tuḥfah al-fuqahā*, 3:373.

⁶⁵ Abdullah Ahmad bin Mohammad bin Qudāma, *Al-Mughni*, (Cairo, Maktabatul Qāhira, 1968), 10:133

⁶⁶ Ibni Farḥūn, *Tabṣirah al- Ḥukkām Fi 'Usūl al-Aqḍiyya wa Manāhij al- Ḥukkām*, 1:56.

⁶⁷ Shaikh Nizām wa Jamā'ah min 'Ullamā-e-Hind, *Fatāwā 'Ālamgiriyyah* (also known as *al- Fatāwā al-Hindiyyah*) 2nd ed. (Quetta, Maktaba Mājidiyyah Eid-Gāh, 1983), 6:145.

⁶⁸ The original text runs as under:

"لَتَحْكِيمَ هُوَ عِبَارَةٌ عَنْ إِتِّحَادِ الْحُصَيْنَيْنِ حَكْمًا بِرِضَاهُمَا بِفَصْلِ خُصُومَاتِهِمَا وَيُقَالُ لَهُ الْحُكْمُ وَالْحُكْمُ" meaning thereby; appointing or empowering someone, with mutual consent by the parties, to solve the matter.... Moḥammad al-'amīm al-'Eḥsān al-Mujaddadī al-Barkatī, *Qawā'id al-fiqh*, 1st ed. (Karachi, al- Ṣadaf Publishers, 1986), 1:222.

⁶⁹ See for further elaboration of the term '*Tahkim*' ...

... Attaullah, Qazi, and Lutfullah Saqib. Tracing the Concept of ADR in Shariah and Law " Hamdard Islamicus, ." XXXIX (3), 2016,

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⁷⁰ As per established principles of Islamic law, the verdict of the court may be in oral or in written form...Please see for minute details of the issue... 'Abdul Karīm bin 'Abdullāh al-Khuḍayr, *Sharḥ Bulūgh al-Murām*, Kitāb al-Qaḍā-5, Page. 10/15: [Internet] ... <http://alfiqh.net/شرح-بلوغ-المرام-عبد-الكريم-الخصير> (accessed on Oct 14th, 2019).

⁷¹ Abū 'Abd-al-Raḥmān 'Abd-Allāh bin 'Abd-al-Raḥmān bin Ṣāleḥ bin ḥamd bin Moḥammad bin ḥamd bin 'Ibrāhīm al-bassām al-Tamīmī, *Taudīḥ-al-'Aḥkām min Bulūgh al-Marām*, 5th Ed., (Makkah al-Mukarramah, Maktabah al-'Asadi, 2003), 7:159.

⁷² Now known as Government Dārul-'ulūm 'Islāmiyah, Saidu Sharif or Dārul-'ulūm al-'Islāmiyah al-Ḥukūmiyyah.

⁷³ '*Tānradār*' is a Pushto version of Urdu word *Thānedār*, who is commonly known as station house officer.

⁷⁴ Means, in evidence, the burden to prove is on the party who alleges the fact, and the party who denies the fact (opposite party) is to swear".