

LAND OWNERSHIP IN SWAT: HISTORICAL AND CONTEMPORARY PERSPECTIVE

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TERMS AND NAMES

Dawtar also spelled as *daftar/dafter*. The land liable to re-allotment in the traditional *wesh* system. The owners of *dawtar* had the proportionate shares in all the categories of land of the village or locality where they had their shares in the *dawtar* and other related privileges and obligations as well.

Dawtari(Plural: *dawtaryan*). The person who holds share in *dawtar*.

Mundai/Munday. Having fixed boundaries, no share elsewhere in the other categories, hills of the concerned locality or other *shamilat*. *Shamilat*. Land, hill and forests etc. held in common by the *dawtar* landowners on the basis of their *dawtar* shares; wasteland, hillside etc. blended with a piece of land. *Wesh*. Distribution, but in the context of the theme of this paper the proper term for it is allotment/re-allotment.

Garzinda Wesh. Literally movable distribution/allotment, meaning non-permanent; the *wesh* system under which the *dawtar* land owners had to shift from one locality/village to another at regular intervals and to take their shares in the new place for the next tenure.

Rupai/Ruppee. The largest unit/scale of *dawtar*. In Swat proper it is called *Rupai white* in some other places it is also called *Brakha/Pacha/Saray/Qwalba/Khat. Adilai*. One half of the *Rupai. Tanga*. One third of the *Rupai. Pau*. One fourth of the *Rupai. Ana*. One sixteenth of the *Rupai. Tora*. Used for two *Paisa dawtar* in some villages. *Paisa*. The smallest part of the *Rupai*.

Nema Paisa. One half of the *Paisa*.

Terai/Daunray. One third of the *Paisa*.

Pau Paisa. One fourth of the *Paisa*.

Serai. Lands, which were under permanent ownership and were not liable to re-allotment in the traditional *wesh* system. The *serai* lands had no proportionate share in other categories of land and *shamilat* of the village or locality.

Banda (plural: *Bandeyl/Bandajaf*). Hamlet; remote pasture in the hills with residential quarters. *Qalangi Banda*. The *banda* usually given on rent. *Ghair Qalangi Banda*. The *banda* used by the owners themselves.

Dhakarak/Ghaas Hundi. Personal protected gross-land; the land protected for grosses for personal use.

Dhaka Chiragah. Common grazing land of a village, tal or *qaum* etc. *Karin*. The hillside land-where proper ploughing is not possible and so is cultivated by the use of pickaxe.

Nautor. An illegal intrusion on the land; the newly made land in the forest or hillside by encroachment.

Warshu. Grazing-land; pasture land. *Zangal*. Forest.

Logay. Literally smoke but in the context of this paper means a single household.

Malkiyat. Legal ownership. *Qabza*. Possession by a mean not entitling ownership but with the passage of time claim ownership.

Qaum. A particular tribe; a section of a tribe or sub-tribe. *Tal*. The segment/group/block of the *dawtaris* of a village/town etc.

Pukhtuns. Those who belong to the segmentary Pukhtun group. In the context of the decree of the ruler of Swat State, dated 7 February 1950, given in the text of this

paper *Pukhtuns* implies only to those Pukhtuns who belong to the segmentary Pukhtun group and yet possess their share in the *dawtar* and also those who though do not belong to the segmentary Pukhtun group but possess share in the *dawtar*. *Sayyads*. The commonly believed descendants of the Prophet Muhammad (PBUH) from his daughter Fatima (RA) and son-in-law Ali (RA).

Mian (plural: *Miangan*). Descendants of saints and spiritual leaders of the past who have acquired wide fame and reputation among many tribes are regarded as *Mians*.

Mullan (singular: *Mulla*). *Mullan* means the priests. They usually perform the duty of *Imamat* (leading the prayers) in the mosques and teaches the Holy Qur'an, and the Islamic injunctions to the people. The title usually become hereditary and applies also to those descendants of these priests who are not versed in the Islamic education and do not perform these functions.

Sahibzadgan (singular: *Sahibzada/Sahibzadah*). The descendants of the *Pirs* of lesser or local fame and reputation are called *Sahibzadgan*.

Gujars. The Gujars are an ethnic group, not Afghans but of the Jat or Rajput group. In Swat, they did not possess hereditary share in the land or by virtue of their descent. They remained merely vassals to the *dawtar* and *serai* landowners and were mostly tenants.

Khan. The meaning of the word Khan depends on the sense in which it is used on a particular occasion. It is used as a title for a chief; for addressing and respect of a landowner; sarcastically for an unworthy person; and is given as personal name. In this paper it refers to the tribal chief.

Malak. Among the Swat Yusufzais *Malak* was the lesser tribal chief as compared to the *Khan* and some times subordinate to the respective *Khan* as well.

Jirga. Tribal/local consultative assembly; forum; council; council of the tribal chiefs. It has other meanings, composition, functions, and uses in different contexts.

Tamasuk. Duly written and legal deed of the land dealing.

Patwari. A keeper of the records and accounts of lands especially at village level.

The sixteenth century proved a turning point in the history of Swat, as the Yusufzai Afghans occupied the land. The Yusufzai retained independent position of Swat but failed to establish an organised government. They lived in the old tribal fashion, headed by prominent tribal chiefs and divided into factions (*dallas*), headed by their own Khans. They, however, laid the foundation of the social organisation, which continued to function successfully for over four centuries till it was fundamentally changed during the Swat State era.

Land not only remained the basis of subsistence and prosperity in the agrarian and tribal society of Swat and the adjoining areas but also the "main source of economic and political power"¹ and "vehicle of a political identity and involvement"². The issues of land tenure, resource ownership and other complications and complexities had their origin in Swat. Hence the question of land ownership is pivotal.

LAND OWNERSHIP

When the Yusufzais and Mandanr migrated from the neighbourhood of Kabul in the last quarter of the fifteenth century A.D. and gradually occupied territories in the present North-West Frontier Province of Pakistan, including Swat, in the sixteenth century, an internecine war broke out between them over the distribution of the occupied areas. However, "the cession of Chamla, Khado Khel and certain other districts upto Kabul River to the Mandarns brought about peace."³

THE TRADITIONAL WESH SYSTEM

The conquered territories were distributed among various sections of the Yusufzai tribe by their saintly leader Shaikh Malli but allotment was not permanent, because the land differed in composition, location, fertility, availability of water, accessibility and so forth. To ensure that all the shareholders share benefits and losses of the land equally, Shaikh Malli devised the system of land tenure called *wesh*.

Under this system land allotted to the main branches of the tribes were re-allotted every ten, seven or five years⁴ among respective sub-branches by drawing lots known as *khasanray*. On every re-allotment all shareholders, having share in the land liable to re-allotment, used to move and settle in the villages allotted to them for the next tenure and to allot the houses and lands of those villages among themselves according to their individual shares. The land within the villages had different categories, so each category was to be divided among all the shareholders in order to share the benefits and the losses. This *wesh* system was called *Garzinda Wesh*.

It is believed that Shaikh Malli had kept the record of his arrangements and shares of the different lineages in his famous book *Daftar-e-Shaikh Malli*. However, no copy of his *Daftar* can be traced.

Serai lands were allotted to the holy families and people, i.e. Sayyads, Mians, Mullas and Sahibzadas, in the allotment of Shaikh Malli. The tribes frequently allotted such lands at the times of the new *wesh*. The owners of *serai* lands were generally called

Stanadar. *Serai* were also allocated to mosques and in some cases to the *Imam* (prayer leader in the mosque) of the mosque as well, which remained in his possession till he remained the *Imam*.

Nevertheless, most of the Khans and Malaks also held *serai* lands, which were excluded from the *wesh* in different names, e.g. *Da Khanai Serai* (*Serai* of Khanship), *Da Daday Serai* (*Serai* for serving guests with maize ears), *Da Melma Serai* (*Serai* for serving guests), *Da Telu Serai* (*Serai* for oil for burning in the *hujra*). Though in principle the seat of Khanship and Malakship, depended on the will of the people of the tribe but practically the seat was more or less hereditary. As such the families of the Khans and Malaks, appropriated the above-mentioned *serai* lands as their personal property. Since these *serai* lands, were by nature exempted from periodical *wesh*, therefore the Khans and Malaks also enjoyed huge pieces of land in addition to their *dawtar* shares.

The *serai* lands were *mundai*, but a few exceptions wherein the *serai* lands had the status of *dawtar*. For example the *serai* land held by the Akhund Khel⁵ Miangan in the Murghzar valley and the territory between the Jinki Khel limits and the present limits of Swat Kohistan. These areas were also subject to re-allotment among the concerned families on the pattern of *dawtar*. They held their share and proprietary rights in the hills and the forests, attached with *serai-dawtar*. The Miangan of Sar-Sardai and Jambil valley also held hills besides other *serai* lands.

ABOLITION OF THE TRADITIONAL WESH SYSTEM

Swat State was founded in 1915, and Abdul Jabar Shah was its first *Bacha* (king) by a *jirga*. He was removed from the seat in September 1917 and Miangul Abdul Wadud⁶ was the new king of the State.⁷ Though devised in good faith, the periodical *wesh* practice had considerable drawbacks. After consolidating his position, Abdul Wadud embarked upon abolishing the *wesh* system, because he considered it a barrier in the way of progress and development.⁸ Process of the Permanent Settlement (commonly known as *Mustaqil Wesh*) took five years to complete throughout the State.⁹

The Permanent Settlement was done, but the *wesh* system was not done away throughout the State. However, the houses and lands around the villages were permanently allotted for the sake of constructions, planting orchards, gardening and so forth. Permanent allotment within the villages, took place afterwards in different localities at different times. In some sections, the *wesh* system continued within the villages throughout the State era and the permanent allotment therein took place in the post-merger time mostly in the 1970s. However, in few villages it came to an end in 1990s in respect of the land but is still practiced in riverside lands.

MISCONCEPTIONS ABOUT THE WESH SYSTEM AND THE PERMANENT SETTLEMENT

Some writers have misunderstood and erroneously present the Permanent Settlement. They assert that Abdul Wadud, annulled the *wesh* system and the occupants of the land, at the time, everywhere in Swat State were recognised owners of the land¹⁰; and that he "declared the existing allotments to be final."¹¹ Another version about the re-allotment or the traditional *wesh* system and the Permanent Settlement had made every one in Swat a landowner and given a share in land by Miangul Abdul Wadud.¹² Such things have neither been practiced nor happened in Swat. Whereas Akbar S. Ahmed claims that, with the Permanent Settlement land could not be claimed as a "lineage right based on belonging to a segmentary Pukhtun group."¹³

The facts are otherwise. The Permanent Settlement never freeze the "inherent rights to the land" "based on belonging to a segmentary Pukhtun group." The inherent rights still persisted and were confirmed and strengthened by the State. A unique¹⁴ decree issued by the Last Wali¹⁵ of the State in the name of Hakim Babuzai in 1950 proclaims that, this is the *Bacha Sahib's and my order* that the Gujars possess no personal *dawtar* or *serai* [land in Swat]. In case of claim they had to produce, a court written *Tamasuk* or twenty notable elder persons to prove the claim. Land held by professionals like *Ingars* (black smiths), *Duruzgars* (carpenters), *Nishanchi* (standard bearer), *Jalawan* (ferryman), etc. are *dawtar of the Pukhtuns*¹⁶. The land as the "lineage rights based on belonging to a segmentary Pukhtun group," still persisted and was strengthened and protected by the State itself. However, the non-Pukhtuns or those who did not belong to a segmentary Pukhtun group can purchase land, but that too with the consent of the concerned Khan and Malak, was prevalent in the pre-State era.

Similarly Sabt-e-Hasan misconceived the traditional *wesh* system in a different sense. He had deemed it, as the redistribution of the land among all the members of the tribe equally and had tried to justify holding of the land as the common property of the masses, under the State, in Communism.¹⁷ Though he speaks about the North-West Frontier Province, it is generally believed about Swat.

It is pertinent to dispel the notion, which under the traditional *wesh* system land was redistributed or re-allotted among all the members of the tribe/clan/family equally. Though the *dawtar* was liable to frequent re-allotment, but it was re-allotted equally among all the members of the tribe/clan/family every ten years or duration of the tenure in the particular area. Every shareholder received the share he possessed prior to the new *wesh*, i.e. re-allotment. Even the weak and poor shareholders got deprived of their shares in the new re-allotment. A person who lost his whole share somehow, i.e. by selling, by coercion of some powerful person, or by other mean, received nothing afterwards; and if he lost the portion of it, he received afterwards only the remaining share.

SWAT KOHISTAN

In Swat Kohistan, land had the same two categories, i.e. *dawtar* and *serai*. Both the *dawtar* and the *serai* lands held the same status as was and still is in Swat proper. But there was no *wesh* system like the Yusufzai of the Swat valley. In Swat Kohistan the

dawtar had been permanently distributed and allotted since earlier times. Similarly the *bandajat* had also been distributed on *qaum* basis. The *bandajat* has two kinds namely *qalangibanda* and *ghairqalangibanda*¹⁸

POST-STATE SCENARIO

In spite of the counsels from people, land settlement was not carried out on modern lines by the Last Wali of the Swat State,¹⁹ causing disputes of the land ownership. After the merger of Swat State, lands occupied forcibly or on some other grounds by the ruling family and the powerful Khans, either attempted to regain their lands or filed writs for them.²⁰ The Gujars also took advantage of the new setup and the Pakistan Peoples Party's (that came into power in Pakistan) slogans and announcements and claimed ownership of the lands which were in their possession as tenants. Even those who had sold their lands reclaimed it on the plea that it had been confiscated. Some age old land disputes were also renewed.²¹ These disputes aggravated the situation in Swat and caused some unwanted incidents and losses.²²

To resolve the crises, Government of the North-West Frontier Province, constituted a Commission in October 1970 vide Notification No. 66/SO (Spl) HD/70 dated 8/10/1970, besides other things, "to enquire into and identify the nature and extent of agrarian problem in Swat District with special reference to the property disputes between (a) the Wali and the ousted claimant owners, and (b) the land owners and the tenants."²³ Number of the cases in reference to problem (a) were 469 whereas that to problem (b) were twenty six.²⁴ Steps were taken to expedite the Commission's work.

On 11 April 1972, it was ordered under Martial Law Regulation No. 122 that it is to be ascertained that what property belonged to the former State and what to the ex-ruling family as private or personal property.²⁵ The work was done accordingly. And under Martial Law Regulation No. 123, dated 11 April 1972, it was ordered that only the "Provincial Government or an officer authorised by it in its behalf" will trial all the disputes relating to the ownership of or any right or interest in, any immovable property in the former State, in respect of (a) the tenants and the ex-Ruler of the former State or his heirs, (b) the claimant landlords and the ex-Ruler or his heirs, and (c) the landlords and the tenants.²⁶

The Commission constituted by the Government of North-West Frontier Province, in October 1970, vide Notification No. 66/SO (Spl) HD/70 dated 8/10/1970, submitted its report to the Government. It was conveyed in the working paper to the members of the Committee, who would attend the meeting to discuss the Commission's recommendations that:

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

our mind once for all and accept all recommendations of the Commission in toto.²⁷

It was further suggested that full implementation is important, so after giving the award and its announcement by the Government, the matter should stand closed and no further enquiry or probe be made in the case of the so far settled disputes.²⁸ But crux of the matter was proper implementation, because "the paper acceptance of the recommendations" was "a very different matter than actual implementation."²⁹

As the Deputy Commissioner and the Officer on Special Duty decided most of the cases in favour of the ex-ruling family and some cases in favour of the claimants, the Federal Government nominated a Chairman/Member of the Federal Land Commission, Shaikh Muhammad Rashid (commonly known as Shaikh Rashid), to see the cases decided by the Deputy Commissioner and the Officer on Special Duty and remove grievances. It has been alleged that Shaikh Muhammad Rashid was biased, towards the ex-ruling family and "politically motivated" hence he decided most of the cases against the ex-ruling family.³⁰

The ex-ruling family lingered on the legal proceedings on one pretext or the other for their own reasons. Besides other tools, they pretend that they have patched-up the matters with the claimants and received the considerations for that compromise. They did not take the choice, given under the Land Reforms Laws (which was 2400 Produce Index Units³¹ [PIUs]) for the time being.

The ex-rulers approached to the Chief Martial Law Administrator, General Ziaul Haq, that the Federal Land Commission's Chairman/Member, namely Shaikh Muhammad Rashid, was biased to the ex-ruling families so his award may be repealed. General Ziaul Haq promulgated President's Orders Nos. 11, 12 and 13 of 1981 and Mr. Justice (Retd.) Qaisar Khan was appointed as Chairman, Tribunal Dir, Chitral, and Swat to review the cases decided by Shaikh Muhammad Rashid. Carrying out the proceedings at Mardan, Qaisar Khan reviewed the decisions of the Chairman/Member Federal Land Commission (namely Shaikh Muhammad Rashid) and decided 55 cases in favour of the ex-ruling family.³²

This, however, neither resolved the question of the choice of 2400 PIUs nor brought an end to the disputes of land ownership between the ex-ruling family and the tenants/claimants. Most of the cases are still pending in different courts, the ex-ruling family had not taken the choice and are beneficiaries of the situation till now.

THE LAND SETTLEMENT⁵⁹

The Land Revenue Act 1967, along with Tenancy Act 1950 was extended to Swat including Kalam on 17 April 1974 Vide Regulation I, 1974.³³ And on 26 May 1994, the Board of Revenue Act 1957 was also extended to Swat.³⁴

In 1970s, Land Settlement was taken by the Government in the then Swat District, i.e. former Swat State. After the completion of the process in Buner and Shangla, now separate Districts, the process started in the present Swat District area including Swat Kohistan, in 1981.

Under the settlement plan, lands were entered both in Swat proper and Swat Kohistan in the name of those who were original *dawtaris*, *serai* and other landowners of the concerned lands/village according to the formula. The formula was the decree of the ruler of Swat State, dated 7 February 1950, in the name of Hakim Babuzai (See pages 5-6 above and footnote No. 16). Under the formula, Gujars possess no personal *dawtar* or *serai* land in Swat. In case of their claim they had to produce a court written *Tamasuk* or twenty notable elder persons in order to prove the claim³⁵. As the *dawtar* landowners sold the far-off lands and the hilly tracts in the hands of the Gujars, after the merger of Swat State, to get rid of the ownership disputes mentioned above. Hence these lands and hilly terraces were entered in the names of the Gujars under the formula and also in the following manner.

The claimed lands were entered in the names of the claimant(s) provided the old owner(s) did not object and dispute the claim(s) or produced a written legal deed of the dealing of the land.

In cases of disputes of ownership between two villages or *qaums* the settlement officer directed the *Afsar-e-Maal*, who was the Assistant Settlement Officer, to decide the case(s) of such nature according to the law and ground reality. The decision(s) made and order(s) passed, shown by a person, by any competent authority were also maintained.

It was the good fortune of the Swati landowners that M. D. Mahmud of Nawshera, a renowned honest Settlement Officer, and Farman Ali Shah Bacha of Ismaila, Swabi, another honest officer, were deputed to Swat for the land settlement as Settlement Officers in the capacities of "Settlement Officer" and "Assistant Settlement Officer" respectively.

According to the Land Settlement Report, in the present Swat including Kalam, i.e. present Swat District:

Total *Mauza* (estates) = 219.

Total *Khatunis* (Survey Numbers) = 130673.

Total *Khasra* Numbers (tenement holding) = 492809.

Total cultivated land = 247553 Acres.

Total uncultivated land including forests = 967,561 acres

Total land = 1215204 Acres.³⁶

But in Malamjaba, about 5000 canals land was left mistakenly unmeasured by the Settlement Department and was measured later in 1991. And in Kalam Tahsil the landowners boycotted the settlement proceedings. So separate landholdings had not been identified and land of each village shown as one or two units.

On the whole, the settlement in Swat (1981-86) was carried out justifiably by the Settlement Officers. They did their best to enter the lands in the names of the real legal owners. The present disputes, regarding land ownership pending in the courts are mostly due to vested interest. The present legal system and framework, the non-implementation of the decisions and the law, and the ineffective administrative system also contribute to land ownership disputes in the present scenario.

FORESTS

The planned exploitation of the forests started during the Swat State era. The Ruler claimed that, the forests belong to the State, however 10% of the sale proceeds of the trees was given as royalty to the local right holders. Moreover, he did not interfere in the grazing rights and *bandajat* etc., and the landowners exercised their other concerned ownership rights.³⁷ In the last days of the State, the Wali increased the royalty to 15%.³⁸ The Pakistani Government also retained this and the people deem and claim the forests as their property. Though, *inter alia*, forests were used for favouritism and as political bribes by the Last Wali,³⁹ even then there was a sort of check and control, over the people.⁴⁰ With the merger of Swat State in Pakistan, the check and control did not remain. The unbounded freedom was abused. Ruthless cutting of the forests rather destruction started by the contractors in collaboration with the officers and staff of the Forest Department,⁴¹ for amassing more and more wealth.

Exercising the powers conferred under Regulation I, 1969,⁴² wherein powers of the ex-ruler of Swat State were transferred to the Provincial Government, the Government of North-West Frontier Province declared through a Gazette Notification, in September 1972, all the forests situated in the former State of Swat, which also include Kalam, as the State property subject to the payment of 15% of their income as royalty to the local rights holders.⁴³ On 20 May 1974 the Government of North-West Frontier Province extended the Forest Act 1927 to ex-Swat State including Kalam.⁴⁴ The Punjab Forest (Sale of Timber) Act 1913 was made applicable and the Northwest Frontier Province.

Protection of Trees and Brushwood Act 1949 was also applied⁴⁵. On 20 December 1975 the provision of chapter IV of the Forest Act of 1927 was applied to all forestland in Swat along with Kalam and forests were declared protected forests.⁴⁶ On 22 December 1975, the Government declared all trees within the protected forests as reserved, and prohibited removal of any forest produce in any such forest and clearing of land for any purpose.⁴⁷

Declaration of the forests as the Government's property, extension of the Forest Act 1927, and the subsequent notifications led the situation from bad to worse. No physical boundaries were marked and proper implementation was not assured. The Government failed to protect the lands/areas/places/forests declared as its own property. Though the Government increased royalty from 15% to 60%⁴⁸, but the landowners and the non-landowners wanted to cut down trees and clear forests for their own reasons. Whereas the contractors and forest-Mafia, ruthlessly cut down trees irrespective of their maturity etc. in collaboration with the officers and staff of the Forest Department which is an open secret.

The Pak-Swiss Kalam Integrated Development Project (KIDP) also contributed to the destruction of the forests and natural resources because of the introduction of the off-season vegetables and new varieties of potatoes. As these vegetables and potatoes proved more productive and cash giving, people gave impetus to cutting trees and forests to clear more land for sowing and producing off-season vegetable and potatoes. Moreover, they also earned and still earn extra from the timber by cutting trees for clearing land for vegetable growing etc. and agricultural purposes.

All these led to the destruction of natural resources, mass deforestation, environmental degradation, soil erosion, destruction of the natural and scenic beauty and ecosystem, climatic modification, and such other consequences.⁴⁹

Royalty of the Forests⁵⁰

Total forest area in the present Swat including Swat Kohistan, i.e. present Swat District, at the time of the Land Settlement has been recorded as 346,842 acres (542 square miles).⁵¹ In the Land Settlement, forests in the Swat District including Kalam had been recorded as possession of the Forest Department and Ownership of the Provincial Government. However, the *patwaris* had done favour and disfavour in recording forests and the hill lands in the people or Government's names. The concerned rights holders receive 60% of the sale proceeds of the forests as royalty, while in Barikot Tahsil Area they receive 80% as royalty.

In Swat proper the royalty is distributed on the *dawtar*/local land holding rights basis. Whereas in Swat Kohistan, there are different rules among different localities and tribes regarding the distribution of the royalty of the forests. These are: *dawtar*, *logay*, and both *dawtar* and *logay*. *Dawtar* means that the royalty is distributed on the *dawtar* share basis among the *dawtars* only. *Logay* means that though the *dawtar* is owned by the *dawtaris* according to their shares the royalty is distributed among all the householders on the household basis. Whereas the *dawtar* and *logay* rules means that a portion of the royalty is distributed among the *dawtaris*, only on the basis of their *dawtar* shares and a portion is distributed among all the householders on the household basis. Further details are as under:

In the Chail Valley in two villages the *dawtar* and in two the procedure of *logay* is in practice.

In Bahrain Tahsil, in the territory on the west of the Swat River the rules of *dawtar* are applied. However, some minor portions in *zangal* had been termed as *logay* area so as to benefit those who had no share in the *dawtar*. In the territory on the east of the Swat River different villages practise different rules. In some villages royalty is owned only by *dawtaris* according to their existing shares. Whereas in some villages it is distributed both on *dawtar* and *logay* basis (in different villages at different ratio) so that the *non-dawtaris* are also benefited. In some, all the royalty is distributed only on *logay* basis.

In proper Kalam area, royalty is owned collectively, which is at first divided among the three *qaums* equally. Within each *qaum*, it is divided on the ancestral (forefathers') basis equally; and among the descendants of the forefathers on per male basis.

In Ushu tract, the royalty is owned collectively, which is divided equally among the four *qaums*. Within the *qaum* it is divided on the ancestral (forefathers') basis equally; and among the descendants of the forefathers on per male basis.

In Utror, area the royalty was owned and distributed between two main *qaums* equally and within the sub-gaums on per male basis but on the basis of *dawtar* meaning, only among *dawtaris*. A sub-branch of Drekhel, filed a writ petition in the Court against

the said practice. The Court gave its verdict in 1997,⁵² that the royalty be distributed on per male basis among all the *dawtaris* of the two main *qaums* instead of being divided equally between two main *qaums* where Drekhel received less per male.

It is noteworthy that in Swat Kohistan the ownership rights in the *dawtar* and *banda* can be sold but the rights of *logay* cannot be sold.

RECOMMENDATIONS

The following points may prove useful for improvement in the existing situation.

1. Compulsory costs to be imposed on the vexatious claimants.
2. Judicial system should be made effective, and judicial officers increased in number.
3. Forest Working Plan prepared in 1964, should be strictly followed and observed in respect of forests and non-forests lands.
4. All forests should be declared *Guzara Forests* and allotted to the owners in the revenue record.
5. Local and collective responsibility and joint liability should be imposed for any misuse or illegal cutting etc.
6. Amendments in the Forest Act might be made and severe punishment, including heavy fine and imprisonment should be included for those involved in illegal cutting, smuggling and transportation etc. The concerned officers of the Forest Department from the rank of Ranger to the Forest Guard at the bottom should be equally made liable for punishments including termination for illegal cutting etc. that took place in the area under their jurisdiction.
7. Forest Management Roundtables should be formed on local levels consisting of members from stakeholders, local elected members, the concerned departments and the Non Government Organisations (NGOs) working in the field, to keep a vigilant eye on the forests, on regular interval, report illegal and ruthless cutting and smuggling etc. and to see whether Forest Laws are observed. From within the Local Level Roundtables, District Level Roundtables and from within the District Level Roundtables, Provincial Level Roundtable should also be formed with members from the Local and District Roundtables. They should monitor the performance of the Local and District Level Roundtables respectively.
8. Use of Deodar and Kail in furniture making, etc. and taking it away from Swat to be banned.

NOTES AND REFERENCES

1. Fredrik Barth, *Political Leadership among Swat Pathans* (London: The Athlone Press, 1959), 24.
2. Michael E. Meeker, "The Twilight of a South Asian Heroic Age: A Rereading of Barth's Study of Swat," *Man* (London) 15 (December 1980): 692.
3. Officer on Special Duty, Settlement Swat, to Secretary, Board of Revenue, NWFP, 29 December 1986, "First Settlement Report, District Swat, 31st December 1986," *District/Sadar Qanungu Office, at Gulkada, Swat*.
4. Muhammad Asif Khan, *Tarikh Riyasat-e-Sivat wa Saxvamh Hayat Barn Kiyasat-e-Swat Hazrat Miangul Gul Shahzada Abdul Wadud Khan Bacha Sahib with Dibacha, Hisa Awal and Hisa Swam* by Muhammad Asif Khan (Pashto) (Printed by Ferozsons Ltd., Peshawar [1958]), 312.
5. Descendants of Mian Karim Dad who was son of Akhund Darwiza (both were famous religious figures in the Frontier in the sixteenth and seventeenth centuries) are known as Akhund Khel. Majority of them lives in the Murghzar Valley and in the territory in-between the present limits of Swat Kohistan and Yusufzais held Swati territory.
6. In Swat, he is commonly known as *Bacha Sahib*. He ruled till 12 December 1949, when he abdicated in favour of his son and heir apparent.
7. For details see Sultan-i-Rome, "Swat State Under the Walis (1917-69)," (Unpublished Ph.D. dissertation, Department of History, University of Peshawar, 2000), chapters 2-4.
8. Muhammad Asif Khan, *The Story of Swat as told by the Founder Miangul Abdul Wadud Badshah Sahib to Muhammad Asif Khan* with Preface, Introduction and Appendices by Muhammad Asif Khan, trans. Preface and trans. by Ashruf Altaf Husain (Printed by Ferozsons Ltd., Peshawar, 1963), 90.
9. See Khan, *The Story of Swat*, 89-91; idem, *Tarikh Riyasat-e-Swat*, 312-13. Miangul Abdul Wadud's and Miangul Jahanzeb's accounts give different dates in respect of the Permanent Settlement. Jahanzeb state the years "about 1930-31" (Fredrik Barth, *The Last Walt of Swat: An Autobiography as told to Fredrik Barth*, repr. [Bangkok: White Orchid Press, 1995], 69) and "from 1928 to 1932" (ibid, 73); whereas, from Abdul Wadud's account it can be inferred 1925-29. The statement that the "Bacha Sahib froze down the circulatory Wesh system in 1920-26" (Inam-ur-Rahim and Alain Viaro, *Szvat: An Afghan Society in Pakistan* [Karachi: City Press, 2002], 132) is also misleading. For somewhat details about the *wesh* system and some issues related to it see Sultan-i-Rome, "Swat State Under the Walis (1917-69)" 205-210.
10. Nasrullah Khan Nasar, "*Riyasatayn*" in *Attack key us Paar* (Urdu), eds. Farigh Bukhari and Raza Hamdani (Facts of Publication has been torned), 516; Sayyad Bahadar Shah Zafar Kaka Khel, *Pukhtana da Tarikh pa Ranra Kay* (Pashto) (Peshawar: University Book Agency, n.d.), 1053; Fazl-e-Rabi Rahi, *Swat Tarikh kay Aayenay mayn* (Urdu), 2d ed. (Mingawara, Swat: Shoaib Sons Publishers, Booksellers, 1997), 54; idem, *Riyasat-e-Swat: Tarikh ka Aik Warq* (Urdu) (Mingawara, Swat: Shoaib Sons Publishers & Booksellers, 2000), 43.
11. Talal Asad, "Market Model, Class Structure and Consent: A Reconsideration of Swat Political Organization," *Man* (London) 7 (March 1972): 76.
12. See Sher Afzal Khan Barikoti, *Taaruf-e-Swat* (Urdu) (Karachi: By the Author, 75/4 League House, (1955), 120-21.
13. Akbar S. Ahmed, *Millennium and Charisma among Pathans: A Critical Essay in Social Anthropology* (London: Routledge and Kegan Paul, 1976), 123-24.
14. The decree is unique in the sense that herein the Wali had stated that *it is Bacha Sahib's* (his father and predecessor on the seat) *and my order*. As far we know, he had stated in

- each of his decrees that 'It is my order that. . .' or 'My order is that. . .' We did not come across in his decrees elsewhere wherein he had stated that *it is Bacha Sahib's and my order*.
15. Miangul Jahanzeb, who became the ruler of Swat State on 12 December 1949 with the abdication of his father in his favour. He ruled till the merger of the State in Pakistan in 1969. In Swat, he is commonly known as Wali Sahib.
 16. Decree of Hukamran Riyasat-e-Swat (henceforward HRS), 7 February 1950, *Personal Collection of the Author* (henceforward PCA) and *District Record Room at Gulkada, Swat* (henceforward DRRGS), Bundle Number [henceforward B.N.] nil, File Number [henceforward F.N.] nil. Also *Riwaj Nama-e-Swat* (Urdu) Compiled by Ghulam Habib Khan, Superintendent, Deputy Commissioner Office, Swat (n.p., n.d.), 520. Translation in the *Riwaj Noma* possesses error.
 17. See Sabt-e-Hasan, *Musa Sey Marks Tak* (Urdu), 8th Impression (Karachi: *Maktaba-e-Danyal*, 1986), 24. Also see Mian Manzurul Haque, *Around Khyber: A Brochure on the Physical, Economic, Agricultural, Industrial, Social and Cultural Aspects of the North-West Frontier Province, the Frontier States & the Tribal Areas* (n.p.: A Pie Publication, n.d.), 23; Aurel Stein, "From Swat to the Gorges of the hid us," *The Geographical Journal* 100 (August 1942): 51.
 18. Personal communication with Shah Salam Khan Advocate (hails: Chail, Swat Kohistan; presently: Gulkada, Swat), Mingawara, 24 August 2002.
 19. Kamran Khan, Interview by Author, Tape Recorded, Gulkada, Swat, 7 October 1998.
 20. Total number of such writs and cases were 495. See "Working Paper on the Report of the Swat Land Commission," *Files of the Governor's Secretariat, North-West Frontier Province, at the Directorate of Archives and Libraries, Peshawar* (henceforward GSNWFP), B.N. 28, Serial Number [henceforward S.N.] 234.
 21. Sirajuddin Swati, *Zamshudah Qabaili Riyasatu kay Masail* (Urdu) (Mingawara, Swat: By the Author, n.d.), 17. For an overview of and facts belaind the land ownership disputes see *Manual of Land Reforms* by Gul Wali Khan (Peshawar: NWFP, Land Commission, 1979), 35-36.
 22. For example see the reports in GSNWFP, B.N. 10, S.N. 84.
 23. Working Paper on the Report of Swat Land Commission," GSNWFP, B.N. 28, S.N. 234. Also see "Minutes of the Meeting held in the Government House Peshawar on 11 August 1972, at 11. A. M. under the Chairmanship of the Governor, NWFP, Peshawar," *ibid*.
 24. "Working Paper on the Report of Swat Land Commission," *ibid*.
 25. *Manual of Land Reforms* by Gul Wali Khan, 128.
 26. For details see *ibid.*, 129-30.
 27. Working Paper on the Report of Swat Land Commission/" GSNWFP, B.N. 28, S.N. 234.
 28. *Ibid*
 29. *mv journal {PL}* vol. 27 (1999), Peshawar, 25.
 30. See *ibid*, 26.
 31. *Ibid*, 25-26.
 32. Contents of this section are mostly based on personal communication with Shah Salam Khan Advocate, Mingawara, 27 August 2002.
 33. *The All Pakistan Legal Decisions* (henceforward PLD), vol. 26 (1974), NWFP, Statutes, 62.
 34. *UPLD*, vol. 47 (1995), NWFP, Statutes, 3; Gazette of NWFP, Extra Ordinary, 26 May 1995, *ibid*
 35. It is noteworthy that the Federal Shariat Court of Pakistan had maintained this decree of the ruler of Swat State. See *PLD*, vol. 47 (1995), FSC, 38.

36. Officer on Special Duty, Settlement Swat, Gulkada, to Director, Land Records, Board of Revenue, NWFP, Peshawar, No. 452/SOS-103/8 dated 18-3-1986, *District/Sadar Qanungu Office, at Gulkada, Swat*.
37. *Working Plan for the Lower Indus Kohistan and Buner Forests, Swat State (1964-1973)*, By: Faqir Muhammad Khan, Working Plan Officer (Peshawar, 1965), 11; also see "Appendix X-B," 160.
38. Personal Communication with Shah Salam Khan Advocate, Mingawara, 24 August 2002.
39. Deduced from the interviews conducted by the Author for his Ph.D. dissertation.
40. See the decrees, rules and regulations in respect of forests; cutting trees or their branches; their preservation; uses of wood; and so forth in *PCA* and *DRRGS*, B.N. nil, F.N. nil; *Riivaj Nama-e Swat*, 373-434.
41. Deduced from the interviews conducted by the Author for his Ph.D. dissertation. Also see Sirajuddin Swati, *Swat Haul kay Aayena Mayn* (Urdu) (Mingawara, Swat: By the Author, n.d.), 13-14.
42. See *PhD*, vol. 22 (1970), West Pakistan Statutes, Regulation I of 1969.
43. Vide Notification No. 10/16-SOTA-II/72/1521 dated 15.9.1972 quoted in "Working Plan for Kalam Forests of Upper Swat Forest Division (1987-88 to 2001-02)" by Nazir Mohammad and Shamsul Wahab, under the guidance of Beat Stucki, Ali Akbar Khan and Christoph Duerr (Peshawar: N.W.F.P. Forest Department; N.W.F.P. Forestry Pre-Investment Centre; and Pak-Swiss Kalam Integrated Development Project, n.d.), 6.
44. Vide Notification No. Legis. 1 (9)/70 dated 20 May 1974, *PLD*, vol. 26 (1974), NWFP, Statute, (Schedule Serial No. 20), 75. Also quoted in "Working Plan for Kalam Forests of Upper Swat Forest Division (1987-88 to 2001-02)," 6.
45. Vide Notification No. Legis. 1 (9)/70 dated 20 May 1974, *PLD*, vol. 26 (1974), NWFP, Statute, (Schedule Serial No. 20), 75.
46. Vide Notification No. SOFT (FAD) V-168/71 (i) dated 20.12.1975, Gazette Notification 17/2/1976 see Ishfaq Ali, *Lazvs Extended to the Tribal Areas ivith Jirga Laws* (Printed by: New Printers Peshawar, [1999]), 120. Also quoted in "Working Plan for Kalam Forests of Upper Swat Forest Division (1987-88 to 2001- 02)," 6.
47. Vide Govt, of N-WFP, Agriculture Department Notification No. SOFT (FAD) V-168/71 (ii) dated 22.12.1975, Gazette Notification 17/2/1976 see Ali, *Laws Extended to the Tribal Areas with Jirga Laws*, 120-21.
48. See "Working Plan for Kalam Forests of Upper Swat Forest Division (1987-88 to 2001-02)," 7.
49. Also see Zaigham Khan, "The Lost World," *Herald* (Karachi) 28 (December 1997): 116-18; idem, "The Beginning of the End," *ibid.*: 121-22.
50. Contents of this section are mostly based on personal communication with Shah Salam Khan Advocate, Mingawara, 24 August 2002. For some of the contentions also see "Behrain at a Glance (Draft): Background Information on Bahrain Range (Swat District of Malakand Division, NWFP, Pakistan): Report No. 1," (Kalam Integrated Development Project /Geographisches Institut, Universitat Zurich-Irchel, Zurich: Mingawara/Zurich, June 1988), 19-28.
51. Officer on Special Duty, Settlement Swat, Gulkada, to Secretary, Board of Revenue, NWFP, Peshawar, No. 2101/SOS-103/4 dated 19-12-1986, *District/Sadar Qanungu Office, at Gulkada, Swat*.
- 52.