

Implications of Peace Agreement with TNSM

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The current peace agreement between defunct Tehreek Nifaz-e-Shariat-e-Muhammadi (TNSM) and the Awami National Party (ANP)-led coalition government in North West Frontier Province (NWFP) took the first step to restore normalcy to Swat and its adjoining areas.

The ANP government is facing severe criticism from national and international press which is terming this agreement as mere continuation of the past agreements. They argue that the previous government had also made such agreements with the militants in troubled tribal region that failed to bring desired results. However if one looks at vigilantly-drafted six points agreement, the government has promised nothing to the TNSM except acknowledging their right of peaceful struggle for enforcement of Shariah. In fact all of the six clauses demand an assurance from the TNSM that it will help to re-establish government's writ in the area and will cooperate with the government against miscreants for restoring peace.

Nevertheless Maulana Fazlullah, the son-in-law of Sufi Muhammad, still remains a security threat. The peace deal can only be used effectively, particularly in neutralizing Fazlullah's militant network, if the provincial government also pays heed to demands of the TNSM, especially by amending and enforcing the Shariah regulations.

The provincial government has already started reviewing Shari Nizam-e-Adl Regulation-2008 draft to repeal of the jurisdiction of the Supreme Court (SC) and the Peshawar High Court (PHC) over the Malakand division and Swat district; Qazi Courts' decisions, this way, may be only challenged in the Federal Shariah Court. Few analysts have concerns that such steps will not only strengthen the "Talibanization" in the region but also brace the parallel judicial system in the country. But the real issue is the priorities; either the safety of lives and properties, law and order, and peace can be compromised over these two concerns?

It can be an ideal situation that the whole country has same judicial system across Karachi to Khyber. But the ground realities are different. In Malakand and Swat valley it is not looking possible to restore government's writ without engaging the radical groups. Nonetheless, we don't have already a uniform judicial system existing in the country; Federal Shariah Courts, federal and provincial ombudsman institutions, Frontier Crimes Regulations and Jirgas are not only operating along with mainstream judicial system but have constitutional and legal status and legitimacy as well. Until the country has the same uniform judicial system, this would not be a valid concern, especially when top priority is to restore peace and government's writ.

At the same time such agreements cannot be favored as last and permanent solution of the issue. The agreement can strengthen the grip of the TNSM if the long term polices are not adopted along side.

No doubt, the TNSM has potential to challenge government's writ if its demands are not fulfilled. It can, meanwhile, float new demands in the future. The same had happened in 2001 when government tried to introduce few amendments in Shariah regulation. It is also important to note that the TNSM has no faith in current political system and has often demanded a separate Majlis-e-Shura (Shariah parliament) for Malakand to make appropriate Islamic laws. This demand vividly gives a concept of an independent judicial system or a parallel state within a state.

To restrict growing influence of the TNSM, the government needs to opt for comprehensive strategies. First of all, moderate political and social forces should be supported and allowed to work freely in the area on the principle of peaceful co- existence. Secondly, alongside Shariah Courts, jurisdiction of the Supreme Court (SC) and the Peshawar High Court (PHC) should not be repealed and people should

have choice to go to the courts, to which they prefer. To avoid overlapping, the governments can make sure that after getting the decision from one court, both the parties in a case would not have right to appeal or resubmit their case in other court.

There is need to detach the TNSM from Shariah judicial system because if one party becomes dominant in a judicial system it would create rifts among different schools of thought. The Malakand Shariah Courts should also be a part of the mainstream judiciary. The Shariah Courts can be brought under Federal Shariah Court which may have right to appoint or remove any judge. The judges should be qualified from recognized universities and would not have affiliation with any group, which has stakes in the area, as it was already decided in May 1994 agreement between the TNSM and government.

Parallel to judicial reforms, the government will also need to strengthen the formal education system to compete with madrasa institution, which is quite popular and is imparting free education to masses. Similarly a strong and impartial structure of police and administration will not only guarantee the peace in the area but also help to reduce dependence on non-state actors for establishing writ of the state.

Although the agreement does not stop the support or involvement of the TNSM in violent activities across the border but government can make it sure through long-term engagement with the group. If government depends on a peace agreement alone, it would not bring about the desired fruit; until such groups are isolated from the violent Taliban movements in Pakistan and Afghanistan.

The coalition government of the ANP and the PPPP is quite enthusiastic to resolve conflicts in the province and also take up an important role in peace treaties in Federally Administered Tribal Areas (FATA). The prime difference between previous government's agreements and the current agreements with the militants is that these agreements have political legitimacy. In addition to political legitimacy, participation of the local leadership can build up public pressure on the militants to stay bound to their words. This factor was lacking in the previous deals with the militants where they could easily eat their words sans any tribal pressure.

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