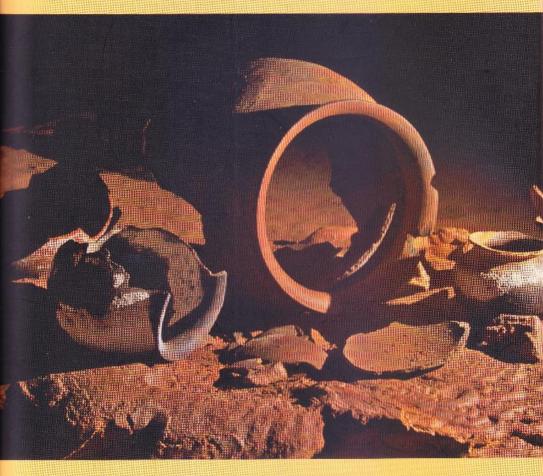Edited by Aparna Sundar | Nandini Sundar

CIVIL WARS
in South Asia

State, Sovereignty, Development

§SAGE

Civil Wars in South Asia

State, Sovereignty, Development

Edited by
Aparna Sundar
Nandini Sundar

Luttikhuis, Bart and A. Dirk Moses (eds). 2014. *Colonial Counterinsurgency and Mass Violence: The Dutch Empire in Indonesia*. Abingdon: Routledge.

Martin, Paul. 1971. 'Bengalis Out for Independence by Any Means'. *The Times*, 25 March.

Mascarenhas, Anthony. 1971. 'Genocide'. *The Sunday Times*, 13 June.

Mazower, Mark. 2009. *No Enchanted Place: The End of Empire and Ideological Origins of the United Nations*. Princeton: Princeton University Press.

Ministry of Information and National Affairs, Government of Pakistan. 1971. *White Paper on the Crisis in East Pakistan*. Karachi: Ministry of Information and National Affairs.

Moses, A. Dirk. 2011. 'The United Nations, Humanitarianism and Human Rights: War Crimes/Genocide Trials for Pakistani Soldiers in Bangladesh, 1971–1974'. In *Human Rights in the Twentieth Century*, edited by Stefan-Ludwig Hoffman, pp. 258–280. New York: Cambridge University Press.

Moyn, Sam. 2010. *The Last Utopia: Human Rights in History*. Cambridge, MA: Harvard University Press.

Rashid, Harun. 1995. 'British Perspectives, Pressures and Publicity Regarding Bangladesh, 1971'. *Contemporary South Asia* 4 (2): 139–150.

Saikia, Yasmin. 2011a. 'Insâniyat for Peace: Survivors' Narrative of the 1971 War of Bangladesh'. *Journal of Genocide Research* 13 (4): 475–501.

———. 2011b. *Women, War, and the Making of Bangladesh: Remembering 1971*. Durham: Duke University Press.

Schanberg, Sydney H. 1971. '"All Part of a Game"—A Grim and Deadly One'. *New York Times*, 4 April.

Smith, Karen E. 2010. *Genocide and the Europeans*. Cambridge: Cambridge University Press.

Smith, Simon C. 2010. 'Coming Down on the Winning Side: Britain and the South Asia Crisis, 1971'. *British Contemporary History* 24 (4): 451–470.

Sterba, James P. 1971. 'India Charges Genocide'. *New York Times*, 17 April.

The Sunday Times. 1971 (13 June). Editorial on 'Stop the Killing'.

Tomalin, Nicolas. 1971. 'Mass Slaughter of Punjabis in East Bengal'. *The Times*, 2 April.

Vivekanandan, B. 1973. 'Britain and the Bangladesh Question'. *International Studies* 12 (4): 598–620.

Zuijdwijk, Ton J. M. 1982. *Petitioning the United Nation: A Study in Human Rights*. New York: St Martin's Press.

7

The Rise of Jihadi Militancy in Pakistan's Tribal Areas

Haris Gazdar, Yasser Kureshi and Asad Sayeed *

Introduction

The tribal areas of Northwest Pakistan have become an arena of militancy and terrorism over the last decade, which threatens not just Pakistan, but the world at large. This chapter is an attempt to explore the factors that have led to this militancy. Bordering Afghanistan, this region has been under the global strategic gaze. As such, most analyses seek to explain militancy either with reference to the larger war theatre around it (i.e., troubles in Afghanistan) or by the very nature of a tribal society with alleged inherent tendencies to violence. In this chapter, we will focus on the institutional dynamic and political economy of the tribal regions to understand changes that have taken place over time and which have created conditions for sustained militancy. Of course, external influences have been critical in these developments and those will be factored in as part of the explanation.

The chapter is divided into four parts. In the first part, we describe the hierarchical structures of the tribes who inhabit the Federally Administered Tribal Area (henceforth FATA). This description sets the context in understanding the relevance of Islamic injunctions as part of the Pakhtun tribal code and changes in the internal structure over time that led to the dominance of the militant clerics. The second part discusses the ideological transition towards Deobandi Islam—the more doctrinaire interpretation—that started in the late 19th century and gradually replaced the more syncretic traditions prevalent earlier. The third part then goes on to explain changes in the economic structure over the last 40 years that have, in turn, led to changes in social relations in the region. Wars in Afghanistan and the Pakistani state's own security policies have also helped create new sources of rent that have helped sustain militancy in the region. The fourth part focuses on the enduring tension between the traditional tribal edicts and the colonially imposed system of arbitration and dispute resolution in the area as one of the strategic entry points for the clerics to assert their ascendancy.

The explanations provided in the second, third and fourth parts provide important insights into the turning of the tribal belt into a very different region from the one encountered by the British around the turn of the 20th century. To add to these phenomena, we contend, has been the relationship of the tribal region with the Pakistani state. First, the Pakistani state never adequately legitimized the system of governance in this region along rational–legal and democratic lines, thus, leaving the door open to militant resistance. Second, in its security policy based on covert warfare through Islamist militants in neighbouring states, it has not only empowered militant clerics in the border region with Afghanistan but also made them vital strategic and ideational allies. This, in turn, has created a genie which has now come to bite as the writ of the Pakistani state in large swathes of FATA has collapsed, and frequent bomb blasts, suicide attacks and kidnappings of innocent civilians and the military in Pakistan are traced back to this region.

This chapter fits in with a number of themes that this book explores. First, it is a classic example of a postcolonial state in South Asia with fragmented sovereignty. A different form of governance structure, with the Frontier Crimes Regulations (FCR) constituting the legal basis,

as well as arm's length rule through tribal *malik*s, separated the rest of Pakistan from the tribal regions. As we explain subsequently, the institutional vacuum created as a result of static colonial institutions created new sources of rents that altered the balance of social power away from the state representatives in the form of the *malik*s and towards the mullahs. Deobandi Islam played the legitimizing role in this transition.

As a result, by the time the civil war erupted, the tribal belt had transformed into a very different region from the one encountered by the British around the turn of the 20th century. Now it is a region which can be characterized as one with contested (divided) sovereignty as militants have wrested complete control over some parts of the region. However, this journey has been interspersed by the Pakistani state having—by default—crafted this divided sovereignty by sponsoring non-state actors in the aftermath of the Soviet invasion of Afghanistan. This chapter also illustrates the argument made in this book (see Chapter 1) that, rather than conceptualize civil wars through the prism of 'failed' or 'fragile' states, it is imperative that the more complex institutional and political–economic structures and processes underlying such wars are investigated.

The Tribes of FATA

Glatzer defines a tribe as 'a social segment based on a genealogical concept of social structure' (2002, 266). According to the 'segmentary lineage theory', Pakhtun society is 'segmented by a principle of descent from a common ancestor or ancestors' (ibid.). This eponymous Pakhtun common ancestor had many male descendants, 'each being the ancestor of one of the innumerable branches and sub-branches or tribes and sub-tribes… down to the local lineages and families' (ibid., 268). Tribal chieftains, called *malik*s, are usually the patriarchs of a particular lineage and essentially 'represent direct unilineal descent from the tribal eponym and are a symbol of lineage continuity' (Ahmed 1980, 149). However, descent alone is not enough. Liebl writes that in this society, 'Tribal and *khel* (sub tribe or kinship group) leadership is not characterized by a

single acknowledged hierarchical leader; rather it is based on personal charisma, ability to provide patronage and demonstrated leadership in times of war or other forms of stress' (2007, 496). Thus, it may be said, Pakhtun leaders have to prove themselves almost regularly to their followers (ibid., 497).

Pakhtun identity is constructed through the marriage of Pakhtun tribalism with Islam. *Pakhtunwali* or the 'Way of the Pakhtuns' is a set of tribal law traditions for the Pakhtun tribes (ibid., 3). Islam also plays a major role in Pakhtun society and the Pakhtun way of life. According to Ahmed, a Pakhtun 'sees the Code (Pakhtunwali) as embedded in Islam' (1980, 106). In Pakhtun society, two groups have been the custodians of the religious dimension of Pakhtun life, the Sayyids/*Mian*s, and the mullahs. The Sayyids/*Mian*s are essentially the saints of Pakhtun society, claiming special religious status on account of claimed descent from the Holy Prophet. The functional role of the mullah, on the other hand, is to lead the prayers and carry out birth- and death-related religious rituals.

There is, however, a debate in the literature on the traditional place of the mullah amongst the Pakhtun tribes. Ahmed subscribes to the view that the mullah plays a functional role as described above, with the added duty of performing the role of a hakim (physician who dispenses potions and talismans to cure disease). Ahmed's 'segmentary lineage' theory placed the mullah as an 'outsider' to the tribal structure who simply played a functional role in ensuring that the ritual Islamic aspects of village and tribal life were taken care of (ibid., 167). Haroon, on the other hand, rejects this position and argues that rather than being an outsider, the mullah was usually a member of the clan that he served. She says that both the mullah and the *malik* needed each other, the mullah requiring the *malik*'s patronage to operate, and the *malik* requiring the mullah's blessing to legitimize his rule (Haroon 2007, 67). She argues that the mullah's influence emanated from his position as custodian of the mosque, where he led congregational prayers and commented on questions of scripture. Second, his distance from the genealogical linkages and hierarchies in tribal society does not necessarily diminish his role in the power structure within the tribal structure. In a society where religion is of great significance to the people, Haroon contends, religious legitimacy is very important. Religious authority was needed

to affirm and strengthen tribal structure, and so religious leaders were required to 'confirm *Maliki* authority' (Haroon 2007, 71). However, the mullahs had no 'guaranteed independent sources of income or claims to land' and needed their host clans to 'invite them to live in their villages and pledge monetary support... and protect their masjids' (ibid.). Therefore, the mullah's social participation depended on the patronage of the tribal leadership.

Ideological Transition: Deobandi Islam in the Tribal Areas

Before we discuss the influence of Deobandi Islam in the tribal areas, it is useful to understand the context in which political Islam proliferated in South Asia and Afghanistan. From the late 19th century, attempts were initiated to 'rationalize' Islam to create a distinct Islamic identity for the Muslims of South Asia in the context of the anti-colonial struggle. Sufi Islam—or the more syncretic ritual-based Islamic practice—was not considered amenable to identity politics. It was in this context that a number of Islamic schools of thought developed, particularly within Sunni Islam, in India between the late 19th and mid-20th century.

The Deobandi school was the first amongst several such reformist movements in Islam, which grew and spread during the 20th century. The Deobandi movement was heavily focused on the Islamic school or madrasa, and all Deobandi madrasas developed their own curriculum—known as *Dars-i-Nizami*—as the foundation of their education. As other groups such as the Barelvis and Jamaat-e-Islami developed, the competition to become 'the spokesmen or "defenders of Islam" to their fellow Muslims' intensified (Metcalf 2002, 6–7). According to Metcalf, this was a new understanding of Islam as a 'corporate identity in competition with others' (ibid.). In this 'struggle for power within Sunnism', the Deobandis focused on attaining a monopoly over the religious domain within Islam, by trying to narrow the room for interpretation in theological matters (Nasr 2000, 169).

The tribal areas were one of the first areas drawn to Deobandi influence as early as the late 19th century. According to Haroon, during

World War I, the Deobandi school sought to launch a movement against the British through the network of mullahs in the tribal regions. An important consequence of this movement was the close links that developed between the tribal mullahs and Deobandi ulema (2007, 60). These connections were then maintained and the mullahs continued to send their students to Deobandi madrasas to study. Thus began an important tradition of mullahs from the tribal areas becoming part of the Deobandi network—a tradition that was to find its echo at the end of the 20th century in the form of Islamist militancy.

Essential to campaigning against competing sources of theological authority was control over the pulpits for dominating religious debate. The Deobandi Ulema focused on 'strengthening the interior domain of Islam and that from which their authority derived—the Madrassas and mosques' (Haroon 2008, 59). In the Pakhtun areas, they focused on 'narrowing the sources of moral and religious authority that the Muslim community could access' and they took 'control of the mosques and application of principles of Sharia in community-level arbitrations' as well as operated through the creation of political parties and alliances with other political groups (ibid., 58). It was from these positions that they emphasized their understanding of Islam to be the only legitimate one. Thus, Deobandi Islam, with its emphasis on and interest in the mosque and madrasa took hold in the tribal areas in general and the Khyber Pakhtunkhwa province in particular.

The Socio-Economic Dimension

The second important change taking place within tribal society was economic in character. Traditionally, the tribal areas existed in a low-level equilibrium, characterized by low levels of rainfall, limited arable land, subsistence agriculture and a minimal bricks-and-mortar infrastructure. As of 2008, only 7 per cent of the land in FATA was cultivated, compared to 37 per cent in the rest of Pakistan. Further, only 40 per cent of the cultivated land was irrigated as opposed to 82 per cent of cultivated land being irrigated in the rest of Pakistan (Shaheed Bhutto Foundation 2009, 88). This low-level equilibrium meant that the distribution of socio-political power also did not change substantially as the level of surplus generated

by the local economy was minimal and no new sources of economic rents came about for a long time. However, this situation was to change significantly from the 1960s onwards.

Two important trends changed the economic landscape of the tribal areas. The first was the initiation of development schemes in the tribal areas in the 1960s and the second was emigration from these areas to the Middle East in the 1970s. With regard to the first, Ahmed reports that in Mohmand Agency (one of the seven tribal areas) a road was built in the 1960s connecting the Agency to the rest of the country and the Agency was electrified. This provision of infrastructure resulted in a glass-making industry being established that generated economic activity, along with employment for local labour, and encouraged the growth of subsidiary vendor enterprises (Ahmed 1980, 343). Development schemes meant new sources of income and employment in and around the tribal regions. They also meant the tribal system faced tensions from within.

Development schemes provided opportunities for social mobilization for those previously restricted under the tribal scheme. The official *malik*s opposed the building of the road, for example, because of the threat to their hegemony. Take, for example, junior lineages, such as the Musa, who bought buses and established passenger bus services on the new road, which generated large profits for them (ibid.). The development schemes, thus, allowed junior lineages 'to emerge from the shadow of their politically more powerful kin… and assert themselves. Religious groups and other subservient groups welcomed the employment opportunities and resultant avenues for economic mobility' (ibid.).

The other important change was large-scale emigration. During the 1970s, a flood of people were heading from the tribal areas, particularly to the rapidly expanding economies of the Gulf States. Waziristan sent 'as much as 10 per cent of its population of approximately 300,000 to work in the Gulf' (Addleton 1992, 160). Many of those who went were from junior lineages, religious groups and 'menial' occupational groups. These young men, who went to work as labour in the Middle East, sent back large sums of remittance money. Ahmed states that, of the emigrants he studied in Mohmand, many were sending back up to PKR 2,000 a month per person besides clothes, watches and radios (1980, 346). Thus, emigration meant a major influx of wealth into the tribal areas, again undercutting the dependency on the patronage of the

senior *malik* lineages. Migration provided financial strength to groups and individuals that previously had little or none. These people came back and started constructing houses and investing in businesses. This access to new places and new sources of wealth had important consequences for the region.

One village study, for instance, found that migrants returning from the Middle East often 'disliked some of the more traditional aspects of rural Islam… such as visits to the tombs of dead saints or *pirs*' and had a tendency to 'endorse new ideas stemming from Saudi Islam'(Addleton 1992, 158). This also meant that religious groups were now amassing wealth and finding alternate sources of patronage, which made them less dependent on the *malik*s. Thus, the mullahs found a new opportunity for economic mobilization to a higher social standing.

The Afghan War that began in 1979 had a major impact on the economy of the tribal areas. The tribal areas of Pakistan played a vital role in the course of the war. Arms depots were established here and arms were moved across the border through the social networks or *Qawm*s. The people of these areas actively supported their fellow tribesmen across the border. For these people, 'the fight of the Afghans was seen in terms of Jihad against the kafir and enemies of Islam' (Ahmed 1991, 125).

This war transformed the economy of the tribal region. Tribesmen in the agencies were encouraged by the leaders of the armed militias fighting the Soviets to farm the highly lucrative poppy crop (Haroon 2007, 203). As a result, poppy cultivation doubled between 1982–1983 and 1988 and close to 200 heroin refineries had been set up in the Khyber alone (Haq 1996, 954). Moreover, the pipeline of weapons from Pakistan to Afghanistan passed through the tribal areas and 'leaked prodigiously' in these areas. As such, by the end of the Afghan War, a large cache of weapons had accumulated in the tribal areas (Kartha 1997, 73). These leaked weapons, in turn, became models used by local arms makers who then produced these guns locally. Known as Darra weapons, they became a major commercial activity in the tribal area, and 'Darra Adam Khel became the main market for smuggled weapons from all over the world' (ibid.).

With the onset of production and trading in drugs and arms came lucrative extraneously driven rents to the tribal areas and transformed it into a virtual 'war economy'. Writing on one of the tribal areas—the Khyber Agency—in 1997, Kartha states that 'almost every family derived

some benefit from trade' in arms and drugs (Kartha 1997, 73). This is a far cry from the staid agro-pastoral economy that existed in the region half a century ago. These sources of extraneous rents have undermined the monopoly over rents that the *malik*s enjoyed in the past and, thus, dispersed economic power in the region.

Arbitration and Dispute Resolution

Perhaps the most important change in the internal dynamic of the tribal regions has been the gradual encroachment of the clerics upon the arbitration and dispute resolution functions of the tribal leadership. Traditionally, the primary tribal institution of arbitration and dispute resolution has been the *jirga*—an assembly of elders called to decide specific issues, whose decisions are binding on parties in a conflict. The *jirga* would regulate life through decisions ranging from the location of a mosque to the settlement of conflicts between tribal sub-sects, to larger issues such as relations with other tribes and even conveying decisions of the tribe to government (Ahmed 1980, 6). The decisions of the *jirga* are typically made according to tribal customary law. In this tradition, the cleric had the limited role of conferring the proceedings of the *jirga* with Islamic legitimacy.

For most of the 20th century, the tribal institutions of justice have been superseded by the legal regime known as the FCR of 1901 instituted by the Colonial state and continued in the postcolonial period. Under this system, the agencies of FATA have been divided into directly administered areas, protected areas and inaccessible tribal territory, respectively (Ali and Rehman 2001, 49). The Political Agent representing the Federal Government uses a different mode of administration for each of these areas for the maintenance of law and order (for a more detailed discussion of the Political Agent, see section 'The Policies of the Pakistani State and Their Consequences').

Administered areas are those where the Political Agent exercises judicial jurisdiction through the FCR. In these areas, 'any offense committed on government roads, officers or other government installations is duly registered and administered through a council of elders appointed under the FCR' (ibid.). In the protected areas, the Political Agent administers by other means, including executive action, but the tribes 'regulate their

lives through tribal custom' (Ali and Rehman 2001, 49). In these areas, the tribes are expected to take cognizance of civil and criminal disputes when making rulings through *jirga*s. Finally, in the inaccessible unprotected tribal territory, the role of the Political Agent is very limited. All disputes in these areas are decided by the tribesmen themselves (ibid.).

The FCR system is based on the 'premise of suppression of crime by infliction of the severest possible punishment' with entirely different rules from the regular judicial system (ibid., 53). The FCR denies the accused due process of law. The entire procedure 'is based on a system of inquiry conducted by the *jirga* rather than the presenting of evidence, examination and cross-examination of witnesses' (ibid.). Under the FCR, the Political Agent is able to take action against entire tribes for the action of single individuals within the tribe, to ensure that the tribe accounts for the crimes of individual tribesmen (International Crisis Group 2010). Moreover, decisions of the Political Agent cannot be appealed in any court of law. In the *jirga*s carried out in the areas where the FCR reigns, the Political Agent often gets to choose the members of the *jirga*, ensuring that the interests of the political elite are reflected rather than those of justice (International Crisis Group 2009). The FCR enforcement mechanism is viewed as a 'corruption and distortion' of the *jirga* system and is deeply unpopular for its repressive nature (Ali and Rehman 2001, 53).

Given the draconian nature of the FCR and the perceived corruption of the *jirga* system by the FCR, this system of arbitration and dispute resolution has not enjoyed popular legitimacy among the people of the tribal regions. In a survey in 2009, when the people of FATA were asked about the most important service that the government needed to provide in the area, 73.25 per cent of the people mentioned the provision of justice (*Daily Times*, 28 April 2009). It is in this area that the clerical movement has been able to respond to the perceived corruption of the tribal leaders and the poor quality of the formal justice system by invoking the piety and moral authority of the cleric. The upward mobility of the mullahs propelled by the empowering ideology of the Deobandi school and the new sources of economic rent opened up by development and emigration pushed the mullahs into a position to encroach upon the space occupied by the *malik*s and traditional tribal leadership.

The clerical challenge to the archaic FCR is succinctly encapsulated in the story of Mullah Nur Mohammad, a cleric from Wana in South

Waziristan, who went to study at a prominent Deobandi madrasa in Multan. After his return in the 1960s, he headed a mosque. This was a time when development projects were initiated in the area, which had all of a sudden increased commercial activity and mobility. A market was established in Wana at this time, in the vicinity of the mosque, which 'became a thriving centre for commerce and trade in the agency' (Ahmed 1991, 50).

Mullah Nur Mohammad added to his personal wealth by having the tribal leaders organize a tax levied upon traders entering the market, which would be given to the mosque. Thus, as traffic in the market grew, so did Nur Mohammad's own fortunes, and he was able to add a proper madrasa complex to the mosque. Nur Mohammad also reinforced his spiritual credentials through distributing 'cures' for illnesses (ibid., 54) Over time, the mullah was also able to use this wealth to recruit his own militia which helped further affirm his authority and display his strength to the people (ibid., 57). Since Nur Mohammad's reputation among the people had grown significantly, he was even called upon to resolve tribal disputes among the Wazirs (ibid., 54). This move to arbitration and dispute resolution made the mullah into an important independent power player within the agency.

Now that Nur Mohammad was not only independent of the patronage of the *malik*s, and was even able to arbitrate in the affairs of the *malik*s, he was in a position to compete with the *malik*s for control of the affairs of the agency. Very soon, he challenged rival religious figures such as the pirs (whom Deobandi ulema rejected) and the *malik*s, the traditional leaders of Wazir society, whom he described as corrupt and incapable of providing justice. He used the pulpit of his popular mosque to 'condemn the *malik*s openly. The *malik*s started feeling uneasy but owing to his deepening influence on the tribe they found themselves absolutely helpless' (ibid., 59).

As a leader of the Wazir tribes, Nur Mohammad then directed his ambitions towards the rival Mehsud tribes. The relationship between the Mehsuds and Wazirs was tenuous, with tensions often building up over resources, particularly timber. When Nur Mohammad tried to improve the position of the Wazirs in the timber trade, and the Mehsuds challenged him, he countered them through sermons in the mosque. In the style of the Deobandis, who used the device of *Takfir*

(excommunication) to push their opponents out of the public space, Mullah Nur Mohammad declared the entire Mehsud tribe to be non-Muslim, and proclaimed that a Jihad was now necessary against the non-Muslim Mehsuds. Thus, the mullah used his spiritual position and Deobandi doctrine of Takfir to mobilize the Wazirs behind him. However, as the affair became bigger, the federal government got involved, siding with the Mehsuds against Nur Mohammad. After a brief conflict, the Wazirs were defeated, and the Mullah's war was brought to a close and he was arrested and imprisoned.

Mullah Nur Mohammad was the product of all three processes discussed above—the infiltration of Deobandi teachings, the impact of migration and new sources of economic rent and the encroachment of the Mullah into the field of arbitration and dispute resolution. However, his ambition to wield territorial power was swiftly quashed by a federal government unwilling to accede to his agenda at that time.

When we compare the situation that prevailed in the 1970s to the Taliban-run regions in the tribal belt today, we see a dramatic difference. Clerics such as Mullah Nur Mohammad were able to create new sources of revenue by taxing markets connected to their mosques and move into the roles occupied by the tribal leaders by arbitrating tribal issues. However, this is a far cry from the power the Taliban today wield. Running quasi-states, today's Taliban are able to levy taxes across entire regions, and have been able to move beyond arbitrating according to the rules of the tribes to creating new laws and new legal structures. Taliban leaders have been promising swift and efficient justice based on Sharia to people deeply disenchanted with the legal regime based on the FCR. In areas where the Taliban have grown particularly strong, they have established Qazi (Islamic) courts to carry out adjudication under Sharia law. By 2008, this included courts in the Mohmand, Bajaur, Khyber and Orakzai agencies (Amin 2008). In Bajaur, the Taliban imposed taxes 'ranging from PKR 30 to PKR 25,000' per month in 2008 (Khattak 2008). Maulana Waheed, who was in charge of Zakat for the Taliban in Bajaur, said that at the time, the Taliban were able to collect up to PKR 200,000 in taxes from the area (ibid.). In Mohmand, the Taliban collected a proportion of the harvest crop, and also skins of sacrificed animals (ibid.). Thus, the Taliban clerics of today act far more like the leaders of a quasi-state, levying taxes and enacting new laws including harsh rules regarding women going out in public, banning foreign

media in the agencies and subjecting minorities to special minority taxes (*Daily Times*, 27 August 2008).

Nur Mohammad, a product of the three trends outlined above, could never dream of authority anywhere close to that enjoyed by the Taliban leaders of today, and, therefore, these processes, while necessary components of the evolution of today's clerical militant leader, do not explain the gap between the authority of Nur Mohammad of the 1970s and Nek Mohammad of the 2000s. The fact that the state was willing and able to contain the insurgency in the 1970s but is unable to do so now makes state capacity and willingness the missing variable in explaining the onset and sustenance of militancy in Pakistan's tribal areas.

The Policies of the Pakistani State and Their Consequences

The relationship between the Centre and the tribal belt has always been a complicated and troubled one. This is especially true because the tribal belt has tended to fall in a contested border area between competing states and empires. During the 19th and early 20th century, the contest was between Afghanistan and the British Empire, and Pakistan took up the same complex relationship with Afghanistan once the British departed. Thus, the tribal belt has always been central to defining the boundaries of the states and empires of the region.

The policy of indirect rule adopted by the British colonial state to contain this region was carried through by the succeeding Pakistani state with virtually no substantive changes. As discussed earlier, while the internal dynamic of the tribal regions altered substantially over time, the formal structure of governance for the region remained unaltered. In this section, we will explore whether this disjuncture explains the rise of Islamist militancy in the tribal areas or whether it is a consequence of the Pakistani state's policy of covert warfare adopted in the last 30 years.

The Policy of Indirect Rule and Its Consequences

Historically, the tribe has been the formally recognized intermediary in relations between the central state and the individual in the tribal belt. After the period of attempted encapsulation by the British and resistance

from the tribes, the British established a system of indirect rule, under which the government controlled the tribal areas through the tribal leadership. This system remained in place after the British transferred control of the area to Pakistan in 1947, and it has been the basic administrative framework for the region to date. As originally devised, the central government appointed a Political Agent for each tribal agency and the Political Agent supervised the tribal agencies in conjunction with the tribal leadership in each agency. The Political Agent permitted tribal leaders to conduct their own affairs within the tribal agency provided they were loyal to the government and did not challenge the government's interests or affairs (Ahmed 1980, 310). The Political Agent reported directly to the Viceroy and later directly to the President and had a relatively free hand to make decisions and to determine policy within his agency with minimal oversight. The Political Agent's system for maintaining order and loyalty within the tribal agencies was to use a carrot-and-stick strategy. The Political Agent had far-reaching patronage at his disposal. As a representative of the state, he could use his patronage powers to create a class of official *malik*s, loyal and suppliant to the British and, later, to the Pakistani government. The *Maliki* is the allowance the Political Agent provides the *malik* of each tribe or clan. The officially appointed *malik*s then distributed this 'external rent' they received from the state among their tribal subjects, as they chose. Given the lack of resources available internally to the *malik*s, this 'external' rent was a major factor in consolidating the authority of those *malik*s who had been favoured with access to this rent. The Political Agent also had, at his disposal, a paramilitary force called the *Khassadar*s working directly under his command. His powers also included the ability to 'fine, blockade, detain, seize hostile tribal groups and confiscate or demolish their property in the tribal areas' under the Frontier Corps Regulations (ibid., 311).

Since, under the Political Agent system, the tribal leaders were not answerable to their people but to the central government, in order to maintain their position and their privileges, they were more concerned about their relationship with the Political Agent than with their followers. The people of these areas turned to these official *malik*s for patronage, because they were the only ones with access to this 'external rent', given their link to the Political Agent and the central government, but

at the same time, they were forced to contend with the fact that these official *malik*s were often corrupt and did not fairly share their wealth or influence with the people in their following (Ahmed 1980). The system of indirect rule not only created a class of fixed *malik*s whose upward linkage to the central state disconnected them from the lower classes in tribal society, but it also imposed a legal system in the form of the FCR, which, as described earlier, was considered deeply corrupt and repressive. Further, the system imposed a static model of rule upon a society that was undergoing major changes, fixing a state elite in place, when new aspiring elites were emerging as a result of new socio-economic opportunities. Thus, the system of indirect rule did not promise justice or meaningful opportunities and benefits to large swathes of society in the tribal belt, in many ways delegitimizing the rule of the official *malik*s closely tied to the system, who were often perceived as corrupted by the system of which they were a part. The deep grievances in tribal society towards this system provided fertile ground for clerics like Nur Mohammad in the 1970s to rise as competing power centres buoyed by newly found socio-economic autonomy, criticizing the corruption and dependency of the official *malik*s, and promising legitimate rule based on the moral authority of Islam, demonstrated through the provision of more meaningful justice through arbitration and dispute resolution. Thus, the system of indirect rule played an important role in delegitimizing the *Maliki* system and providing spaces for new political entrepreneurs such as the cleric to emerge.

Pakistan's National Security Paradigm After the Soviet Invasion of Afghanistan

When the Soviet Union invaded Afghanistan in 1979, the Pakistani state made a policy decision to support the international coalition that resisted this invasion. During this war, the border region between Pakistan and Afghanistan developed vital national importance as part of this new strategy. The Pakistani intelligence agency, the Inter-Services Intelligence (ISI), 'which administered the distribution of aid, insisted on controlling and directing the military operations' (Glatzer 2002, 266). An arms pipeline was established to funnel arms into Afghanistan. The weapons were trucked to depots controlled by mujahideen groups in the

border region (Glatzer 2002, 266). Thus, the Pakistani state armed and empowered religious militants along the borders, making them crucial allies in a new national security strategy.

The main lesson learnt by the Pakistani security establishment from the successful pushback of the Soviet Union in Afghanistan was the utility of covert warfare to achieve geostrategic objectives. This experience also demonstrated the utility of ideologically inspired mobilization for this purpose. Of course, the ideology here was to be the Islamic concept of Jihad. Further, partly because of its own ideological orientation and partly because of the networks already established during the Afghan Jihad, the security establishment chose the militants to be from the Deobandi school of thought. This led to two crucial changes.

First, to support the new Jihad-based strategy, the Pakistani state developed a new infrastructure of theological institutions across the country. Under General Zia ul Haq, the state 'was deeply committed to Islamization, and through its decade-long rule… created numerous Islamic social and political institutions… providing financial and other support to madrasas, and enabled Islamic parties, social groups and *Ulema* to do the same' (Nasr 2000, 145). The preference for Deobandi groups meant that their madrasas proliferated at the fastest rate, especially in the Khyber Pakhutnkhwa province and the tribal areas. The head of Dar ul Uloom Haqqaniya, a highly revered Deobandi madrasa, Maulana Abdul Haq, 'encouraged students of his involved in the Jihad… to develop Madrasa Haqqaniya as an organizational and networking base' (Haroon 2008, 67). He encouraged religious leaders at madrasas in the tribal areas to 'organize in support of the Afghan Jihad' (ibid.). Abdul Haq turned Dar ul Uloom Haqqaniya into an important base of the resistance, as it was 'used to channel funds, provided by the Pakistani government to the mujahidin', and even sent Afghan students who had come as refugees back to fight in the resistance (ibid., 68). Led by Abdul Haq's initiative, madrasas in the tribal areas switched to 'providing simultaneous military and religious training through the region' (Haroon 2007, 204). These developments were encouraged and 'supervised by the Pakistan secret services (ISI)', which supported 'engaging local Pakistan-side Pakhtuns in the industry and ideology of the Afghan Jihad' (Abou Zahab and Roy 2004, 27).

Pakistan's tribal belt had now become critical to providing a support structure for the national policy supporting the Jihad. Throughout the 1990s, weapons continued to flow through the tribal areas as they did during the 1980s, this time to arm the Taliban. Meanwhile, Deobandi madrasas in Pakistan continued to produce young religious militants. With the establishment of the Taliban government in Afghanistan, these youth were exposed to not only militant training but also a theocratic state in which the mullahs were not subordinate to other centres of power or competing for power, but actually controlled the institutions of state.

Second, the full-fledged endorsement of Islamist allies in pursuing Pakistan's national security goals resulted in the country, in general, and its tribal border region, in particular, being opened up to all manner of groups supporting the Afghan and Kashmiri Jihadis from around the world. When millions of refugees crossed the border from Afghanistan into Pakistan's tribal areas, the Pakistani government allowed 'Deobandi or Islamic charity organizations' to operate freely in and effectively run the camps (Liebl 2007, 503). The border region also attracted large numbers of Arab fundamentalist religious organizations. Funding from Saudi Arabia and the close involvement of Arab religious organizations in the refugee camps attracted large numbers of Arab militants, usually *Wahhabi* and *Salafi*, to the region.

After the Soviet–Afghan war was over, these Arab fighters 'were refusing to go back to their own countries' (Khan 1995, 31). In fact, Pakistani authorities were 'doing little to ensure that the Arab fighters leave Pakistan apart from conducting wholly fruitless raids on offices of the Muslim aid agencies' (ibid., 32). Foreign aid became a very important boon for the success of the Taliban project in Afghanistan, and indeed, the Arab organization Al-Qaeda established close relations with the Taliban and 'integrated themselves into their command structure' (Rubin 2003, xv). Madrasas and religious leaders in the tribal areas of Pakistan also 'privately maintained connections with the Arab-led Islamists' (Haroon 2007, 210). This connection gave these religious leaders access to new sources of money, wealth and organizations.

It was in this process that the tribal elites—the *maliks*—became increasingly irrelevant to the Pakistani state's interests in the tribal border regions. The state had developed a close national strategic and

ideational alliance with the militant clerics and Islamist organizations proliferating in the border region. The role of the tribal elites as the primary interlocutors between the state and the people of the tribal belt was increasingly undermined, and state resources were moved from the *malik*s to the mullahs. Dorronsoro called this process the nationalization and radicalization of border politics in Pakistan (2012, 32). These two aspects of Pakistan's state strategy remained in place during the 1990s and after the attacks of 11 September (ibid.).

When a coalition led by American forces came to Afghanistan to dismantle the Al-Qaeda-backed Taliban regime and flush out the Arab-led Islamists, many of the Taliban leaders and militants and Al-Qaeda figures fled into the Pakistani-side Tribal Areas and took refuge with the Pakhtun tribes there. *Herald* reported that 'thousands of Arabs and Chechen militants crossed into the country' during early 2002 (Khan 2002, 28). The Pakistani state had turned the border into a region completely open to Jihadi organizations, both from inside and outside Pakistan, and continued to covertly cling to a strategy of supporting Islamist proxies in Afghanistan and Kashmir. Therefore, there was little effort by the Pakistani state to stop the influx of these militants into the Tribal Area. The tribesmen took these militants, both Afghan and Arab, into their homes and provided them with due hospitality. The Pakistani security establishment 'used to look the other way' when they received information about militants crossing into the tribal regions (ibid., 29). Their presence created important economic opportunities and economic ties between the peoples of these areas and the Jihadi militants.

Over the years, these Arab patrons have been able to ensure that the Taliban in the tribal regions have remained well funded, to the extent that in 2008, the tribal Taliban had an annual budget estimated at PKR 4 billion (*Daily Times*, 16 October 2008). A Taliban mercenary was receiving a wage of PKR 6,000 a month, and local Taliban commanders received up to PKR 20,000 a month (ibid.). This was much more than the wages being paid by the government to their own Khassadars, who earned a meagre PKR 3,000 a month (ibid.). The close affiliation between these Taliban groups and Al-Qaeda and the large supply of patronage that Al-Qaeda provided, meant that several of these groups aligned themselves with the agenda of Al-Qaeda. For example, the Tehrik-e-Taliban, has been closely affiliated with Al-Qaeda. The Haqqani Network based in North Waziristan

is said to have Al-Qaeda members embedded within its ranks (Rassler and Brown 2011, 38). Other smaller organizations including the Maulvi Faqir group, the Umer Khalid group and the Tariq Afridi group also aligned themselves with Al-Qaeda's agenda, mainly by targeting NATO tankers that transit through Pakistan to Afghanistan.

As pressure grew both from abroad and from within Pakistan to flush out foreign militants, the Pakistan army was forced to move into the tribal areas. From late 2002 onwards, the Pakistani army moved into the tribal areas with the apparent aim of flushing out the foreign militants. The entrance of the army made the *malik*s even more irrelevant, as the army bypassed them to go directly after the foreign militants. The *malik*s could do little about this as their authority was still dependent upon patronage and support from the government. Therefore, neither were the *malik*s benefiting from state support the way local clerical militants were, nor were they able to take an independent stance opposed to direct state intervention in the region due to their dependency on the state. Thus, the writ of the *malik*s was seriously undermined, leaving the tribal belt a chaotic, violent, lawless region. This lawless void created the opportunity for the organized militant clerics of the tribal areas to take action now to replace the *malik*s.

Clerical militant groups across the tribal region established state-like entities on the promise of bringing law and justice to lawless areas. Legitimizing their conduct on the basis of Islam and with large caches of arms and armed militants to enforce their writ, they were able to suppress challenges from the *malik*s. In the Khyber Agency, for example, the young Mangal Bagh rose to prominence with his rhetoric of taking on 'tribal elders who are traditionally pro-establishment and receive all the benefits doled out by the government'(Zaidi 2008, 3). The Jihadi militants targeted these *malik*s, and by 2008, 'some 400 pro-government *malik*s were killed by the militants' (Ansari 2008, 73). Surviving *malik*s were powerless, as they dared not challenge the Jihadi militant organizations for influence.

The clerical militant groups were in a very advantageous position in the border region. As vital allies in the state's national security strategy using Islamist proxies, they were given access to state resources and space to operate in these regions. At the same time, the arms supplies, smuggling and transnational operatives in the region made these groups autonomous

from state control. Many of these groups, as explained earlier, drew close to Al-Qaeda who provided plenty of support. When the Pakistani state turned on these foreign operatives settled in the region, Al-Qaeda increasingly opposed the Pakistani state. Several militant groups in the region, such as the Tehrik-e-Taliban Pakistan, running their own quasi-states, joined Al-Qaeda in its fight against the Pakistani state.

The autonomy that has been provided to these militant groups by the state has allowed them to form their own rent sources, quasi-states and militant alliances, which, in turn, has given them the opportunity to determine the approach they are willing to take towards the Pakistani state. Those groups who have fallen into the orbit of Al-Qaeda have committed themselves to using their bases in the tribal regions to fight the Pakistani state. On the other hand, many of these groups remain allied to the Pakistani state. Herein is the key difference between the insurgency in Swat that was quelled by the State in 2009 and the Taliban of the border region. While the Taliban takeover in Swat was the product of the same radicalizing state policies that armed, empowered and inspired clerical militants to take over state structures, for the Pakistan army, however, there was little utility to maintain an alliance with the groups in Swat based on a national security agenda. Swat's distance from the theatre of conflict in any national state agenda made the Taliban there more vulnerable. On the other hand, the continued significance of the tribal areas in the struggle for influence in Afghanistan through Islamic proxies means that the state is still only willing to take action against militant groups that provide little value to its ambitions in Afghanistan. Those groups focused on the fight in Afghanistan remain vital to the state's national security calculus and so retain the ability to rule in the tribal regions autonomously and with impunity.

This is the story then of how Pakistani state policy played a decisive role in taking the clerics of the tribal belt from being ambitious political entrepreneurs looking for a space to attain some real political authority in a world dominated by tribal *malik*s, to running their own little regions, and taking over the functions of arbitration, taxation and policing. Decades of indirect rule had helped make the official *malik*s deeply dependent upon the state, disconnecting them from their tribal base and delegitimizing their authority, especially given their subordination to the repressive and unpopular FCR. This helped create the space for mullahs to

compete with the *malik*s, once they had developed the theological tools and the socio-economic autonomy to do so. However, the policies followed during and after the Afghan War made the clerical militants a vital part of Pakistan's national security strategy, and provided the militants an autonomous space in the tribal belt.

It is important to distinguish the foregoing analysis from the dominant themes in the literature. Scholars of the region have frequently characterized the struggles between the tribes of the region and the central state, be it the British Empire or Pakistan, as a struggle against encapsulation by these fiercely independent tribes. Ahmed (1980) sees the mullah as mostly an outsider, but holds that the mullah has historically been able to insert himself into a dominant role when there is a leadership crisis within the tribes. Such a leadership crisis would emerge when an outside force attempts to subjugate the tribes collectively and there is need for leadership that can transcend the tribes. Islam transcends all these lineages and, hence, can be a unifying ground for the tribes to resist encapsulation. Haroon (2007) also explores in detail the history of Mullah-led resistance to British attempts at bringing the tribal areas under direct rule. She describes how clerics used their religious authority to mobilize the tribal people under the banner of Jihad, to give the fight religious legitimacy and bring together large *Lashkar*s. Thus, religious leadership took the forefront in resisting British colonial encroachment into the tribal areas.

Haroon (2008, 213–214) uses the same framework to explain the rise of today's Pakistani Taliban in the tribal belt as a consequence of the Pakistan army entering the tribal belt, disrupting and destabilizing the tribal system. This, in turn, mobilized the tribesmen behind the militant clerics to confront the Federal Government's direct intervention into the tribal regions. According to her, today's militant clerics continue to hold power as 'moderators of… tribalism' (ibid., 216). However, examining today's clerical militants as products of the theme of 'recurring resistance' ignores the transformative processes that have taken place in the region, altering both the clerics and the tribal society, as explained above. And more importantly, it ignores the crucial role of today's militant clerics for the Pakistani state. Policies during and after the Afghan war made the clerics a vital part of Pakistan's national security strategy and provided the militant groups autonomous space to displace the tribal structure

and take power in these regions. Therefore, these clerics, rather than emerging to confront encapsulation of the state, have emerged, crucially, with the support of the state to confront and displace the tribal leadership in these regions.

* * *

This chapter has attempted to demonstrate that the militant clerics of the tribal regions of today are a far cry from the mullahs who resisted British encapsulation in the 1920s. Today's militant clerics have not emerged to protect the tribes from direct encapsulation. Instead, they seek to create their own rule, displacing the traditional tribal structure, and, in the process, are a major threat to peace and stability, not only in Pakistan, but regionally and globally also.

   This chapter argues that the causal basis of this militancy has been deeply conditioned by the influence of ideational and socio-economic changes that have taken place in the tribal areas over the last century. However, the sustained militancy along Jihadist lines we see today has been underpinned by the institutional structure of indirect rule that the Pakistani state has persisted with in the tribal areas. This has created the legitimacy for militant challenges against the established order of *malik*s and Political Agents that continues to formally govern the area through the legal structure of the antiquated FCR. Whether this is an error of omission or part of some unstated geopolitical calculus of Pakistan's security establishment is now a moot point. Finally, the policy of covert warfare of Pakistan's security establishment proved to be the proverbial nail in the coffin in having sustained this militancy to the point that we see sovereignty divided in Pakistan's northwest tribal areas.

References

Abou Zahab, Mariam and Olivier Roy. 2004. *Islamist Networks: The Afghan–Pakistan Connection*. London: Hurst.

Addleton, Jonathan S. 1992. *Undermining the Centre: The Gulf Migration and Pakistan*. Karachi: Oxford University Press.

Ahmed, Akbar S. 1980. *Pakhtun Economy and Society: Traditional Structure and Economic Development in a Tribal Society*. London: Routledge & Kegan Paul.

———. 1991. *Resistance and Control in Pakistan*. New York: Routledge.

Ali, Shaheen Sardari and Javaid Rehman. 2001. *Indigenous Peoples and Ethnic Minorities of Pakistan: Constitutional and Legal Perspectives*. Richmond: Curzon Press.

Amin, Akhtar. 2008. 'Taliban Set Up Illegal Courts in FATA, NWFP'. *The News*, 29 June.

Ansari, Massoud. 2008. 'Progeny of Fear'. *Herald*, August.

Daily Times. 2008 (4 July). 'Taliban Order Mohmand Women to Veil'. http://www.dailytimes.com.pk/default.asp?page=2008\07\04\story_4-7-2008_pg7_28

———. 2008 (27 August). 'Taliban Ban Foreign Media in N. Waziristan'. http://archives.dailytimes.com.pk/national/27-Aug-2008/taliban-ban-foreign-media-in-n-waziristan

———. 2008 (16 October). 'Local Taliban Annual Budget at PKR 4 Billion'.

———. 2009 (28 April). '56% in FATA See Afghan Taliban as "Heroes": Survey'. http://archives.dailytimes.com.pk/main/28-Apr-2009/56-in-fata-see-afghan-taliban-as-heroes-survey

Dorronsoro, Gilles. 2012. 'The Transformation of the Afghanistan–Pakistan Border'. In *Under the Drones: Modern Lives in the Afghanistan–Pakistan Borderlands*, edited by Shahzad Lewis and Robert Crews, pp. 30–44. Cambridge: Harvard University Press.

Glatzer, Bernt. 2002. 'The Pashtun Tribal System'. In *Concepts of Tribal Society*, edited by G. Pfeffer and D. K. Behera. New Delhi: Concept.

Haq, Ikramul. 1996. 'Pak–Afghan Drug Trade in Historical Perspective'. *Asian Survey* 36 (10): 945–963.

Haroon, Sana. 2007. *Frontier of Faith: Islam in the Indo-Afghan Borderland*. London: Hurst.

———. 2008. 'The Rise of Deobandi Islam in the North-West Frontier Province and Its Implications in Colonial India and Pakistan 1914–1996'. *Journal of the Royal Asiatic Society* (*Third Series*) 18 (I): 47–70.

International Crisis Group. 2009 (21 October). *Pakistan: Countering Militancy in FATA—Asia Report No. 178*.

———. 2010 (6 December). *Reforming Pakistan's Criminal Justice System—Asia Report No. 196*.

Kartha, Tara. 1997. 'The Diffusion of Light Weapons in Pakistan'. *Small Wars and Insurgencies* 8 (1): 71–87.

Khan, Aamer Ahmed. 1995. 'Have Gun Will Travel'. *Herald*, December.

Khan, M. Ilyas. 2002. 'Sleeping with the Enemy'. *Herald*, June.

Khattak, Iqbal. 2008. 'Taliban Collecting Taxes to Raise Funds for "Jihad"'. *Daily Times*, 15 August.

Liebl, Vern, 2007. 'Pushtuns, Tribalism, Leadership, Islam and Taliban: A Short View'. *Small Wars and Insurgencies* 18 (3): 492–510.

Metcalf, Barbara D. 2002. 'Traditionalist' Islamic Activism: Deoband, Tablighis and Talibs. Netherlands: ISIM.

Nasr, Vali. 2000. 'The Rise of Sunni Militancy in Pakistan: The Changing Role of Islamism and the Ulama in Society and Politics'. *Modern Asian Studies* 34 (1): 139–180.

Rassler, Don and Vahid Brown. 2011. 'The Haqqani Network and the Evolution of Al-Qaeda'. *Combating Terrorism Center*, 14 July.

Rubin, Barnett. 2003. *The Fragmentation of Afghanistan: State Formation and Collapse in the International System.* Pakistan: Oxford University Press.

Shaheed Bhutto Foundation, Benazir Democracy Institute. 2009 (January). 'Mainstreaming Fata'. Islamabad: Shaheed Bhutto Foundation.

Zaidi, Syed Manzoor Abbas. 2008. 'A Profile of Mangal Bagh'. *The Long War Journal*, November.

8
Routine Emergencies: India's Armed Forces Special Powers Act

*Sanjib Baruah**

When the United Nations (UN) High Commissioner for Human Rights, Navaneethem Pillay, visited New Delhi in March 2009, she took up with Indian officials the case of the Armed Forces Special Powers Act (AFSPA), a law that in certain parts of the country governs the 'use of armed forces in aid of the civil powers' during conditions regarded as 'disturbed or dangerous'. The AFSPA empowers the armed forces to make preventive arrests, to search premises without warrant and to shoot and kill civilians. It also provides significant legal immunity to soldiers charged with misusing those powers: Court proceedings are made contingent on the central government's prior approval (Government of India 1958). While the AFSPA may be in effect in an entire state, its full force comes into play only in 'disturbed areas', though sometimes an entire state can be declared 'disturbed'. An area can remain in that state for years on end.

* This chapter is dedicated to the memory of Ram Narayan Kumar, a human rights activist and friend, who passed away on 28 June 2009. During the months before his death, he was trying to organize a national campaign against the AFSPA. This chapter is an attempt to continue my conversation with Ram where we had left off: on how to effectively campaign against this law.