

Continuity and Changes in the Administration of FATA (1947-2017): A Case Study of Frontier Crime Regulation

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- p- ISSN: 2708-2458
- e- ISSN: 2708-2466
- L- ISSN: 2708-2458
- Vol. IV, No. I (2019)
- Pages: 22 - 27

Abstract: *FATA is a region within Pakistan that is often termed a "lawless region". It is governed through colonial-era discriminatory law i.e. Frontier Crime Regulation. Under FCR, the plight of the people of FATA was unimaginable. There have been reforms in the FCR in the past but they couldn't mainstream the people of FATA. The historic decision of the FATA-KP merger will lead the people of FATA from FCR to constitutionalism. This paper attempts to study the continuity and changes in the administrative structure of FATA since the inception of Pakistan till now. The paper ends with the logical decision to merge FATA with KP.*

Key Words: FATA, Frontier Crime Regulations, FATA-KP Merger, FATA Reforms

Introduction

Pakistan is a sovereign country where in some parts, colonial legacy still prevails. Those regions within Pakistan are known as FATA (Federally administered tribal areas). As the name indicates, FATA is "administered" by the federal government through a set of laws known as FCR (Frontier Crime Regulation). It was introduced back in 1901 by the British colonial masters to administer the tribes living in the frontier region. Such kinds of laws were present in almost all parts of the world under the British Empire. Special districts administrative ordinance which was used to manage the frontiers in Nairobi in Kenya, was also like FCR. These laws were used to rule tribes indirectly living in the peripheries of the British Empire ([Hopkins, 2015](#), p. 1). This research paper attempts to shed light on all the changes done in the FCR to administer FATA from 1947-2017 ([Ali, 2018](#)).

FATA: A Troubled Region

FATA is located in the northwestern part of Pakistan. On the west, it is along the Pak-Afghan border known as the Durand line while on the east it borders the KP province. The people who inhabit FATA are mostly Pashtuns. There are numerous tribes and subtribes living in FATA. The area of FATA is almost 27,224 square kilometers and it is made up of seven agencies with respective capital cities. Bajaur (north), Mohmand (north), Khyber (center), Orakzai (center), Kurram (center), North Waziristan (south), South Waziristan (south)

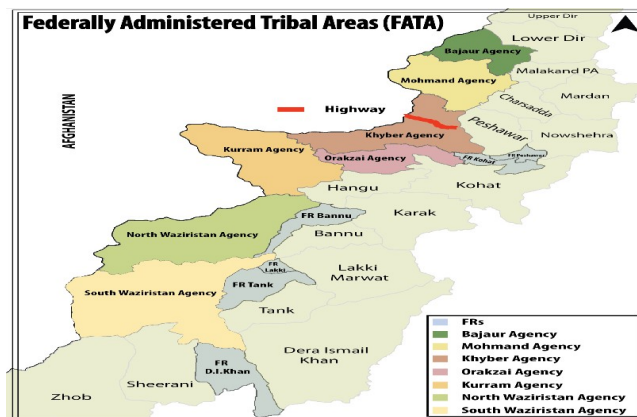


Figure 1 (Government File)

FATA and KP province are separated by six frontier regions. These include FR Peshawar, FR Bannu, FR Kohat, FR Lakki Marwat, FR Tank, and FR Dera Ismail Khan. If we take a look at the economic condition of FATA, almost 60 percent of the population lives below the poverty line. Unemployment is rampant. Basic services like health care and education are inadequate. The adult literacy rate is 28.7 percent which is very low as compared to the literacy rate of Pakistan. Women are further handicapped by the local cultural and legal norms. The social setup of FATA is conventional. They follow the code of life called Pashtunwali. They revere their cultural norms, traditions, and rules. FATA has seen the worst type of violence after the 9/11 war on terrorism started in its neighborhood ([Ali, 2018](#))

FCR: A Colonial Instrument of Tyranny

Frontier Crime Regulation is a piece of law that was used by the British to administer and indirectly control the peripheries of the Empire. Such law was used in Nairobi, Kenya with the title of Special Districts Administrative Ordinance ([Hopkins, 2015](#)). If we look at the history of FCR, it was introduced during the British Raj in the subcontinent in 1848. It was amended according to the British needs and finally promulgated in 1901 in the areas now called FATA (FCR-A bad law nobody can defend, 2005). At the time of independence of Pakistan in 1947, FATA decided to become part of Pakistan on the condition that the state of Pakistan would let FATA keep its semiautonomous status. Thus, FATA came into the fold of Pakistan along with FCR ([Babakhel, 2018](#))

FCR has been termed as a black law or draconian law. According to FCR, the people of FATA were denied the following rights:

1. If a person is convicted by the Jarga, he cannot appeal to the courts of the country. The federal government can take action against him without any trial.
2. Tribal people cannot enter settled areas of Pakistan.
3. The right to be dealt with according to law, security, safeguards against illegal arrest and detention, protection against double jeopardy and self-incrimination, prohibition of torture for the purpose of extracting evidence, property rights, and equality of citizens ([Hussain](#))

The most important thing is that FCR denied the jurisdiction of the supreme and the high courts within the territory of FATA. Laws are made to safeguard human rights but FCR is a peculiar law that is subjugating the citizens and increasing the violation of human rights. The most notorious clause is that of "collective punishment" according to which if a person is convicted, he will be punished along with the members of his tribe, in some cases even his whole village will be punished (FCR-A bad law nobody can defend, 2005).

The constitutions of Pakistan recognized the special statutes of FATA along with FCR ([Ali, 2018](#)). Article 1 of the constitution of 1973 says that FATA is part of Pakistan. Other than this articles 246 and 247 dealt with FATA. It stated that the courts of Pakistan will not have jurisdiction over FATA. These areas will be administered by the Governor of KP and the President of Pakistan will be the chief executive. Further, a political agent (PA) who is a civil servant of Pakistan is assigned to each tribal region to administer it. He is assisted by an assistant political agent and the soldiers. (USIP) The post of Political agent has been controversial because of his unchecked judicial, civil, and revenue powers in the region ([Dr. Sohail Ahmed, Spring 2016](#)).

Reforms in the Past: Unfulfilled Promise

In 1954, Supreme Court Chief Justice Alvin Robert Cornelius remarked about FCR as obnoxious to all modern mechanisms to deliver justice. FCR has been amended on numerous occasions. In 1996-97, Universal Adult Franchise was introduced it gave the FATA people the right to vote in general elections (Tauqir)

FATA remained insignificant for the national to the international community for years. After the 9/11 terrorist attacks which hit America, the world was not the same. America attacked Al-Qaeda and the Taliban in Afghanistan. Some terrorists fled to FATA, as it is on the other side of the Duran line. The Journalists started to write about this "lawless region" and in this way, FATA was highlighted in the national and international forums. It came to the knowledge of many people that within a sovereign country there lies a part of land which is governed by FCR (Hussain). Slowly and gradually, the government decided to introduce reforms to the unjust laws of FCR in order to give the people of FATA the rights that they deserve as citizens of Pakistan ([Hopkins, 2015](#)).

In 2008, when the PPP took over the reign of the government, they introduced the reforms to FCR. On 12th August 2011, President Zardari signed two regulations for the reform process namely the

Extension of the political party order 2002 to the tribal areas and the amendment to the FCR called Frontier Crime (amendments) Regulation 2000.

The following are the features of these regulations:

1. Political party's order will be extended to FATA
2. To curtail the power of arbitrary arrest and detention without the right to bail under the FCR
3. Women and children under the age of 16 should not be punished according to the collective punishment clause of FCR
4. FATA tribunal will be established which will act like the Peshawar High court
5. The funds received by the Political Agent will be audited by the Auditor General of Pakistan(Hussain)

According to the Political Parties' Order 2002, the political parties can operate freely in FATA and present their socio-economic agenda. This will help to counter the extremist groups present within FATA who are promoting their ideology to the local people. Ms Jahangir, who was heading the Human Rights Commission of Pakistan in 2011 had said that,

"The extension of the political parties order will also help generate the interest of people who will be gradually brought to the mainstream national life because they will enjoy the right to vote, but not to a political party. The audit of political agents will also take care of bribes in Fata," (Major changes done in FCR; people get political rights, 2011).

These reforms to FCR were appreciated initially, but in the long run, they failed to mainstream the interests and rights of the people of FATA. The scenario was worsened by the ongoing "war on terror", growing extremisms, terrorism, and the operations that were launched to curb these evils. People started to leave their homes and started living in other parts of Pakistan. The government also introduced "Action (in aid to civil power) Regulations in 2011. According to this amendment, the armed forces were empowered to punish any person living in FATA after investigating him in the internment centers. This was in contradiction to the government's claim that they are working for the welfare of the people of FATA (Hussain).

Similarly, the government made the FATA tribunal which would act like the high court but retired civil bureaucrats were appointed in this tribunal instead of retired judges. This was severely criticized at that time as it was not a logical decision. Another criticism was that the collective punishment clause should have been abolished rather than amended(Hussain). The reforms to the FCR at that time were not enough to lessen the grievances of the people of FATA. The demands of the residents of FATA in response to these reforms are summarized as under:

1. To separate the executive from the Judiciary
2. The jurisdiction of the High and Supreme Court should be extended to FATA
3. Local government
4. Change the status quo and form a new contract with the people of FATA
5. Levis to be formed into law enforcement agencies
6. FCR should be reformed as a whole (Khan, 2018)

The reforms introduced completely missed the demands of the people of FATA mentioned above. So the plight of the people continued under FCR. According to political experts, the reforms were lacking and delayed despite the flexible legislative process of Pakistan. Two main reasons are talked about. Firstly, the security policy (as FATA is a strategic outpost) in relation to Afghanistan is best served if FATA continues to be ruled through FCR. Secondly, if FATA is merged with KP, this will lead to the strengthening of Pukhtoon nationalist sentiments which can be dangerous for the country (Hussain).

FATA Reforms: Need of the Hour

In 2015, the FATA MPs put forth their united effort to call for effective reforms in the governance of FATA. They demanded that FATA be merged with the province of KP and to abolish FCR. The then Prime Minister called for the formation of a six-member reform committee for FATA reforms headed by Sartaj Aziz who was the special advisor to PM of foreign affairs. The purpose of this committee was to suggest effective reforms in FATA and to come up with a functional plan to carry out those reforms (Ali, 2018).

The members of the reform committee started to travel to the FATA region. They met with tribal elders and local people. It took eight months for the committee to come up with workable options for the future of a progressive FATA. The committee had the following guidelines that they considered while chalking a plan for the future of FATA:

1. Reforms should bring positive change in the lives of the people
2. The reforms should not contradict the local culture
3. The aim of the reforms is to alter the buffer statutes of the region without creating insecurity
4. FATA reforms should be seen as a journey and not as a destination
5. The circumstances should be monitored in order to protect the reforms from jeopardy
6. The best personnel should head the reform process to ensure its long-term results for the region (Tauqir)

The committee presented its recommendations in August 2016. It outlined the four reform options for FATA:

1. FATA should remain as it is with some changes in FCR
2. FATA should be given the status of a province
3. FATA should be merged with KP
4. FATA should be given the quasi- autonomy (Major changes done in FCR; people get political rights, 2011)

There was a debate over these options. Only two options were narrowed down which were considered to be most practical. One was the FATA-KP merger and the second was to give FATA the status of a province. The research was conducted in December 2016 by a research Centre in Islamabad, according to which 74% of people support the FATA-KP merger. This option is feasible on many accounts. On the other hand, FATA cannot be given the status of the province because of the lack of unavailability of the appropriate amount of funds and non-sustainability. Firstly, FATA borders KP province, people also belong to the same ethnicity ([Pakistan, 2016](#)).

People are also settled in KP with their jobs and education in the province. In March 2017, a landmark decision was taken by PM Nawaz Sharif on the reform process for FATA. A complete plan was given to initiate and implement the reforms in the administrative setup of FATA. The plan for reform had political, administrative, legal, and development dimensions ([Ali, 2018](#)). Each dimension is discussed below.

Political and Administrative Reforms: The merger will result in the integration of FATA with KP province. This process will not be immediate, a five-year timeline is set to facilitate the integration of all the departments of FATA with KP. The seven agencies of FATA will be given in the statutes of districts according to the density of the population. Administratively, KP's representation will increase in the KP provincial assembly and also in the national assembly. In the national assembly, KP has forty-three seats, in which the twelve seats of FATA will be added, thus resulting in fifty-five seats in the national assembly. Similarly, at the local level, local party elections will be held under the FATA local government regulation. This will lead to the transfer of power at the local level. This will promote development, and will also ensure the implementation of the reform process ([Ali, 2018](#)).

Legal Changes: The legal aspect of the reform process is also very important. The merger will mean that FCR will be repealed and the regular legal processes will be applicable to FATA. For this purpose, article 247 of the constitution will be amended. Moreover, the legal aspect also includes the tribal Jirga system which is used by the locals to settle their conflicts. The FATA reform committee suggested the Rewaj Act under which the legal system of FCR will be retained ([Ali, 2018](#)).

The reform committee recommended a five-year transition period which will facilitate the integration and mainstreaming of Fata. This slow and steady process of integration will reduce the demerits and enable the authorities to fill up the loopholes. The five-year transition period will be utilized to achieve certain goals and essentials. Some are mentioned below:

1. Restore peace in the FATA region and rehabilitation of temporarily displaced persons
2. Take necessary steps for the economic and social development of the region
3. Set up the local body government to ensure the participation of the locals in the political sphere
4. Introducing judicial reforms
5. To improve the law-enforcing agencies (LEAs)
6. Improve the capacity of FC for their border management duties ([Pakistan, 2016](#))

The draft of the tribal areas Rewaj bill 2017 was presented in the National Assembly by the federal government on May 15. According to this draft bill, there will be two legal systems that will work parallel to each other. The jurisdiction of the Supreme Court and the Peshawar High Court will be extended to FATA. The judges will be appointed by the Federal government. Jirgas will stay relevant in this system as they will be functional in the trial of any case. This is the same as was done under FCR. People could appeal to the High Court. The political agent will be replaced by the Judges. The cases will be forwarded to the council of elders which will decide the fate of the case according to the local reward ([Shah, 2017](#)).

This bill faced criticism from different sections of the society. According to lawyer and former parliamentarian from Khyber Agency Abdul Lateef Afridi, this bill will not facilitate the mainstreaming of the people of FATA. He suggested that regular judicial laws should be extended to FATA. The dominant view is that reward laws cannot be reconciled with the regular laws of the country. So the government did not carry out further proceedings on the Rewaj bill because of widespread criticism of its provisions ([Shah, 2017](#)).

On May 28th, 2018, Parliament carried out the 31st constitutional amendment which enabled the FATA and KP merger. President Mamnoon Hussian signed the "Fata Interim Governance Regulation 2018" into law. This regulation repealed the draconian FCR, it declared the tribal agencies as tribal districts, the tehsils, and six frontier regions as subdivisions and it renamed the political agent as the deputy commissioner. Following are some more features of this regulation:

1. In matters of *civil dispute*, the deputy commissioner will have the authority to nominate a council of elders and the dispute will be referred to the said council. The council will investigate the dispute according to the local Rewaj within 90 days. The deputy commissioner will pass the decree after he receives the findings.
2. In case of a *criminal offense*, the case will be registered and then the assistant commissioner will act as a judge, appointed by the governor. The assistant commissioner will constitute a council of elders within 10 days of the offense. The council will investigate the offense and submit its findings to the Judge. The judge then will pass the necessary orders according to the majority of the council and the law.
3. An appeal can be made to the additional commissioner appointed by the governor within 30 days of the declaration of an order. An appeal can be made to the Peshawar High Court within 30 days of the order by the additional commissioner ([Khan, 2018](#)).

Conclusion

The historic decision of the FATA-KP merger will mainstream the residents of FATA. They will enjoy all the rights provided by the constitution of Pakistan. Though the decision to merge is a step in the right direction, the transition period spelled out in the reform plan should be utilized to ensure that the merger becomes successful. A holistic approach is essential as there are numerous factors that need to be catered to during the merger. Administrative, political, security and cultural dimensions need to be taken into account. As we have seen in the past, history doesn't bear witness to successful and sustained merger plans. In 2003, the B" areas in Balochistan were converted into A" areas, and these areas were brought under the authority of the Police. This couldn't be sustained and was annulled in 2010. Dir, Swat, and Chitral were merged with KP but this arrangement wasn't successful. Before partition, Bengal was partitioned in 1905 but was not successful so it was reversed to its previous status in 1911 ([Babakhel, 2018](#)). Therefore, it is very important to learn lessons from the past to ensure that the current FATA-KP merger will sustain the test.

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