

The Merger of FATA with Khyber Pakhtunkhwa: An Historical Analysis

Dr. Altaf Ullah and Dr. Syed Umar Hayat

Abstract

Federally Administered Tribal Areas (FATA) which has recently been merged with Khyber Pakhtunkhwa, is comparatively neglected region of Pakistan. It had seven political agencies and six frontier regions with a system of administration and judicature, significantly different from rest of the country. The legal-administrative framework for these areas had been formulated through the Frontier Crimes Regulation which was popularly known as FCR. This Regulation had been the mainstay of the government in FATA. The origin of this regulatory system dates back to the British colonial period of pre-partition India. After the creation of Pakistan, these areas remained isolated from the rest of the state territories and did not come under the orbit of the national and provincial parliaments. Constitutionally, the President of the state through the Governor of Khyber Pakhtunkhwa, who acted as an agent of the former, administered these areas. Now under the latest merger in May 2018, the entire scenario is required to be reshaped to bring these areas under the mainstream politics of the country. But prior to any regulatory or political move concerning the locality, a comprehensive analysis of the historical background seems to be pertinent. This study is an effort in that direction.

Keywords: Pakistan, FATA, FCR, Reforms, Merger, KP

Introduction

Pakistan's north western borderland extending over 27220 square kilometers, consisting of seven political agencies and six frontier regions, was known as Federally Administered Tribal Areas (FATA) (Sarfranz, 2008, p. 8). The demography of FATA demonstrates that this mountainous land was inhabited by a majority of Pakhtun population (IPRI Factfile, 2008, p. 15). It was surrounded by the province of Khyber Pakhtunkhwa in the north and east, the province of Balochistan in the south, the province of the Punjab in the south-east and Afghanistan in the west.

Administratively, Federally Administered Tribal Areas was divided into two categories i.e., 'protected areas' and 'non-protected areas'. The former were directly governed by the Federal Government via its political appointees called Political Agents while the latter were administered indirectly by the local tribes (Tayyab, 2005, p. 15). Being a federal and at times provincially appointed official, the Political Agent

*Authors are Research Fellow, National Institute of Historical and Cultural Research, Centre of Excellence, Quaid-i-Azam University, Islamabad and Associate Editor, *Mujallah Tarikh wa Saqafat-i-Pakistan* and Senior Research Fellow, National Institute of Historical and Cultural Research, Centre of Excellence, Quaid-i-Azam University, Islamabad and Editor-in-Chief, *Mujallah Tarikh wa Saqafat-i-Pakistan*

closely watched the administration of the concerned political agency with maximum power and executive authority in hand. He exercised a blend of executive, judicial and revenue powers and also maintained law and order situation, suppressed crimes and criminal activities in the concerned tribal agency.

Keeping all these responsibilities intact, he was supported by Khassadars, (an irregular force which worked under the overall command of the Political Agent to protect roads and other government installations and performed the duties of guards) levies (tribal militias) and paramilitary forces that worked under military command (Rakisits, 2008, p. 2). The administrative structure in each political agency further revealed that Political Agents were further assisted by Assistant Political Agents and Officers in-Charge of specific sub-division. At local level political tehsildar, naib tehsildar and political moharir performed their administrative functions.

The administrative affairs of frontier regions of FATA had been overseen by the Deputy Commissioners of the respective districts. All those officials performed their respective duties under the overall administrative control of Governor's Secretariat (Sarfraz, 2008, p. 21). The tribes were internally free to regulate their own affairs keeping in view their tribal codes (unwritten), customs and traditions. They also essentially took care of the principle of 'collective responsibility' for the deeds and actions of their individual family or tribe members and 'territorial responsibility' of those areas which were given under their control (GOP, 2006, p. 5).

The Ministry of States and Frontier Regions (SAFRON) at federal level had been assigned the task to keep a close watch on certain issues of management, development and other related matters across FATA (Tayyab, 2005, p. 13). However, SAFRON, being a federal ministry, was accountable to the elected Prime Minister and National Assembly of Pakistan which was almost insignificant in policy execution in FATA and worked mostly as a channel of steering federal funds. The real authority was thus rested with the head of the state (Maqbool, 2007, p. 174). Being a representative of the President, the Governor of Khyber Pakhtunkhwa province performed his duties on behalf of the Federal Government and overseen the affairs of these areas through FATA Secretariat located at Peshawar, the provincial capital (Tayyab, 2005, p. 13).

Reforms in FATA: In Retrospect

The history of reforms in FATA remained diversified because different classes of Pakistan strived to introduce considerable modifications in the legal, administrative and political framework of these areas. A common misperception and general confusion prevailed in our society that all the regular and ordinary laws of the state

The Merger of FATA with Khyber Pakhtunkhwa: An Historical Analysis

did not apply to FATA and that no effort had been undertaken by the successive governments to introduce reforms in these areas. This perception, however, might be partially correct but not totally acceptable as different central governments in Pakistan gave much time and energy to take initiative in this regard. The misperception had been, perhaps, drawn from the fact that all those efforts did not result in mainstreaming these areas into the national politics. But it cannot be denied that those gradual steps laid the foundation of the recent merger of FATA with the province of Khyber Pakhtunkhwa. In the first instance, one can observe that since the creation of Pakistan, a number of laws had been extended to the tribal areas such as the Passport Act 1913, the Trade Mark Act 1940, the Public Debt Act 1944, Pakistan Control of Entry Act 1952, and Adult Franchise Act 1996 etc.

While in the second instance, certain formal efforts were made by different governments in the beginning of 21st century to bring significant changes in the legal, administrative and political structure of FATA. Those initiatives included, Extension of Local Government Ordinance 2001 to FATA, FATA Strengthening and Rationalization of Administration Report 2006, FATA Sustainable Development Plan 2006-2015, FCR Reforms Committee Report 2008, Extension of Political Parties Order 2002 to FATA (2011), Frontier Crimes Amendment Regulations 2011, FATA Local Government Regulation 2012, FATA Reforms Commission Report 2015, FATA Reforms Committee Report 2016 and the recent amendment in the constitution by the Parliament in May 2018 (Altaf & Hassan, 2018, pp. 224-234; GOP, 2016, pp. 23-27).

Nonetheless, different governments in Pakistan had been undertaking their respective efforts to bring gradually some positive changes in the legal-administrative and political domain of FATA particularly in the last quarter of the 20th century. Indeed, many of those efforts to introduce reforms in these areas could not be materialized due to inevitable circumstances in the country in general and the region in particular. However, a brief description of those important reform attempts for FATA would be helpful for the better understanding of the scenario.

Naseerullah Babar's Report, 1976

The former Prime Minister Zulfikar Ali Bhutto for the first time took the initiative to introduce legal-administrative, political and economic reforms in FATA in 1976. He formed a formal committee under the chairmanship of Gen. (Rtd) Naseerullah Khan Babar who was the Governor of the Khyber Pakhtunkhwa province at that time. The prominent members of the committee were – Hafeez Pirzada, Rafi Raza and Dr.

Mubashar Hassan (Sadia and Adnan, 2016, p. 23., GOP, 2016, p. 23). The main purpose of the committee was to design a framework to integrate these areas with the contiguous province of Khyber Pakhtunkhwa prior to the elections of 1977. Unfortunately, the military coup in the same year, however, thwarted this effort. Beside it, the Bhutto regime undertook certain other steps to eradicate the backwardness of these areas such as increasing job opportunities for the tribesmen including their lateral induction in the Civil Service, construction of government offices, communication networks, as well as improving the existing education and health facilities and building new ones like Cadet College Razmak in North Waziristan Agency of FATA (Sadia & Adnan, 2016, p. 23).

Adult Franchise Act, 1996

The right to vote is a universal right of the citizens of any modern state. But in FATA the right of franchise was previously restricted to the Maliks (tribal elders) who could cast their votes in national elections and the common tribesmen were deprived of this right. Hence, the elections in FATA were based on selective voting system. Benazir Bhutto in her first tenure as Prime Minister extended Adult Franchise Act to FATA accommodating the tribal people beneath the umbrella of the Parliament. Accordingly, every adult tribesman and woman was granted the right to cast their votes and elect their political representatives to the National Assembly (GOP, 2016, p. 23., Sadia & Adnan, 2016, p. 24). That Act was immediately implemented and the electoral rolls were made afresh to enlist the tribal people from FATA. The decision to provide the right to vote was a historic one particularly for the tribal population. It gradually created in the minds of these tribal people a sense of belonging to Pakistan. Indeed, the participation of general masses of the tribal areas in the 1997 national elections was the immediate repercussion of the extension of Adult Franchise Act of 1996.

FATA at the Advent of the 21st Century

FATA remained under lime light especially since the advent of the British rule in the subcontinent. It was considered as a 'black hole' and 'no man's land' particularly by the British writers. On the one hand, it was deliberately kept insulated from the light of modern civilizations in the pre- partition era for certain hidden objectives of the colonial masters. While on the other hand, in the post-partition period it was also kept isolated from the rest of the country, considering it as a special area or region of the country. However, prior to the beginning of 21st century certain efforts were made by the successive governments to bring these areas at par with the other regions of the country. But tangible fruits of those efforts were not so significant. With the advent of

The Merger of FATA with Khyber Pakhtunkhwa: An Historical Analysis

the 21st century, certain reform initiatives were taken by different governments for legal-administrative and political uplift of tribal areas remained somehow effective. Hence, a bird eye view of those efforts and consequences seems to be worth mentioning.

FCR Reforms Committee, 2005

In the first decade of the 21st century, the initiative to launch a reform process in the century old FCR was undertaken by Musharraf regime. In April 2005, the Governor of Khyber Pakhtunkhwa, Khalilur Rahman constituted FCR Reforms Committee under the chairmanship of Justice (Rtd) Mian Muhammad Ajmal. The composition of the Committee ensured participation of different walks of life as it accommodated tribal elders, serving and retired civil servants, lawyers, a FATA parliamentarian and journalist (Rahimullah, 2011, p. 18., Raza, 2012, p. 18). While inaugurating its work on the assigned terms of reference i.e. to recommend necessary modifications in FCR after soliciting public opinion across FATA, the Committee visited FATA and conducted town-hall meetings attended by people belonging to all walks of life. The Committee elicited public opinion and sought their views on FCR. It also took the opinion of experts, intelligentsia, lawyers, intellectuals, political workers, civil society groups, and parliamentarians from FATA as well.

The FCR Reforms Committee after thorough deliberations and discussions reached to the conclusion that majority of the stakeholders wished for major modifications in FCR in order to make it a humane law, whereas, some of the beneficiaries under this law wished to maintain the status quo (Rahimullah, 2011). Although the Committee submitted its recommendations to the Government, yet the state authorities particularly the new Governor of Khyber Pakhtunkhwa, Lt. Gen. (Retired) Ali Muhammad Jan Aurakzai did not pay due attention to the proposals of the Committee apparently due to the so-called fragile security environment in FATA. Consequently, the process of reforms in the century old law was thus put on the back burner once again.

FATA Strengthening and Rationalization of Administration Report, 2006

A Task Force under Sahibzada Imtiaz Ahmad (Shakil, 2006) was appointed by the government in April 2006. It was entrusted with two major responsibilities i.e., to bring positive changes in the administrative structure of FATA and also to chalk out a comprehensive planning for the development of the whole region (Sadia and Adnan, 2016, p. 26). The Task Force submitted its report within the prescribed time period to the Government in a formal meeting presided over by the then President Pervez

Dr. Altaf Ullah and Dr. Syed Umar Hayat

Musharraf (Sadia and Adnan, 2016, p. 26). The report provided a thorough sketch of the existing situation in these areas and focused on administrative reforms and then recommended the following:

- “Strengthening of FATA Secretariat for a fast-paced development,
- Development authority for FATA,
- Protection of tribal system/traditions and customs,
- Removal of ambiguities between the federal, provincial and FATA Secretariat and establishment of a coordinated network between these for integrated efforts,
- And, dealing with law and order through reviving tribal traditions, usages, and custom in a spirit which is acceptable to the people of these areas,
- Constitution of a high-level commission to decide a well thought-out future of fata, instead of depending on piecemeal reforms that create more distortion instead of doing any good. Until the future of FATA is put in place, the centuries-old traditional system of tribal governance should be strengthened” (Sadia and Adnan, 2016, p. 26).

Cabinet Reforms Committee Recommendations, 2008

On 7 January 2008, Owais Ahmad Ghani took oath as the new Governor of Khyber Pakhtunkhwa province and afterwards he was given a briefing on the recommendations formulated by the FCR Reforms Committee. Thus, the process of reforms in FCR once again took momentum. Shortly after the general elections of 2008, the PPP government established a Cabinet Reforms Committee under the chairmanship of Farooq H. Naek, Federal Minister for Law, to reconsider the modifications proposed by the previous Committee. The Committee was consisted of two Federal Ministers, Najmuddin Khan of PPP and Hamidullah Jan Afridi an Independent MNA from Khyber Agency, and also several members of the parliament such as Zafar Beg Bhattani, Akhund Zada Chitan and Rahmatullah Kakar etc (Raza, 2012, pp. 118-19). The Cabinet Reforms Committee recommended a number of modifications in the FCR. Some of the salient features of these recommendations were that the title of the Frontier Crimes Regulation should be replaced by Federally Administered Tribal Areas (FATA) Regulation, 2008. A judicial officer i.e. a district and session judge should be appointed to hear appeals against the decisions of Political Agents.

The committee also recommended a three member FATA Tribunal to be headed by a retired Judge of High Court and having two other members i.e., a lawyer and a

The Merger of FATA with Khyber Pakhtunkhwa: An Historical Analysis

bureaucrat would be formed with final appellate authority against the decisions of Judicial Officer. The authority of Political Agent to nominate Jirga should be abandoned and the concerned parties would select members of a Jirga for arbitration. The discretionary power given to the Political Agent by Section 40 of FCR under which he could arrest a person for two years without giving any reason, should be amended and the accused should be brought before a court of law within twenty-four hours. The Committee also proposed that children, women and aged persons should be debarred from the 'collective responsibility' clause of this Regulation (Daily Time, August 30, 2008).

Frontier Crimes (Amendment) Regulation, 2011

Meaningful reforms in the legal-administrative structure and political domain of FATA were carried out by the PPP government when President Asif Ali Zardari signed Frontier Crimes (Amendment) Regulation, 2011 along with the Extension of Political Parties Order to FATA on August 12, 2011. This was the first ever substantive reforms package introduced by the government in one hundred and ten years history of the FCR. The Presidential Order brought considerable changes in the old version of this Regulation including modifications, substitutions, insertions and omissions as well (Hamid, 2012, p. 101., fatatreforms.org, 30 July 2013). Considering the effectiveness of the Presidential Order, some of its salient features seem to be worth highlighting, for better understanding of the phenomenon. Therefore, the most significant characteristics of the Frontier Crimes (Amendment) Regulation, 2011 are being elaborated a little bit.

a) Legal Protection

The amended version of Frontier Crimes Regulation reduced the severity of the "collective responsibility" provision by debarring the detention of women and children under age i.e., below sixteen years, and aged persons above sixty-five years. The imprisonment of an entire tribe under the same provision was changed in a way that in such a case of investigation the male members of a family must be arrested first, followed by the sub-tribe and then by other sections of the tribe (Frontier Crimes (Amendment) Regulation, 2011). It provided some human rights to the residents of tribal belt. The tribal people could not be detained for indefinite span of time and they would have the right to appeal in FATA Tribunal (Farhat, August 20, 2011). It was obligatory for the detaining authority to produce the accused before an Assistant Political Agent within twenty-four hours of his arrest, moreover, the accused will be entitled to bail and could be released on bail as well. Property rights were given to the

effect that no one could be deprived of his property unless he was properly compensated for that in case of confiscation.

b) FATA Tribunal

Although the idea of establishing FATA Tribunal was basically introduced through the amendments incorporated in FCR during 1997 yet the Frontier Crimes (Amendment) Regulation, 2011 further increased its independence and visibility by including two retired bureaucrats and a lawyer in FATA Tribunal (fatareforms.org, 30 July, 2013). It was to be consisted of a Chairman, a civil servant of not less than BPS-21 rank having thorough experience of tribal administration and two other members out of whom one would be from legal side who was eligible to be appointed as judge of the high court having sufficient familiarity with Rewaj (tribal customs) and the other would be from Civil Service who had attained BPS-20 rank having experience of tribal administration as well (Frontier Crimes (Amendment) Regulation, 2011). The Tribunal would act as a highest appellate body to hear complaints of the tribal people against any decision or judgment, decree or sentence passed by an appellate authority within ninety days of the judgment made by the Commissioner, Additional Commissioner, Political Agent or Deputy Commissioner (Frontier Crimes (Amendment) Regulation, 2011). Similarly, the Tribunal may review its own decision within thirty days on the request of any individual of FATA (Frontier Crimes (Amendment) Regulation, 2011). Beneath the Tribunal, the Commissioner or Additional Commissioner could be approached as an appellate body against the decisions, judgments, decrees and orders of Political Agent and Assistant Political Agent. Thus, the reforms provided the people of FATA an opportunity to question the actions and judgments passed by the political executives.

c) Qaumi Jirga

The history of Tribal Areas demonstrates that Jirga is an integral part of the dispensation of justice and regarded as an essential component of the tribal society. The reform package also advocated for the introduction of Qaumi Jirga to be consisted of respected elders and representatives of the tribes. The newly inserted provision in the amended version of FCR states thus, “the Political Agent of District Coordination Officer, as the case may be, may take cognizance of any offence or civil dispute in exceptional circumstances, if so recommended by a Qaumi Jirga of the Tribe in the interest of justice and public peace” (Frontier Crimes (Amendment) Regulation, 2011). It was, however, accommodated in a way that the power of political administration does not hamper.

d) Jail Inspection

The August 2011 reforms introduced a new concept of jail inspection by inserting the provision which provided that “FATA Tribunal, the Appellate Authority, the Political Agent and District Coordination Officer, as the case may be, shall visit the jails where the tribal convicts or detainees have been kept twice a year” (Frontier Crimes (Amendment) Regulation, 2011). The FATA did not have any jail and resultantly the convicted prisoners were sent to different jails located in various settled districts such as Haripur, D.I.Khan, and Peshawar etc. Under the circumstances, the Presidential Order contained the provision that the prisoners of tribal areas imprisoned in different jails would be twice visited in a year by the FATA Tribunal.

e) Audit by Central Government

The process of audit by the central government was introduced in these reforms. The State Fund used by the political agents of their respective Agencies or by the Deputy Commissioners of their respective frontier regions, would be subjected to audit by the Auditor General of Pakistan (Frontier Crimes (Amendment) Regulation, 2011). The central government had taken notice of financial mismanagement and irregularities of more than 24.13 million rupees in FATA in different development projects (fatareforms.org, 19 September, 2013). The insertion of such provision in the text of FCR, thus, ushered a new era in FATA.

An Analysis of the Frontier Crimes (Amendment) Regulation, 2011

Although the reforms package for Federally Administered Tribal Areas (Frontier Crimes (Amendment) Regulation 2011) had been appreciated in different quarters of the country, yet, these reforms were criticized in certain academic and intellectual circles.

It was criticized on the grounds that these reforms could not totally do away with the archaic and draconian clause of “collective responsibility” which presented a very peculiar picture in the present day nation state system (Farhat, August 20, 2011). Amendment in the said clause which excluded the whole tribe from ‘collective responsibility’ and limiting this clause to respective clan and close relatives of the accused, exemplified the reality that, this clause was basically inhuman and draconian in nature and essence. Hence, for the sake of individual freedom, this clause should be straight away abolished (Hamid, 2012, p. 104).

The well-known concept of separation of judiciary from the executive had been neglected while incorporating amendments in FCR. For instance, the composition of

FATA Tribunal was against the letter and spirit of the constitution of Pakistan which advocates the separation of judiciary from the executive. Resultantly, instead of retired judges of the Supreme Court or High Court, civil bureaucrats were incorporated in FATA Tribunal. Serious reservations regarding the composition of this appellate body came to surface on the part of civil society, legal fraternity and common people of FATA as well. They argued that instead of extending the jurisdiction of superior courts of the country i.e. Supreme Court and High Courts, a Tribunal had been introduced in FATA. Theoretically, the members of Tribunal were expected to give impartial verdicts in different cases brought before them for review but practically how a civil servant would go against the verdict of another bureaucrat in favour of the people. For instance, Akbar Khan, a retired civil servant was appointed as a member of FATA Tribunal who got retired few months back as Commissioner FCR. So, it was not logical to expect him of giving verdicts against his own decisions which he had already made as Commissioner FCR in FATA (Hamid, 2012, pp. 103-104). Similarly, the constitution of the Islamic Republic of Pakistan under section 199 provides right to any individual to proceed to High Court in case his rights are violated but the reforms package did not provide this basic right to the people of FATA (FRC Report, 2012, p. 12).

The announcement of two identical Presidential Orders i.e., Actions (in Aid of Civil Power) Regulation for Federally Administered Tribal Areas and Provincially Administered Tribal Areas on June 27, 2011 by the Central Government further affected the reforms package. The armed forces of the state had been given unprecedented powers to encounter terrorism in FATA under this Regulation (Actions in Aid of Civil Power Regulation). The Regulation declared that “whereas there exists grave and unprecedented threat to the territorial integrity of Pakistan by miscreants and foreign funded elements, who asserted to unlawful control over the territories of Pakistan and to curb this threat and menace, Armed Forces have been requisitioned to carry out actions in aid of civil power” (Action (in Aid of Civil Power) Regulation, 2011). It empowered the military to act vigorously in FATA that might even lead to basic human rights abuse in these areas and create hurdles in the reforms implementation as well. It was a retrospective law as it stated that “it shall be applicable to the Federally Administered Tribal Areas of Pakistan” (Action (in Aid of Civil Power) Regulation, 2011) and “it shall come into force at once and shall be deemed to have taken effect from the 1st January, 2008” (Action (in Aid of Civil Power) Regulation, 2011). The Armed Forces might arrest terror suspects arbitrarily and keep them in detention for 120 days which might lead to misuse of power in tribal areas. It also authorized the military to capture any individual’s land without any sort

The Merger of FATA with Khyber Pakhtunkhwa: An Historical Analysis

of compensation across the region. Anyhow, such actions can be taken in case of emergency but should not endure after the restoration of peace.

FATA Reforms Commission, 2015

The former Governor of Khyber Pakhtunkhwa, Sardar Mahtab Ahmad Khan formed FATA Reforms Commission comprising five members in May 2014 (GOKP, Notification No. SOI/1/GS/2014 16 May, 2014). The body was entrusted with an important task of designing strategic goals, policies and plans regarding the transformation of tribal areas into an integrated modern political polity via socio-economic, political and legal-administrative development. The significant terms of reference of the Commission were:

- “To set a clear strategic objectives in line with the aspirations of the people of FATA,
- To revisit and redefine state – citizen relationship,
- Identify key reform areas for institutional development and strengthening for good for good governance in FATA,
- To review the effectiveness of FCR in changing governance paradigm in FATA” (GOKP, Report, 2015).

The Commission submitted its comprehensive report to the Governor of Khyber Pakhtunkhwa in April 2015. It proposed the establishment of Agency and FRs Councils with ninety per cent elected while ten per cent nominated members. The Governor had the authority to nominate members from women community, technocrats and minorities. The next important recommendation was about the formation of an Advisory Council of Governor to be consisted of all members of the Agency and FRs Councils. To reinforce the general security in tribal areas, the Commission recommended the enhancement of levies forces while for the sake of border’s security and management a considerable increase in the Frontier Corps was preferred. In order to coordinate civil-military operations in tribal areas, it proposed that Apex Committees would further be strengthened (GOP, 2016, p. 26). However, the recommendations of the Commission could not be materialized primarily due to deteriorated law and order situation in FATA (Sadia & Adnan, 2016, p. 28).

Report of the Committee on FATA Reforms, 2016

The year 2016 witnessed another breakthrough when the Report of the Committee on FATA reforms, appeared in August (Altaf & Shehbaz, 2017, p. 132., GOP, 2016, p. 27). The prime purpose of the Committee was, “to propose a concrete way forward for

the political mainstreaming of FATA” (GOP, 2016, p. 27). It, however, after nine months of thorough discussions and deliberations with various stakeholders, concluded that FATA would be completely merged with the contiguous province of Khyber Pakhtunkhwa within five years. Frontier Crimes Regulation would be replaced by Rewaj Act and the cases of tribesmen would be decided by the Council of Elders (Jirga) under this Act. The people of these areas would elect their political representatives to the National and as well as Provincial Assembly i.e., in the general elections of 2018. Such seats’ arrangement would be formally facilitated through amendment in the constitution. The peaceful return and rehabilitation of TDPs along with the reconstruction of infrastructure throughout the region would be ensured. The jurisdiction of the High and Supreme Courts would be extended to FATA. A high level committee would be formed to frame 10 years’ socio-economic and development plan for these areas. For proper implementation of these reforms, a directorate of enforcement would be established. Three per cent share would be ensured for FATA in the NFC Award. Twenty thousand local candidates would be recruited in levies and the provincial government would have the authority to merge levies into police force or maintain its previous status (Altaf & Hassan, 2018, p. 233., GOP, 2016, pp. 32-37).

Amendment in the Constitution, 2018

The recent development in this regard is, however, made on 24 May 2018 when the National Assembly passed the historic 31st Amendment Bill, paving the way for merging FATA with the province of Khyber Pakhtunkhwa. This amendment was passed by a total of 229 votes in the Assembly while only one vote was cast against it. The political parties that supported the bill were, Pakistan Muslim League (N), Pakistan Peoples Party, Pakistan Tehrik-i-Insaf, Jamat-i-Islami and Muttahid Qaumi Movement-Pakistan (MQM-P) while Jamiat Ulema-i-Islam (Fazal) and Pakhtunkhwa Milli Awami Party opposed the Bill by staging walkout from the Assembly (Dawn, Islamabad, 25 May, 2018. The News, Islamabad, 25 May, 2018). However, the same amendment was endorsed and successfully passed by the Senate next day (The News, Islamabad, 26 May, 2018. Dawn, Islamabad, 26 May, 2018). Henceforth, the bill needed the approval of the concerned Provincial Assembly with two-third majority vote. On 27 May, 2018 the Khyber Pakhtunkhwa Assembly in its formal session subsequently passed the bill effectively. Jamiat-i-Ulema-i-Islam (Fazal) was the only major political party that opposed the merger of FATA with the province of Khyber Pakhtunkhwa and demanded a referendum to seek assent of the tribal people in this respect. Nevertheless, ninety-two members of the assembly voted in favour, whereas,

The Merger of FATA with Khyber Pakhtunkhwa: An Historical Analysis

seven members opposed the bill (Daily Mashriq, Peshawar, 29 May, 2018). The tribal areas (FATA) of Pakistan would, thus, be brought into the mainstream of the country and the tribal people would get representation in the Provincial Assembly as well.

Conclusion

The evaluation of reform processes in FATA from past to the present demonstrated that FCR provided the only theoretical foundation which administered FATA's legal and administrative system since its formulation by the British Imperial power during the 19th century. The FCR bestowed more discretionary powers upon the political administration in FATA, so, the proverbial notion that "power corrupts and absolute power corrupts absolutely" is thus applicable here. The Government of Pakistan could not change the redundant legal-administrative structure of FATA particularly in the latter half of the 20th century. Nevertheless, with the beginning of 21st century the successive Governments in Pakistan accelerated their respective reform initiatives in FATA. Amendments in the century-old FCR and the extension of Political Parties Order 2002 to FATA in August 2011 were the first ever substantive reforms package that altered the existing legal-administrative structure and politics in FATA substantially. It was followed by various reform initiatives such as Report of FATA Reforms Commission in April 2015, recommendations of FATA Reforms Committee in August 2016 and then by the more recent amendment in the constitution in May 2018 which paved way for the befitting merger of FATA with the province of Khyber Pakhtunkhwa.

References

The Frontier Crimes Regulation, 1901 (Regulation No. III of 1901 As Amended August 2011), Section 21 (c)(iii) and Section 22 (d). (Hereafter referred as Frontier Crimes (Amendment) Regulation.

Action (in Aid of Civil Power) Regulation, 2011.

Irregularities Detected in FATA Development Projects (2013). Retrieved from <http://www.fatareforms.org/irregularities-detected-fata-development-projects/> accessed on 19 September, 2017.

Summary of 2011 Amendments to the Frontier Crimes Regulation (FCR). (2013). Retrieved from www.fatareforms.org/summary-of-2011-amendments-to-the-frontier-crimes-regulation/ accessed on 30 July, 2017.

Ullah, A. & Hassan, M. (2018). Qabaeli Alaqaajaat (FATA) ki Haiseeyyat: Mumkena Hal per aik Tanqeedi Jaeza” in *Mujallah Tarikh wa Saqafat-i- Pakistan*, January-June.

Ullah, A. & Hayat, S. U. (2017). The recent electoral reforms in FATA: An appraisal. *Journal of Political Studies*, 24(2), 22-34.

Ullah, A. & Khan, S. (2017). Qabaeli Alaqaajaat (FATA) mein Islahati Kawish 2016: Tarikh ke Tanazur mein” in *Mujallah Tarikh wa Saqafat-i-Pakistan*, July-December.

Daily Times (30 August, 2008).

Dawn (25 May, 2018) Islamabad.

Dawn (26 May, 2018) Islamabad.

Frontier Crimes (Amendment) Regulation 2011.

Ghafoor, M. T. (2005). *Impediments involved in the integration of Federally Administered Tribal Areas (FATA) in the national mainstream of Pakistan* (Master Thesis), War Studies, Baluchistan University.

Government of Khyber Pakhtunkhwa, (16 May, 2014) Notification No. SOI/1/GS/2014 dated. Governor Secretariat, Khyber Pakhtunkhwa Peshawar.

Government of Pakistan (2006), *FATA Sustainable Development Plan (2006-2015)* Peshawar: Planning and Development Department, Civil Secretariat FATA.

Government of Pakistan, (2016) *Report of the Committee on FATA Reforms 2016*, Islamabad: Ministry of Foreign Affairs, August.

Governor’s Secretariat Peshawar, (2015) *Interim Report of FATA Reforms Commission*, March.

Hussain, Muhammad Hamid, (2012) “Frontier Crimes Regulation: A Case Study of Reforms Process” in *TIGAH* Vol. 1.

The Merger of FATA with Khyber Pakhtunkhwa: An Historical Analysis

IPRI Factfile, (2008) “FATA: A Profile of Socio-Economic Development”, Islamabad: Islamabad Policy Research Institute.

Khan, Raza Rahman, (2012) “FATA Political Regime: Changing Legal-Administrative Status of Tribal Areas” in *TIGAH* Vol. 1.

Khan, Sarfraz, (2008) “Special Status of FATA: Illegal Becoming Licit” in *Central Asia*, No. 63.

Khan, Sarfraz, (2010) “Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia” in *Eurasia Border Review*, Vol. 1.

Mashriq, (2018) Peshawar, 29 May.

Rakisits, Claude, (2008) “Pakistan’s Tribal Areas: A Critical No Man’s Land” paper delivered at Webster University Forum, Geneva, 25 April. Available online <http://www.geopoliticalassessments.com>, accessed on 19 March, 2013

Report of FATA Seminar Series (2012) *FCR Amendments: A Way Forward or Hurdle for Peace and Development in FATA* Islamabad: FATA Research Centre.

Shaikh, Shakil, (2006) “Musharraf Promises Major Structural Reforms in FATA” in *The New*, Islamabad, 10 May.

Shinwari, Naveed Ahmad, (2010) *Understanding FATA: Attitudes Towards Governance, Religion & Society in Pakistan’s Federally Administered Tribal Areas*, Vol. IV. Islamabad: Community Appraisal & Motivation Programme.

Sulaiman, Sadia and Bukhari, Syed Adnan Ali Shah, (2016) *Governance Reforms in FATA: A People’s Perspective*, Islamabad: FATA Research Centre.

Taj, Farhat, (2011) “New FATA Reforms – Good But Insufficient” in *Daily Times*, 20 August.

The News, (2018) Islamabad, 26 May.

The News, (2018) Islamabad, 25 May.

The News, (2018) Islamabad, 29 May.

Wazir, Muhammad Maqbool Khan, (2007) “FATA under FCR (Frontier Crimes Regulation): An Imperial Black Law” in *Central Asia*, No. 61.

Yousafzai, Rahimullah, (2011) “Some More Real Change in FATA” in *The News*, 16 August.

Yusufzai, Rahimullah, (2011) “Undeserving Awarded, Deserving Ones Like Mian Ajmal Unrewarded” in *The News*, 29 August.