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(Thus do We relate to thee some stories of what happened before - Al-Qur'ān, XX:99)



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STATE AND SOCIETY IN FEDERALLY ADMINISTERED TRIBAL AREAS (FATA) OF PAKISTAN A HISTORICAL REVIEW

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Pakistan's north western borderland extending over 27220 square kilometers, consisting of seven political agencies and six frontier regions, is known as Federally Administered Tribal Areas (FATA). The demography of FATA demonstrates that this mountainous land is inhabited by a majority of *Pakhtūn* population. FATA is a nucleus of the "region between Oxus and Jumna that has been the theatre of decisive events in mankind's history".¹ Its strategic location is important due to its close proximity with the state of Afghanistan which further links to Central Asia and Russia. It is surrounded by the provinces of Khyber Pakhtunkhwa (KP) in the north and east, Balochistan in the south, Punjab in the south-east while Afghanistan lies to its west. The state machinery operates in these areas through a historical law i.e. The Frontier Crimes Regulation (FCR) of 1901, formed and implemented by the colonial government in British India in order to serve its imperial designs in these areas and beyond. By the great divide of August 1947, Pakistan inherited tribal areas as an integral part of its territory and continued with the same FCR to administer it.* The

*In fact Pakistan did not inherit the FATA Tribal areas automatically. At the time of creation of Pakistan the tribes who had definite treaties with the British Indian Government had to formally accede to Pakistan. "It was later in 1950 that the areas were made an "integral part of the dominion of Pakistan" with effect from 15th August 1947", by means of retrospective legislation by a notification of the Governor General of Pakistan issued on 27th January 1950. See Sultan-i-Rome, *the North West Frontier (Khyber Pakhtunkhwa) Essays on History*, Karachi, OUP, 2013, p. 354 – Ed.

present research paper is thoroughly devoted to a historical discourse on the state and society in Federally Administered Tribal Areas. It discusses the geographic and demographic conditions of FATA on the one hand and critically analyses the historic FCR on the other hand through which the state administers the overall affairs of these areas.

Composition of FATA

The physical geography of Federally Administered Tribal Areas demonstrates that it is a narrow strip of territory extending over 27220 sq. km along Pak-Afghan border² making 3.4 per cent of Pakistan's land area. FATA is surrounded by the province of Khyber Pakhtunkhwa (KP) in the north and east, the province of Balochistan in the south, the province of Punjab in the south-east and in the west by the state of Afghanistan.³ It is thus connected in the north with the district of Lower Dir of Khyber Pakhtunkhwa, whereas in the east with the districts of Bannu, Dera Isma'il Khan, Karak, Kohat, Lakki Marwat, Malakand, Nowshera, Charsadda and Peshawar. In the southeast, FATA is physically linked with the district of Dera Ghazi Khan in the Punjab province, while in the south it joins the districts of Zhob and Musa Khel of Balochistan province.⁴ Pak-Afghan border also known as the Durand Line lies to the west of FATA.

FATA is consisted of seven political agencies and six tribal pockets called 'Frontier Regions'. The political agencies are, Bajaur (Bajawar), Khyber, Kurram, Mohmand, North Waziristan, Orakza'i and South Waziristan agency. Whereas regular Frontier Regions are in the district of Bannu, Dera Isma'il Khan, Kohat, Lakki Marwat, Peshawar and Tank. With a minor exception of Orakza'i agency, the rest of the political agencies have a common border with the state of Afghanistan.⁵ To the north and west, FATA and the province of Khyber Pakhtunkhwa collectively join a chain of nine provinces in Afghanistan from north to south i.e. Nuristan, Kunar, Nangarhar, Khost, Paktika, Zabul, Qandahar, Helmand and Nimruz, which are predominantly inhabited by the Pakhtun ethnic group.⁶ The Census Report of Pakistan 1998 mentions 3.138 million population of these areas which makes 2.4 per cent of the total population of the country. But the current estimate shows its population almost 3.5 million. FATA is inhabited by the majority of Pakhtun tribes with a limited number of other religious groups such as Sikhs and Hindus.⁷

Bajaur agency is the smallest agency having an area of 1290 sq km. It was given the status of agency on 1st December 1973 with headquarter at Khair.⁸ It is surrounded in the northeast by Dir district, in the northwest

by the state of Afghanistan, whereas it joins Malakand agency on the southeast and Mohmand agency on the southwest. Nawagai and Barang are the two main valleys enclosed by high mountain ranges of which 3000 meters is the tallest point. 74121 hectares is its total cultivated area and 54914 hectares is uncultivated area while its irrigated area is 19524 hectares and unirrigated area is 54597 hectares. Forests cover an estimated area of 30175 acres. Administratively, this political agency has been divided into seven tehsils (sub-districts) i.e. Barang, Chamarkand, Khair, Mamund, Nawagai, Salarsa'i and Utmankhel. The Salarsa'i branch of Tarkalanri tribe makes major part of the population across the agency. Salarsa'i is further divided into different clans such as Bram Khel, (Khan Khel) and Ibrahim Khel to which the ruling family belongs. It is evident that a major portion of lands in the agency is still under the ownership of these khans. According to the Census Report of 1998, the population of Bajur agency is almost 0.595 million.⁹

Khyber agency was formed in 1879.¹⁰ It is the next strategically important agency of FATA. The physical map of the agency demonstrates that the Kabul river and Koh-i Saffaid ranges lies to its north, in proximity with Mohmand agency to the north east, district Peshawar of Khyber Pakhtunkhwa lies to its east, Kurram agency to its west, whereas, it joins the state of Afghanistan in the north west and Orakza'i agency in the south. Its total land area is 2576 sq. km. The historic Khyber Pass with a maximum length of forty kilometers is located at a height of 3870 feet. The Bara River, Choor River and Khyber 'Nullah' (drain) are the three major water bodies which drain through the Khyber agency and ultimately flow into the Peshawar valley. The rough mountainous and barren landscape is the characteristics of the agency with some plains and cultivated lands and several much attractive valleys such as Bara, Bazar, Maidan and Rajgal.¹¹ The tribal social structure of Khyber agency shows that it has been inhabited by four major tribes i.e. Afridi, Shinwari, Mullagori and Shilmani. The Afridi tribe is further divided into different clans and sub-clans such as Adamkhel, Akakhel, Kamarkhel, Kamberkhel, Kukikhel, Malik Dinkhel, Sipah and Zakhakhel. The Shilmani tribe is divided into Shamsheer, Haleemza'i and Kam Shilmani. The Mullagori tribe is further sub-divided into Adamkhel and Isma'il Khel while 'Ali Sherkhel is the sub-clan of the Shinwari tribe.¹² Khyber agency had 0.547 million people.¹³

Established in the year 1892 and extending over an area of 3380 sq. km, Kurram agency is in close proximity to the neighbouring state of Afghanistan in the north and west, in the east to the Khyber and

Orakza'i agency, in the southeast to the district Kohāt of Khyber Pakhtunkhwa province whereas in the south it joins North Waziristān agency. The dominant tribes residing in the agency are Tūri and Bangash alongwith 'Alī Sherzā'i, Mangal, Massūza'i, Muqbil, Pāra Chamkanī, Syed and Zaimusht. The agency is home to both Shī'ah and Sunnī communities.¹⁴ Kurram agency seems to be divided into three categories i.e. Upper, Central and Lower Kurram. The Upper Kurram is inhabited by almost eighty per cent Shī'ah population, in Central Kurram about ninety five per cent people belong to the Sunnī community while Lower Kurram is also inhabited by the Sunnī population with an estimate of eighty per cent. The total population of the agency is about 935,000.¹⁵

Mohmand agency was established in 1951. It is surrounded in the north by Bājaur Agency, in the east by the districts of Charsadda and Malākand, it joins Peshawar district in the southeast while the Khyber agency and the state of Afghanistan are to its south and west respectively. Its total area is 2296 sq. km while its population is about 0.4 million. Prior to 1951, the Political Agent of Khyber agency had to administer this area. It shares sixty eight kilometers border with the neighbouring state of Afghanistan. The Kabul river presents a natural boundary between the Khyber and Mohmand agency. The three basins i.e. Ghandav Khawarh, Kabul and Swat make a comprehensive drainage system across the agency and all these basins ultimately flow into the plains of district Chārsadda of Khyber Pakhtunkhwa province.¹⁶ The population residing in Mohmand agency belongs to Hāleemza'i, Mūsā Khel, Šafi, Tarakza'i and Uthmānkhel tribes.¹⁷

Constituted in 1910 with headquarter at Mirānshāh, the North Waziristān agency occupies an area of 4707 sq. km. It is bordered by the district Hangu of Khyber Pakhtunkhwa and the Kurram agency on the north, the districts Bannū and Karak of the same province lie in the east while in the south it joins South Waziristān agency and the state of Afghanistan makes its western border. The major tribes of the agency are Dāwar, Wazīr, Saidgi and Gurbaz. The Wazīr tribe is further divided into many clans and sub-clans such as Torikhel, Mamitkhel, Kabul Khel, Maddakhel, Manzarkhel, Bakkakhel and Jānikhel. Wāna and Kanigurām are the two popular towns of the agency. Its total population is round about 0.46 million.¹⁸

The only political agency of FATA which does not share its border with the neighbouring state of Afghanistan is the Orakza'i agency. It touches the Khyber agency in the north, Darra Ādam Khel in the east, Hangu and Kohāt districts of Khyber Pakhtunkhwa province in the south

and the Kurram agency in the west.¹⁹ It was formed in December, 1973 with an area of 1538 sq. km. Earlier, it was a part of the Frontier Region Kohāt and therefore, was administered directly by the Deputy Commissioner of the District of Kohat. The Mastura and Khānki Toi are the main streams originating from the hills in the west and smoothly flow towards east. Its estimated population is 0.225 million and belongs to mainly two tribes i.e. Aurakza'i and Daulatza'i.²⁰

The last and the largest political agency of FATA is the South Waziristān agency with an area of 6620 sq. km. It is connected in the north by the North Waziristān agency, district D.I. Khan of Khyber Pakhtunkhwa province lies to the east while the state of Afghanistan and the province of Balochistan lie to the west and south respectively. The Tank Zam, Shahur and Gomal are the major rivers whereas Wāna, Zarmilan, Spin and Barwān are the major plains of the agency. Different tribes residing in the agency are the Wazīr and Maḥsūd, Dottani and Sulemān khels. All these tribes make a population of round about 0.430 million of the agency.²¹

Beside these seven political agencies of FATA, there are six small tribal zones called Frontier Regions (FRs) attached to different districts. The administrative affairs of each Frontier Region are in the hands of Deputy Commissioner concerned.²² Frontier Region Bannū is connected with both North and South Waziristān agencies and with Karak and Bannū districts. Its total area is 877 sq. km and population is approximately 0.020 million. The major tribes residing in this region are Aḥmadza'i and Utmānza'i. An Assistant Political Agent has been appointed who administers the affairs of the Region under the supervision of Deputy Commissioner Bannū District.²³ The total area of the Frontier Region D.I. Khan is 3229 sq. km. Its estimated population is 0.039 million of which Shīrānīs and Ustrāna makes the major portion.²⁴ This Region is connected with Dera Ghāzi Khān, South Waziristān agency, D.I. Khan and the district Zhob of the Balochistan province. The popular hill Takht-i-Sulemān is located in this Region. The Deputy Commissioner of D.I. Khan District is the administrative head of the Region.²⁵ The Frontier Region Kohat occupies 46 sq. km as its total area, having an estimated population of 0.088 million and inhabited by Akhorwāl, Shirakai, Tor Chappar, Jawakai and Zarghūnkhel.²⁶ The Frontier Region Lakki covers an area of 132 sq. km and is mainly inhabited by Bhitānī tribe. Its total population is approximately 0.007 million. The administrative control directly goes to Deputy Commissioner of Lakki Marwat. The Frontier Region Peshawar is connected to the Khyber agency, districts Kohāt, Nowshera

and Peshawar. Its total area is 261 sq. km while population is round about 0.054 million. It is mainly inhabited by Ashukhel, Hasankhel, Janakor and Pasani. The Political Agent of Khyber agency and Deputy Commissioner Kohat deal with administrative affairs of the Region. The last one is the Frontier Region Tank which covers an area of 1221 sq. km and an estimated population of 0.027 million. It is connected with South Waziristan agency, FR Bannu and D.I. Khan district. It is inhabited by Dhana, Tatta and Warasput tribes.²⁷

Origin of the Frontier Crimes Regulation 1901

The British government strengthened its basis of power by establishing a strategic and effective judicial system and an archive of legal record of the necessary documents which ultimately assisted them in tax collection and maintaining public order during the mid-nineteen century in the British India. The government was mostly cautious against collective criminal activities and considered it as a direct menace to the empire rather than individual crimes.²⁸ The colonial authorities after thorough visualization drafted and executed a comprehensive system of legal and formal codes in the form of Indian Penal Code²⁹ and Code of Criminal Procedure^{30*} in order to rule British India effectively. In the like manner, Criminal Tribes Act was also designed in 1871 through which the government watched, registered and controlled certain tribes. However, the British official authorities realized within a short span of time that these formal codes, laws, rules of evidence and fact-finding potentials were insufficient to control the crimes in the Peshawar valley in general and particularly along the Afghan border regions and thus created tribal agencies. The colonial authorities quickly differentiated between the peaceful agriculturists residing in the valleys and wild tribesmen of the border areas. The only distinction of the settled district was that surveys of formal tax revenue and settlement had been completed

*The codes prepared by Macaulay had replaced the old Mughul judicial system. Based on the British Common Law they severely damaged or distorted Hindu as well as Muslim Judicial System. East India Company had abolished the post of *qādis* as introduction of magistrates and judges made their posts redundant. However, they had also served to legalise Muslim marriages. Absence of *qādis* created havoc in matrimonial relations. Then Nawwab Abdul Latif persuaded the Government to appoint honorary *qādis* in all the towns who could register marriages.

The new legal system did not accept Muslim family Trusts damaging landholdings of a number of families. Efforts by (Justice) Ameer Ali, Mawlānā Shibli and finally Mr. Jinnah persuaded the government to legalise it. This was M.A. Jinnah's first service for his community (in 1911).

Similarly Muslim divorces were not accepted as legal. They were however, permitted and allowed in the thirties of the last century – Ed.

while the rest of the situation and general environment of the settled district and tribal belt was almost alike. When the government observed high rate of killings, robberies and violence across the Peshawar valley, it eventually developed the Punjab Frontier Crimes Regulation and implemented it in early 1872.³¹ After the establishment of North West Frontier Province, the government introduced the same Regulation with some minor modifications which was called Frontier Crimes Regulation 1901.³² The colonial authorities implemented it on 24 April, 1901 as the judicial, legal, and administrative system for the North West Frontier of their Indian Empire, bordering Afghanistan.³³

The Frontier Crimes Regulation has been promulgated by the British colonial authorities via Regulation III of 1901. It is a brief law consisting of seven chapters spread over sixty three sections.³⁴ It is not just a formal document comprising only punishments for different crimes but a comprehensive system of governance and also a major component of administrative system of justice in the tribal areas.³⁵ This Regulation has been implemented to protect the interests of British government in North West Frontier Province, Balochistan and in the entire tribal belt. The province of NWFP was fortunate enough to get rid off this harsh and hard Regulation with the promulgation of 1956 constitution while Balochistan was liberated from its rule under the 1973 constitution. In the like manner, Dir and Malakand were released from its clutches in the same year. But FATA is the only region subservient to FCR even today.³⁶ No other laws, applicable in the rest of the state, are extended to these areas, thus, only this Regulation serves as the supreme law in FATA.³⁷

Administrative Structure of FATA

The effective control of North Western Frontiers of the Indian Empire was an imperative colonial policy which protected imperial holdings in the region and severed as a bulwark against the Russian expansionism from Central Asia in Afghanistan. Although it was difficult for the British government to fully establish its writ in these areas yet they monitored and administered it through their appointed agents and tribal elders. So far as the internal affairs of these areas were concerned, the masses were independent in their local matters due to the strong prevailing tribal codes, customs and traditions. However, the government oversaw the overall security and external affairs of these areas for the sake of its vested interests.³⁸

Since the occupation of Sindh and Punjab respectively in 1843 and 1849, the British colonial masters had to oversee the plains of the Subcontinent towards the north west. For this purpose they established five settled districts i.e. Bannū, Dera Ghāzi Khan, Dera Ismā'il Khān, Kohāt and Peshawar as distinct from the tribal areas. A dual function of administering the affairs of these districts as well as controlling the tribes adjacent to these five districts thus became the responsibility of British government in the Punjab.³⁹ During the course of administering the tribal areas, the British administrative authorities reached the conclusion that the available armed forces could not effectively defend the vast and rough tribal belt, so eventually, they had to depend on the political administration for the tribes. It was thus decided that the central government would itself directly keep an eye on the frontier policy and administration instead of depending on the Punjab provincial government. In this context, the system of political agencies was launched in the tribal belt.⁴⁰

As stated earlier, the British administration enforced a series of special laws for the tribal areas distinct from the rest of civil and criminal procedures prevailing in the rest of British India during 1871-1876. With the passage of time, these Regulations based on the concept of 'collective territorial responsibility' and *Jirga* (*loa Jarga*) for the dispute resolution across the tribal belt, were ultimately considered as inadequate. So the year 1901 witnessed two major changes in the colonial administration i.e. the issuance of Frontier Crimes Regulation (FCR) (1901) and the creation of North West Frontier Province (NWFP) as well. The FCR of 1901 expanded the scope of the previous Regulations by providing extensive powers including judicial authority to the government officials.⁴¹ The territories that constitute nowadays Khyber Pakhtunkhwa province were first administered by a chief commissioner as an integral part of the Punjab province. It was, however, declared a full-fledged province in 1901 by Lord Curzon, the Governor General, with settled as well as tribal areas. The governor of the province had to administer both the settled and tribal areas and was directly responsible to the Governor General of India. In the post-partition era the same status of the administration was retained with the governor of Khyber Pakhtunkhwa reporting directly to the Governor General and later on to the President of the state.⁴² The administrative structure of British India demonstrated that districts were the administrative units in settled areas on the one hand while political agencies in the tribal areas on the other hand. Deputy Commissioner in the settled districts and Political Agent in the political agencies were at

the helm of affairs in their respective areas in this parallel system of administration across the Empire.⁴³

Administratively, Federally Administered Tribal Areas have been divided into two categories i.e. 'protected areas' and 'non-protected areas'. The former are directly governed by the Central Government via its political appointees called 'political agents' while the latter are administered indirectly by the local tribes.⁴⁴ Being a federal and at times provincially appointed official, the Political Agent closely watches the administration of the concerned political agency with maximum power and executive authority in hand. He exercises a blend of executive, judicial and revenue powers and also maintains law and order situation and suppresses crimes and criminal activities in the tribal agency. Keeping all these responsibilities intact, he is supported by *khāṣṣādārs*,⁴⁵ levies (tribal militias) and paramilitary forces that work under military command.⁴⁶ The administrative structure in each political agency further reveals that a Political Agent is further assisted by an assistant political agent and officer in-charge of specific sub-division. At local level political *teḥsildār*, *nā'ib teḥsildār* and political *moḥarrir* (*muḥarrir*: clerk) perform their administrative functions. The administrative affairs of Frontier Regions of FATA have been overseen by the Deputy Commissioners of the concerned districts. All these officials perform their respective duties under the overall administrative control of the Governor's FATA Secretariat.⁴⁷ The tribes are internally free to regulate their own affairs keeping in mind their tribal codes (of course unwritten), customs and traditions. They also essentially take care of the principle of 'collective responsibility' for the deeds and actions of their individual family or members of their tribe and 'territorial responsibility' of those areas which are given under their control.⁴⁸

The Ministry of States and Frontier Regions (SAFRON)⁴⁹ at the Federal level has been assigned the task to keep a closed watch on certain issues of management, development and other related matters across FATA.⁵⁰ However, SAFRON, being a Federal ministry, is accountable to the elected Prime Minister and the National Assembly of Pakistan which is almost immaterial in policy execution in FATA and works mostly as a channel of steering Federal funds. The real authority thus rests with the head of the state.⁵¹ Being a representative of the President, the Governor Khyber Pakhtunkhwa province, performs his functions on behalf of the Central Government and oversees the affairs of these areas through FATA Secretariat located at the provincial capital Peshawar.⁵²

Political Administration, *Jirga* and FCR

Frontier Crimes Regulation, the *jirga* system and political administration are the three essential components of administrative system of justice around which the whole fabric of FATA's political, administrative and judicial structure revolves.⁵³ Being an indigenous institution, the *jirga* plays an important role in resolving different disputes such as personal, public, inter-tribal conflicts and quarrels among the contending parties in tribal areas in order to provide speedy justice to the people. By incorporating the institution of the *jirga* in FCR, the colonial masters apparently demonstrated that they had proper regard for the tribal feelings and sentiments but in fact it was an attractive diplomacy as they retained the real authority in their own hands through political administration which was not bound to the decision of a *jirga*.

The Deputy Commissioner or Political Agent may by law refer any civil or criminal case to the council of elders (*jirga*) nominated by the political administration in order to investigate a matter. It, therefore, hears both the contending parties, examines evidence, carries out further investigations and inquiries if needs be and finally issues its findings. The finding or decision of the *jirga* is examined by the political administration and thus, the Deputy Commissioner or Political Agent may:

- (a) "Remand the case to the Council for a further finding; or
- (b) Refer the case to a second Council; or
- (c) Refer the parties to the "Civil Court; or
- (d) Pass a decree in accordance with the findings of the Council, or of not less than three-fourth of the members thereof, on any matter stated in the reference; or
- (e) Declare that further proceedings under this section are not required."⁵⁴

The above is the instance of civil cases which demonstrates that real powers always remain with the political executive whose verdict is irrevocable and can not be challenged in any court of justice except by an appeal to the Commissioner and, thereafter, a plea to the tribunal against the decision of Commissioner to review the decision. In this way the criminal cases also go through such process.⁵⁵ About the status of the *jirga*, a well-known writer, Spain states, "The *jirga* was beyond

doubt a Pathān institution, the form it took under the Frontier Crimes Regulation was a far cry from its natural state. In any event, the decision of the *jirga* was primarily recommendatory, and the actual acquittal or conviction and sentence were formalized in a decree by the Deputy Commissioner."⁵⁶

Illogical and Irrational Provisions in FCR

The most critical feature of Frontier Crimes Regulation is the system of 'collective territorial responsibility'. According to this system, if a crime is committed anywhere in the tribal areas, the whole family or tribe on whose territory the crime is committed, is held accountable by the political administration. Hence, due to this part of the Regulation an innocent individual may be held liable for the crime of another person. In the same way, under the umbrella of 'collective territorial responsibility', the whole family, clan, sub-clan or village may suffer a verity of punishments.⁵⁷ Even innocent men, women and children become victim of this imperial black law. There are so many instances in which children of about two years of age have been convicted.⁵⁸ The responsibility to implement the verdict of the *jirga* has been given to the tribe in the "non-protected" areas of FATA. The *jirga* can impose heavy fine on the accused, expel an individual or a family from the locality, confiscate, destroy or set on fire their homes and property which are the serious measures of punishments.

The idea of 'collective responsibility' has been articulated by John Coke⁵⁹ who was the officer in-charge of Kohāt Pass Āfrīdīs. He laid down the procedure in a certain critical situation and in case of trouble thus: "to close the Pass at once, seize all the Āfrīdīs to be found in the Peshawar and Kohāt districts, put the men in jail, sell their cattle, stop all Past allowances held by the Āfrīdīs, and, when the matter is settled, cause all losses to be made good, not from their confiscated allowances, but from the allowances made from the time they may commence."⁶⁰ John Coke's notion of 'collective responsibility' was followed by Herbert Edwardes who applied this idea with more accuracy and perfection when he was posted as Commissioner of Peshawar division during October, 1853. He banned the felonious tribes from the environs of Peshawar and thus made them responsible for the involvement in crimes and criminal activities or their reluctance to exert themselves for its punishment and prevention.⁶¹ Herbert Edwardes first exercised this imperial strategy against Kukikhel Āfrīdīs when a British messenger had been

seized and deprived by them of quinine jars. In this way, colonial masters during the British *Rāj* and the various successive ruling juntas even in the post-partition era constantly utilized this imperial instrument of 'collective responsibility' in order to control the tribes.⁶²

It is interesting to note that the Regulation authorizes political administration to take actions against any tribe or member of any tribe to detain all or any member of the tribe acting in a hostile or unfriendly manner without the prior permission of Commissioner. Beside it, he can order to remove villages, restrict the erection of hamlets and can impose heavy fines on tribesmen in certain circumstances.⁶³ It is mentioned in the Regulation that political administration may impose fine on communities accessory to a crime. In this respect section 22 of the Regulation thus states:

"Where, from the circumstances of any case, there appears to be good reason to believe that the inhabitants of any village, or part, of a village, or any of them, have:

- (a) connived at, or in any way abetted, the commission of an offence; or
- (b) failed to render all assistance in their power to discover the offenders or to effect their arrest;
- (c) connived at the escape of, or harboured, any offender or person suspected of having taken part in the commission of an offence; or
- (d) combined to suppress material evidence of the Commission of an offence;

The Deputy Commissioner may, with the previous sanction of the Commissioner, impose a fine on the inhabitants of such a village or part of a village, or any of them as a whole."⁶⁴

The political executive in tribal areas can detain any person for upto three years as a preventive measure against murder, or culpable homicide or the dissemination of sedition.⁶⁵ The tenure of this imprisonment can be increased for another three years by the Deputy Commissioner or Political Agent.⁶⁶ He can make an individual to execute a bond for keeping peace and good behaviour for a period not more than three years.⁶⁷ On the pretext of preventive measures against crimes, he can stop any construction near to border or do away with them on security

reason, and halt the construction of or demolish buildings which are used as a meeting point for robbers, house-breakers, thieves etc.⁶⁸

Restricted by this law, the people of FATA can not enjoy the right to appeal, through *wakīl* (the right to legal representation) and *dālīl* (the right to present reasoned evidence) in any court of law.⁶⁹ It was, however, the Commissioner who acted as a revisional court. But in 1997 FCR was modified (Section 55-A was added) allowing second appeal in the form of revision before the tribunal comprising secretaries of home and law departments and the chief secretary of NWFP (K.P.). All these arrangements seem cosmetic having no positive results for the tribesmen.⁷⁰ In fact, trial under this law does not provide any proper and due opportunity to the accused to put forward his case in a legal way. Deprived of legal representation, the accused does not present evidence nor cross-examine any witnesses. He is denied the right of appeal and thus can not plead his case in the High Court of the contiguous province or Supreme Court of the country. The authority to revise the Deputy Commissioner or Political Agent's verdicts rests with the Commissioner who can take action either on his own or in response to a petition by an aggrieved party but he is not allowed "to set aside the finding on any question of fact of a Council of Elders, where such finding has been accepted by the Deputy Commissioner, unless he is of the opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice."⁷¹ In case of a split decision, the FCR tribunal is the ultimate appellate body consisting of three senior civil bureaucrats.⁷² This judicial body casts its decisive vote in case of a split verdict. However, it is quiet clear that both the convicted parties have no option to approach an impartial court of justice and must rely on the bureaucratic judgment.⁷³

The FCR puts restriction on the jurisdiction of civil courts in the tribal areas, therefore, neither any court can take notice of the verdict made by the political administration nor can an individual challenge such verdicts. The right to appeal to superior courts has been restricted by this law which states, "except as therein otherwise provided, no decision, decree, sentence or order given, passed or made, or, act done, under Chapter III, Chapter IV, Chapter V or Chapter VI, shall be called in question, or set aside by, any Civil or Criminal Court."⁷⁴

Post Partition Scenario of FATA

The dawn of 14 August, 1947 witnessed the origin of a new state

i.e. Pakistan, in South Asia when the British colonial government ultimately winded up its long term rule over the Sub-continent. From the day first, the tribal areas became an integral part of Pakistan and the Governor General of the state directly assumed the responsibility of the areas.* Keeping in view the prevailing situational phenomenon, it was decided by the state authorities not to alter the status of these areas for the time being. The tribal population was, therefore, left undisturbed and thus the politico-administrative structure of these areas, designed by the colonial masters, remained intact. The tribal people declared their allegiance and support to Pakistan through open *jirgas* organized by the Governor of the North-West Frontier Province, Sir George Cunningham during November, 1947.⁷⁵

The first Governor General of Pakistan, Quaid-i-Azam Mohammad. Ali Jinnah, came to the N.W.F.P. on an official visit in April 1948. During his stay at the Government House Peshawar, he met tribal representatives and Maliks (Malaks) and also addressed the tribal *jirga* there. He expressed in his speech about the intention of Central Government regarding the future of tribal people, "Pakistan has no desire to unduly interfere with your internal freedom. On the contrary, Pakistan wants to help you and make you, as far as it lies in our power, self-reliant and self-sufficient and help in your educational, social and economic uplift, and not be left as you are dependent on annual doles, as has been the practice hitherto which meant that at the end of the year you were no better off than beggars asking for allowances, if possible a little more. We want to put you on your legs as self-respecting citizens who have the opportunities of fully developing and producing what is best in you and your land."⁷⁶ In respect of the status of tribal areas he said, "You have also expressed your desire that the benefits, such as your allowances and *khāṣṣadārī*, that you have had in the past and are receiving (allowances), should continue. Neither my Government nor I have any desire to modify the existing arrangements except in consultation with you so long as you remain loyal and faithful to Pakistan".⁷⁷

Being a charismatic leader and founding father of the nation, the Quaid, was kind enough towards the people of tribal belt of Pakistan. During his visit to the tribal areas he declared that the valiant and brave tribesmen gave sacrifices for the creation of Pakistan. Hence, they would have equal rights of citizenship in Pakistan.⁷⁸ But after his demise, the succeeding ruling elites in the country could not bring any positive change

in the state policy regarding the tribal areas and the colonial structure of administration thus remained intact as a legacy of the British *Rāj*. In the like manner, the coming decades witnessed the same situation in these areas where the *Maliks* and *Lungī* holders* represented the local people and enjoyed their previous position. Consequently, no political, electoral, administrative or judicial and constitutional or legislative reforms have been introduced in the tribal belt.⁷⁹

Constitutional Status of FATA

With the promulgation of Pakistan's first constitution in 1956, the county came under the umbrella of parliamentary form of government but it couldn't introduce any change in the political-administrative set up of tribal areas.⁸⁰ The second fundamental law of the land, formulated under the supervision of military government of Ayub Khan, keeping in view the peculiar situation of tribal areas kept it outside the domain of both central and provincial laws. It authorized the governor of the province wherein the tribal belt was located to make special legislation for these areas. The power of making, amending and repealing any regulation or amending any provincial or central law for the entire or any particular part of these areas was given to the governor by the head of the state.⁸¹

It seems that no major change has been introduced in the politico-administrative set up in FATA by the fundamental laws of the land since the inception of the county. Even the most popular political system i.e. the 1973 Constitution of Pakistan, did not merge these areas into the mainstream of the country and kept them away from the rest of the Pakistani society on the pretext of their special status. Dealing with the tribal areas, Article 247 of the Constitution declares that FATA comes under the executive authority of the Federation of Pakistan. The same Article and SRO 109⁸² authorizes the head of the state to exercise administrative power in FATA. On behalf of the President, the Governor of the adjacent province i.e. Khyber Pakhtunkhwa, acts as his agent exercising executive authority in these areas.

It is peculiar in nature to note that, the constitution declares that the territories of Pakistan shall comprise among others "the Federally Administered Tribal Areas"⁸³ presenting FATA as an integral part of the county but the "fundamental human rights",⁸⁴ enshrined in the constitution, do not apply to FATA. All these rights have been rendered

*See footnote one p. 1 for the actual position – Ed.

*Please see appendix in the end of this article – Ed.

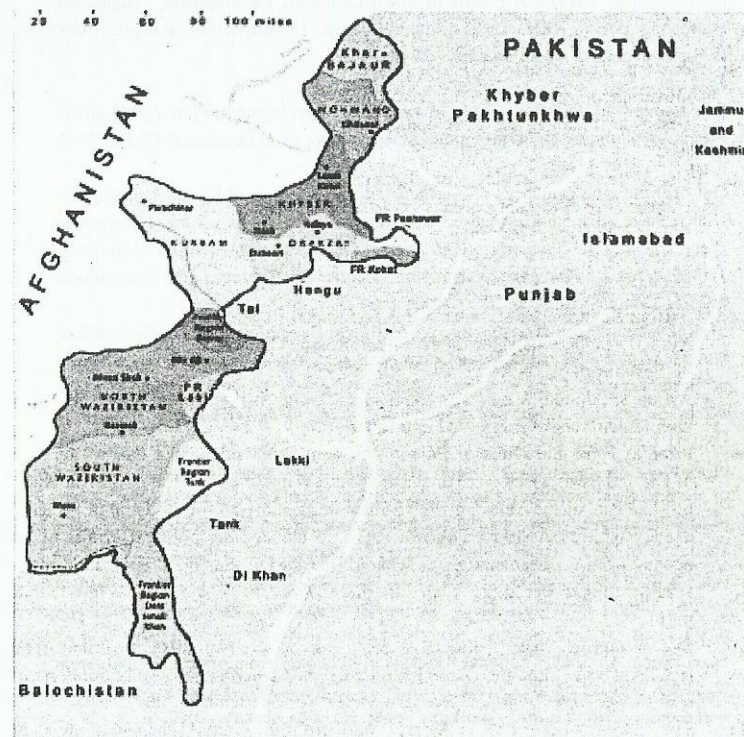
null and void by Article 247 of the same constitution so far as the administration of FATA is concerned and explained a different *modus operandi** for its governance. It debars any act of the parliament to be extended to these areas until the head of the state directs so. He acts like the chief executive of these areas and his executive authority is unchallenged. It, however, demonstrates that all the three constitutions of Pakistan could not and did not integrate FATA into the national mainstream of the country and carried on the bureaucratic rule instead of the constitutional one.⁸⁵

Conclusion

The implementation of a special law in the form of Frontier Crimes Regulation 1901 in Federally Administered Tribal Areas served the interests of British colonial government in India. Apparently it seemed that this law was executed by the government as an instrument to check crimes and criminal activities but actually the government exploited it as a tool of forward policy in India's North West particularly in tribal areas which furthered its imperialistic designs towards Central Asia and countered the Russian approach as well. The government thus kept these areas untouched and adopted a policy of non-intervention into the traditions of tribal people. By keeping the status quo in these areas, the British government kept them away from human rights principles, reformist political activities leading to individual freedom, progress and development. By virtue of unlimited powers in the hands of political administration under FCR, the people of FATA can neither enjoy human rights nor can they claim any other status, privilege, position conferred upon other citizens of Pakistan.

It is peculiar in nature that after a long political journey extending over a period of sixty five years, the state of Pakistan could neither fully integrate these areas in its fold nor could properly bring positive changes in the legal and administrative framework of FATA which could lead to the socio-economic, political, legal and administrative development in these area. There might be so many factors responsible for the socio-cultural, political, economic, judicial and administrative decay of FATA but the utmost and historically important factor is the Frontier Crimes Regulation 1901. The government could not or did not wish to introduce reforms in FCR even in the post-partition period. Only few minor and modest changes have

been incorporated in the text of this Regulation but its substance has fundamentally remained the same. However, to an extent meaningful reforms in the legal-administrative structure of Federally Administered Tribal Areas have been carried out by the government when President of Pakistan signed Frontier Crimes (Amendment) Regulation 2011 along with the Extension of Political Parties Order to FATA on August 12, 2011. This is the first ever substantive reforms package introduced by the government in the history of FCR. But now the question of its implementation is of immense importance. It is a big challenge for the government to execute these reforms in the present day fragile security situation across FATA.



Official map of FATA

Source: <http://fatada.gov.pk/interactive-map-of-fata/>

(Accessed on 8th May 2015)

*An unvarying or habitual method or Procedure – Ed.

Notes and References

1. Toynbee, Arnold. J., *Between Oxus and Jumna*, London, Oxford University Press, 1961, p. 238.
2. The Durand Line has been named after Sri Mortimor Durand who after conducting a comprehensive survey of the border areas between British India and Afghanistan during 1890-1894, drew a boundary line between the two. It is also called as the Pak-Afghan border. Sarfraz Khan, "Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia" in *Eurasia Border Review*, vol. 1, Spring 2010. http://src-h.slav.hokudai.ac.jp/publicn/eurasia_border_review/no1/06_Khan.pdf accessed on 13 November, 2012, p. 63. (The line was named after him because he represented, negotiated and signed the agreement on behalf of the British Government – Ed.)
3. *IPRI Facfile*, "FATA: A Profile of Socio-Economic Development", Islamabad, Islamabad Policy Research Institute, 2008, p. 15, <http://ipripak.org/factfiles/ff94.pdf> accessed on 23 January, 2012.
4. *Ibid.*, p. 21.
5. Government of Pakistan, *FATA Sustainable Development Plan (2006-2015)*, Peshawar, Planning and Development Department, Civil Secretariat FATA, 2006, p. 3.
6. Out of these nine provinces of Afghanistan, the province of Kunar, Nuristan and Nimruz have other ethnic groups as well. Shuja Nawaz, *FATA – A More Dangerous Place: Meeting the Challenge of Militancy and Terror in the Federally Administered Tribal Areas of Pakistan*, Washington, Centre for Strategic and International Studies, January-2009, p. 2.
7. Sarfraz Khan, "Special Status of FATA: Illegal Becoming Licit" in *Central Asia*, No. 63, Winter 2008, Area Study Centre, Russia, China & Central Asia, University of Peshawar, pp. 8-9.
8. Akbar S. Ahmed, *Social and Economic Change in the Tribal Areas*, Karachi, Oxford University Press, 1977, p. 30.
9. Prior to 1960, the status of Bājaur was semi-independent like that of the state of Dir and Swāt which were under the political jurisdiction of the Political Agent of Mālākand agency. During 1960 Bājaur was declared a sub-division of the same agency with an Assistant Political Agent to manage the political affairs of the agency from the headquarters at Mundā, District Dir. Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in the *Central Asia*, No. 63, Winter 2008, p. 11.
10. Syed Wiqār Alī Shāh, "Political Reforms in Federally Administered Tribal Areas (FATA): Will It End the Current Militancy" in *Heidelberg Paper in South Asian and Comparative Politics*, Working Paper No. 64, January, 2012, p. 3.
11. The historic Khyber Pass is the great northern route from Afghanistan into India whereas the Gomal and Kurram Passes make intermediate communications and the Bolān Pass leads to the great southern passage. Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in the *Central Asia*, No. 63, Winter 2008, p. 10.
12. Sarfraz Khan, "Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia" in *Eurasia Border Review*, vol. 1, Spring 2010, p. 63, http://src-h.slav.hokudai.ac.jp/publicn/eurasia_border_review/no1/06_Khan.pdf accessed on 13 November, 2012.
13. Government of NWFP, *Important Agency/FR Wise Socio-Economic Indicator of FATA (2000-2001)*, Bureau of Statistics Planning and Development Department, n.d, p. 42; also see Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in the *Central Asia*, No. 63, Winter 2008, p. 10.
14. Sarfraz, "Special Status of FATA: Illegal Becoming Licit", *op. cit.*, pp. 10-11.
15. Muhammad Zaheer Khan and Sharafat Ali Chaudhry, "Conflict in Kurram Agency: Nature and Causes", FATA Research Centre, Islamabad <http://frc.com.pk/articles/conflict-in-kurram-agency-nature-and-causes/> accessed on June 12, 2013, n.p.
16. Sarfraz, "Special Status of FATA: Illegal Becoming Licit", *op. cit.*, p. 12.
17. Government of NWFP, *Important Agency/FR Wise Socio-Economic Indicator of FATA (2000-2001)*, p. 42.
18. Sarfraz, "Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia", *op. cit.*, p. 63. Also see Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in the *Central Asia*, No. 63, Winter 2008, p. 13; and Akbar, *Social and Economic Change in the Tribal Areas*, p. 35.
19. Farhat Taj, "Life in Orakzai" in *The News*, 11 February, 2009.
20. Sarfraz, "Special Status of FATA: Illegal Becoming Licit", *op. cit.*, p. 12.
21. Out of these plains Wāna is the richest in ground and surface water potentials. The Maḥsūd tribe makes 57 per cent of the total population, the Wazīr tribe 35 per cent while Dottani/Sulemankhel are 8 per cent of the total population of the South Wazīrīstān agency. See Government of NWFP, "Development Briefs of North Wazīrīstān Agency" in *Agencies/F.R.s Development Briefs of FATA (2002-03)*, Bureau of Statistics Planning and Development Department, n.d, p. 3; also see Sarfraz, "Special Status of FATA: Illegal Becoming Licit", *op. cit.*, pp. 12-13.
22. Akbar, *Social and Economic Change in the Tribal Areas*, p. 37.
23. Sarfraz, "Special Status of FATA: Illegal Becoming Licit", *op. cit.*, p. 13.
24. Government of NWFP, *Important Agency/FR Wise Socio-Economic Indicator of FATA (2000-2001)*, p. 42.
25. Sarfraz, "Special Status of FATA: Illegal Becoming Licit", *op. cit.*, pp. 13-14; also see Akbar, *Social and Economic Change in the Tribal Areas*, p. 37.
26. Sarfraz, "Special Status of FATA: Illegal Becoming Licit", *op. cit.*, p. 14.
27. *Ibid.*
28. Robert Nichols, ed. *The Frontier Crimes Regulations: A History in Documents*, Karachi, Oxford University Press, 2013, p. x.
29. The Indian Penal Code was first drafted by the 1st Law Commission under the chairmanship of Thomas Babington Macaulay. It was mainly based on the law of England and guidelines were taken from the Napoleonic Code and also from Edwards Livingston's Louisiana Civil Code of 1825. This code was finally written in 1860, therefore, it is referred as Indian Penal Code 1860. It was, however, implemented on 1st January, 1862 in India by the British colonial government. Being a comprehensive code of India, it covers all aspects of criminal law. It has been inherited by the state of Pakistan in the post-partition period.

- and now it is called Pakistan Penal Code. It has since been modified several times and is now supplemented by other criminal provisions as well. Government of Pakistan, *The Pakistan Penal Code, 1860 (XLV of 1860): As Modified Upto [sic] the 3rd February 1980*, Islamabad, Government Printing Press, 1980.
30. The Code of Criminal Procedure of 1861 was the most important legislation on procedure for the administration of substantive criminal law in British India. When the British government took direct control of India after the war of 1857, they passed the Criminal Procedure Code from the British Parliament in 1861.
 31. Nichols, ed. *The Frontier Crimes Regulations: A History in Documents*, pp. x-xi.
 32. *Ibid.*, p. xi.
 33. The North-West Frontiers of British India were predominantly inhabited by majority of Pakhtūn population. "Summary of 2011 Amendments to the Frontier Crimes Regulation (FCR)" <http://www.fatareforms.org/summary-of-2011-amendments-to-the-frontier-crimes-regulation/> accessed on 30 July 2013, n.p.
 34. Maqbool, "FATA Under FCR (Frontier Crimes Regulation): An Imperial Black Law" in the *Central Asia*, No. 61, Winter 2007, p. 177.
 35. Mahmood Shah, "FCR and FATA Reforms" <http://dawn.com/2011/04/05/fcr-and-fata-reforms/> accessed on 11 June, 2012; also see Maqbool, "FATA Under FCR (Frontier Crimes Regulation): An Imperial Black Law" in the *Central Asia*, No. 61, Winter 2007, p. 175.
 36. Latif Afridi, "Human Rights and Discriminatory Laws in FATA" in *The Frontier Post*, Peshawar, 12 December, 1993.
 37. Frontier Crimes Regulations 1901 serves all purposes both of procedural and substantive law in FATA. The Civil Procedure Code (C.P.C), Criminal Procedure Code (Cr.P.C) and other laws of evidence functioning in the country are not applicable in FATA. Thus, no lawyer can defend an accused at a trial. Maqbool, "FATA Under FCR (Frontier Crimes Regulation): An Imperial Black Law" in the *Central Asia*, No. 61, Winter 2007, p. 183.
 38. The Forward Policy of the colonial masters aimed at pacifying the tribes as far as possible. This policy consequently led to the tribal uprising of 1897-1898. The government, therefore, apprehended that it would never be possible to fully subdue the frontier tribes and thus decided to design and implement the Closed Door Policy. This policy brought the concept of establishing different political agencies, enclosed by a chain of posts and cantonments where the tribal population was allowed to manage their internal matters according to the laws and customs of their own society. Claude Rakisits, "Pakistan's Tribal Areas: A Critical No Man's Land" paper delivered at Webster University Forum, Geneva, 25 April, 2008, p. 1. http://www.geopoliticalassessments.com/Pakistan_s_Tribal_Areas.pdf accessed on 19 March, 2013. also see *IPRI Factfile*, "FATA: A Profile of Socio-Economic Development", p. 16.
 39. Noor ul Haq, et al., "Federally Administered Tribal Areas of Pakistan" in *IPRI Paper 10*, <http://ipripak.org/papers/federally.shtml> accessed on 12 February, 2012, n.p.
 40. It was the year 1877, when the British Viceroy, Lord Lytton was at the helm of affairs who took the decision of creating political agencies in the tribal belt in the north west of the British Indian Empire. *Ibid.*

41. The creation of another administrative unit in the shape of North West Frontier Province was a new political development in British India. It was created by detaching some parts of the then Punjab province and including certain principalities of the tribal belt. It comprised then by five settled districts i.e. Bannū, Dera Ismā'il Khān, Hazāra, Kohāt, and Peshawar, and five political agencies i.e. Dir Swāt Chitrāl, Khyber, Kurram, North Waziristān and South Waziristān. All these settled districts and agencies were placed under the administrative control of a chief commissioner directly responsible to the Governor General of India. *IPRI Factfile*, "FATA: A Profile of Socio-Economic Development", pp. 16-17. (It was hoped that the addition of the five settled districts would balance the unruly aspect of the tribal areas – *Ed.*)
42. Maqbool, "FATA Under FCR, *op. cit.*", p. 174.
43. In order to maintain peace and security, the Political Agent was assisted by a tribal militia and levies recruited from the local populace to look after the region as a police force in the political agencies. For this purpose, forts, pickets and posts were constructed at different locations in the tribal areas where these forces were to be stationed. Noor ul Haq *et. al.*, "Federally Administered Tribal Areas of Pakistan", n.p.
44. Muhammad Tayyab Ghafoor, "Impediments Involved in the Integration of Federally Administered Tribal Areas (FATA) in the National Mainstream of Pakistan" Master Thesis, War Studies, Baluchistan University, 2005, p. 13.
45. It is an irregular force which works under the overall command of the Political Agent to protect roads and other government installations and perform the duties of guards.
46. Claude Rakisits, "Pakistan's Tribal Areas: A Critical No Man's Land" p. 2; also see Naveed Ahmad Shinwārī, *Understanding FATA: Attitudes Towards Governance, Religion & Society in Pakistan's Federally Administered Tribal Areas*, vol. IV, Islamabad, Community Appraisal & Motivation Programme, 2010, p. 7.
47. Sarfraz, "Special Status of FATA: Illegal Becoming Licit", *op. cit.*, p. 21.
48. Government of Pakistan, *FATA Sustainable Development Plan (2006-2015)*, p. 5.
49. On April 17, 1948 Quaid-i-Azam Mohammad Ali Jinnah graced an all tribal *jirga* in Peshawar which was attended by two hundred tribal Malikis who pledged their allegiance to the state of Pakistan. On that occasion, the tribal Malikis put their strong request to the founder of the nation and the first Governor General of Pakistan that they should be placed under the direct administration of the federal government. Hence, the Quaid paid proper surveillance to their request and their demand was met on July 6, 1948 by establishing the Ministry of States and Frontier Regions (SAFRON) and took personally its charge. Sarfraz, "Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia", *op. cit.*, p. 69.
50. Ghafoor, "Impediments Involved in the Integration of Federally Administered Tribal Areas (FATA) in the National Mainstream of Pakistan", p. 13.
51. Maqbool, "FATA Under FCR, *op. cit.*", p. 174.
52. Ghafoor, "Impediments Involved in the Integration of Federally Administered Tribal Areas (FATA) in the National Mainstream of Pakistan" p. 13.

53. Abdul Malik Khan, "The Dispensation of Justice in the Federally Administered Tribal Areas (FATA) of Pakistan: Its Application and Analysis" in the *Central Asia*, No. 62, Summer 2008, Area Study Centre, Russia, China & Central Asia, University of Peshawar, p. 111.
54. Government of North-West Frontier Province Law Department. *The Frontier Crimes Regulation, 1901 (Regulation III of 1901) [As modified upto 31 October, 1971]*, Chapter III, Section 8, Clause 3, p. 5.
55. Maqbool, "FATA Under FCR, *op. cit.*, p. 184.
56. J.W. Spain, *The Pathan Borderland*, The Hague, Mouton and Co., 1963, pp. 145-146.
57. Government of North-West Frontier Province Law Department. *The Frontier Crimes Regulation, 1901 (Regulation III of 1901) [As modified upto 31 October, 1971]*, Chapter IV, pp. 10-11.
58. Society for the Protection of the Rights of the Child (SPARC) in its annual report of 2004 described that almost seventy children had been detained under this law. Abdullah Khoso, "Pakistan: Human Rights – Infringing Human and Child Rights" n.p, <http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-047-2010> accessed on 12 January, 2013. Also see Muhammad Hamid Hussain, "Frontier Crimes Regulation: A Case Study of Reforms Process" in *TIGAH*, vol. 1, July 2012, FATA Research Centre, Islamabad, p. 99.
59. Major General John Coke (1806-1897) was appointed as Deputy Commissioner of the Kohāt district in 1850 with both civil and military powers of the district on the frontier of Afghanistan at a time when security situation of Kohāt district was the worst in Punjab. The hill tribes were making constant raids on the villages. G.B. Malleson writes about Coke as follows: "Colonel Coke was one of the best known and most distinguished officers of the Punjab Frontier Force. To a thorough knowledge of his profession he added an acquaintance with the natives of India not to be surpassed; and a rare power of bending them to his will. He had been with Sir Charles Napier in Upper Sind, with Gough at Chillianwāla and Gujrat, with Gilbert in pursuit of the Sikhs. After the conclusion of the second Sikh War, he served continuously, up to the outbreak of the Mutiny 1057, on the frontier. There his name became a household word. Scarcely an expedition was undertaken against the wild border tribes but Coke bore a part in it. Twice was he wounded; but his unflinching demeanour, his power of leadership, whilst it gained the supreme confidence of his men, extorted respect and admiration from his enemies. Wherever he might, be his presence was a power." George Bruce Malleson, *History of the Indian Mutiny, (1857-1859) Commencing from the Close of the Second Volume of Sir J. Kaye's History of the Sepoy War*, USA: Cambridge University Press, n.d.
60. Sarfraz, "Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia" in *Eurasia Border Review*, p. 68.
61. Herbert Benjamin Edwardes, *Memorials of the Life and Letters of Major General Sir Herbert B. Edwardes*, vol. I, arranged by Emma Sidney Edwardes, London, Kegan Paul, Trench, 1886, p. 230.
62. This clause of the Frontier Crimes Regulation (1901) i.e. 'collective territorial responsibility' proved to be the corner stone of political administration across

- tribal areas and this principle is presumed to be enshrined in the customs and usage prevailing in the tribal belt. Sarfraz, "Special Status of FATA: Illegal Becoming Licit", *op. cit.*, p. 21.
63. Government of North-West Frontier Province Law Department. *The Frontier Crimes Regulation, 1901 (Regulation III of 1901) [As modified upto 31 October, 1971]*, Chapter IV, Section 21, p. 10.
64. *Ibid.*, Chapter IV, Section 22, p. 10. Also see Maqbool, "FATA Under FCR, *op. cit.*, p. 186.
65. Government of North-West Frontier Province Law Department. *The Frontier Crimes Regulation, 1901 (Regulation III of 1901) [As modified upto 31 October, 1971]*, Chapter V, Section 40, pp. 16-17.
66. *Ibid.*, Chapter V, Section 46, pp. 19-20.
67. *Ibid.*, Chapter V, Section 40, pp. 16-17.
68. *Ibid.*, Chapter V, Section 31-34, pp. 13-14.
69. Abid Mehsud, "Frontier Crimes Regulations: A Black Law" in *The Frontier Post*, Peshawar, 23 June, 2012.
70. Since the inception of Pakistan, the Frontier Crimes Regulation (1901) has not been amended except for few minor changes. It was amended by the then President of Pakistan in 1997 on the forceful demand of tribal people and incorporated 55-A by virtue of which an FCR Tribunal has been established. Maqbool, "FATA Under FCR (Frontier Crimes Regulation): An Imperial Black Law" in the *Central Asia*, No. 61, Winter 2007, p. 191. Also see Afridi, "Human Rights and Discriminatory Laws in FATA" in *The Frontier Post*, Peshawar, 12 December, 1993.
71. Government of North-West Frontier Province Law Department. *The Frontier Crimes Regulation, 1901 (Regulation III of 1901) [As modified upto 31 October, 1971]*, Chapter VI, Section 50, Peshawar, Government Stationary and Printing Department N.W.F.P., 1973, p. 21.
72. The FCR Tribunal comprises the following three persons, (i) Provincial Law Secretary, (ii) Home Secretary, and (iii) Chief Secretary of Khyber Pakhtunkhwa Province. Maqbool, "FATA Under FCR, *op. cit.*, p. 176.
73. *Ibid.*
74. Government of North-West Frontier Province Law Department. *The Frontier Crimes Regulation, 1901 (Regulation III of 1901) [As modified upto 31 October, 1971]*, Chapter VII, Section 60, p. 23.
75. Shah, "Political Reforms in Federally Administered Tribal Areas (FATA): Will It End the Current Militancy", p. 7.
76. *Quaid-i-Azam Mohammad Ali Jinnah Speeches and Statements as Governor General of Pakistan 1947-1948*, Islamabad, Ministry of Information & Broadcasting Directorate of Films & Publications, 1989, p. 238.
77. *Ibid.*, p. 239.
78. Raza Rahman Khan, "FATA Political Regime: Changing Legal-Administrative Status of Tribal Areas" in *TIGAH*, vol. 1, July 2012, FATA Research Centre, Islamabad, p. 115.
79. Shah, "Political Reforms in Federally Administered Tribal Areas (FATA): Will It End the Current Militancy", p. 8.

80. Mumtaz Ali Bangash, "Political and Administrative Development of Tribal Areas: A Focus on Khyber and Kurram" Unpublished Ph.D. Dissertation, Area Study Centre, Russia, China & Central Asia, University of Peshawar, 1996, p. 339.
81. Government of Pakistan, *The Constitution of the Republic of Pakistan 1962*, Islamabad: Ministry of Law and Parliamentary Affairs, 1962, Article 223.
82. SRO stands for Statutory Regulatory Order (SRO). The above mentioned SRO has been issued by the federation of Pakistan on 25 June, 1970 which declares that administrative and financial powers with respect to FATA vest in the President of Pakistan.
83. Government of Pakistan, *The Constitution of the Islamic Republic of Pakistan, 1973*, Islamabad, Ministry of Law and Parliamentary Affairs, 1973, Part-I, Article 1, Clause 2.
84. The fundamental human rights include, security of person, prohibition of forced labour, slavery etc, protection against retrospective punishments, safeguard against double punishments and self incrimination, inviolability of dignity of man, freedom of movement, freedom of assembly, freedom of association, freedom of trade, business or profession, freedom of speech, freedom to profess religion and to manage religious institutions, protection of property, equality of citizens before law, and preservation of language, script and culture. *Ibid.*, Part-II, Chapter-I, Article 2-A and Article 8 to Article 28.
85. Maqbool, "FATA Under FCR, *op. cit.*, p. 179.

APPENDIX

Lungī, also known as *Kullāh* (a coloured cloth worn by Muhammadans as a *lungī* (cloth) or turban with a check border), is a turban traditionally worn by tribal elders across FATA as a mark of distinction.

The 'lungī holding system' was introduced by the British colonial rulers after the signing of the first agreement with tribesmen of Khyber Agency in 1865. The accord was meant to ensure support of local tribesmen in logistic supplies to British troops in Afghanistan and their safety. It was followed by the Gandamak Agreement of 1879 and the Durand Line Agreement of 1893.

Lungī system, commonly known as "*Sufaid Resh*" (white bearded ones) in the Khyber Agency is also a form of formal recognition although at a slightly lower level. A *lungī* signifies the holding of a position of favour with the government and of influence in the tribe. In Khyber there are 3630 *Lungī* holders (*Sufaid Resh*). The *Lungī* is for an individual

and is not hereditary. In practice, however, the *Lungī* of a deceased *Lungī* holder is usually granted to his elder son.

Until 1996, only *lungīwāls*, or *lungī* holders, were allowed to cast their votes in the general elections in FATA. In 1997, the adult franchise was extended to the tribal regions and all tribesmen were given the right to vote.

The political agent of a tribal agency has the authority to award '*lungī*' to anyone in recognition for his services for the state. However, he makes the decision according to the directives of the President, Prime Minister, Governor, Chief Minister, Chief Secretary, Secretary home and tribal affairs and Divisional Commissioner.

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