

**Pakistan's Federally Administered Tribal Areas (FATA): Analysis
of Fault lines and Appraisal of Policy Options**

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Pakistan Tribal Areas are distinct due to their buffer status between Afghanistan and Pakistan's settled areas. This territory has been kept bereft throughout the history, whether it was under the British rule or now as federally administered. Throughout the history this area is strewn with own settled customs and traditions. The administration of justice system is till date through Jirga and by draconian law codes of Frontier Crime Regulations (FCR) which are ignominious to today's civilized world. Though the people of FATA are repeatedly demanding reforms in their legal and political structure, but no civilian or military government has tried to remake these codes according to geo-political dynamics. Consequently, the regional geo-strategic trend has made FATA an origin from where the country security and stability is methodically weakening. The structure in FATA is unable to grasp the nettle whereby the agent powers exceed in agent-structure paradigm. The best policy options for these fault lines at this critical juncture can be constitutional reforms of FATA related articles, and to conjure society structure which could match with the evolutionary capacity of FATA.

Keywords: Jirga, administration, Pathan, FATA, FCR.

Federally Administered Tribal (FATA) Areas have total of one lac square miles of territory on Pak-Afghan border both sides (Spain, 1962, p. 22) occupied by Pashtuns. The very term of FATA is totally different from Provincially Administered Tribal Areas (PATA) stretched over 27,220 Square Kilometers, of which 3.2 million is Pathan population encompassing six frontier region and seven agencies.

James W. Spain has argued in his book 'The people of Khyber' that Pathan take it contemptuous to be known by this terminology which is anyhow used in Western world for them. This very terminology signifies aggressive neighbours dwelling on Indus River sides (Spain, 1962, p.12). This word got changed by British to "Paythan", but these tribals are called as 'Pushtun' or 'Pukhtun'. Afghan terminology is also used by some which is having nothing to do with Afghan nationality. All these terminologies are depended upon the speaker's accent.

Pathan are comprised of four major groups where half are inhabited in Afghanistan and the other in Pakistan. The very ruler, Durrani of Afghanistan are also coming under this first category, who are Iranianised recently. While Ghilzai are nomads who do not consider Durand Line as an authentic line. They visit Pakistan in winter and in summer go back to Afghanistan and having identity of Powendas in Pakistan whereas in Afghanistan the term Kuchi is used for them.

Independent tribes are coming under third group who dwell on both sides of the Durand Line with organized tribal structure. The tribes under this group are Zaimusht, Wazirs and Mahsuds Mohmands, Afridis, Shinwaris, Bangash and Orakzais, who are in Pakistan tribal area. Whereas some are inhabited in settled areas also. Muhammadzai and Khattaks are under fourth group who are in settled areas under this set up.

Sir Olaf Careo has made differentiation in open plateau and plains residents and the highlanders too whereas the first mentioned to the Afghan name of the senior branch, which is subdivided then into "West Afghans" that is and Ghaljis and "Eastern Afghans" that is Yusufzais particularly. The Eastern and Western are having Highlanders between them who are Bangash, Afridi, Waziris, Tuvi and Mehsuds, Khattaks etc. He described them as Pushtuns or Pukhtuns. While he carries on in more detail that they dwells east of Durand Line that is Pakistan whose distinguishing feature is insurmountable trait by any colonial power and at the moment they are integral part of tribal areas.

Moreover, Spain has detailed further that that independent tribes have kept their identity intact and formed categories mainly Waziris, Mehsuds, Afridis whose main loyalty is always for their own tribe. They are bound by their own codes known as Pukhtunwali and the very Pathan living standards. For them democracy is in initial form and are under influence of certain families and ruled by their elders, called chieftains whose features of wisdom, bravery and powerfulness making them rules in their respective areas (Spain, 1962, p. 25). Pathan condemned the central authority and contemplates foreign interventionist as contemptuous because they regard their own customs and traditions formulated by their own chieftains (Burki, Afghan Belt).

The above mentioned assessment was important regarding an insight of the origin of major concerns related Tribal Areas. These tribesmen and their land have charmed the Historian all over the world mainly British. This paper highlights the fault lines in Federally Administered Tribal Areas (FATA) by adopting historical and analytical approach in order to illustrate the land and people and their code of conduct with major emphasis on their legal and political system. In the appraisal of policy options has been made.

Historical Background

The areas, which our various constitutions have listed as "Tribal Areas" (including same adjoining lands) have been treated historically as a "Buffer Zone" by the rulers of India. Mughal Emperor Babar consequently captured Kabul whereas his writ was extended to large areas of Afghanistan. Using this as a base he entered India and laid the foundations of the Mughal Dynasty. He shifted the power center from Kabul to Dehli and the Hindukush territories merely became an outpost of the Empire (Khan, 2000, p. 47).

Until Emperor Akbar's time, the writ of the Mughal Empire was stretched to Kabul and Kandahar and these areas were termed as lesser India. As the area being a corridor to India, was

frequently a battleground hence, Akbar's grappled continuously to keep these areas under control. Emperor Akbar succumbed the tribes of the frontier and introduced the system of allowances to the Afridis for keeping the passes open. This system is still in vogue. Mughal empire witnessed downfall after Akbar's demise whereby the grip on those areas was weakened. As soon as the control on central Asia was slipped that led to debacle of Mughal Empire.

Within two decades of the death of Emperor Aurangzeb, the debacle of the Mughal Empire was instigated and between 1707 and the Mutiny of 1857, which was an era of British ruling, Nadir Shah followed by Durrani held grip over these areas. After Ahmad Shah Durrani's death in 1773 and ascendancy to the throne of Dost Muhammad in 1826, enmities, intrigues, feuds became the order of the day. Dost Muhammad was head on to act fast to regain the territories as Ranjit Singh had captured Peshawar and was advancing beyond it. Dost Muhammad's son Muhammad Akbar threw the gauntlet to Ranjit Singh near Jamrud whereby Sikhs were defeated after a tough battle.

Meanwhile, the Amir before proceeding to Peshawar, contemplated to seek the intervention of Lord Auckland, the newly arrived Governor General of India, in settling the differences between himself and the Sikh ruler. Accordingly, in the spring of 1836, Dost Muhammad wrote to Lord Auckland congratulating him on his assumption of office, and asking his advice on how to deal with the Sikhs. The latter opened the door to British intervention in Central Asia (Tytler, 1967, p. 74).

Lord Auckland's response was very diplomatic indicating that the British Government's policy was not of interference in the affairs of other Independent States, but he was, nevertheless, assigned Mr. Alexander Burnes, to examine whether trade could be promoted with neighbouring countries. Mr. Burnes's mission was difficult to be fulfilled because the British had second thoughts and had wanted that the just wishes of their old ally, Ranjit Singh, be accommodated (Khan, 2000, p. 60). On the other hand, Dost Muhammad's eyes were all set on Peshawar. The mission of Mr. Burnes thus yielded in nothing.

Simultaneously, Russia like Britain was stretching territories, and both were skeptical to each other. Russians contemplated the British as rivals in Central Asian trade while Britishers were apprehensive of Russian advancement and taken it nightmarish to the security of Indian Empire. Consequently, the history of nineteenth century is history of moves and counter-moves on the part of Russia and Britain, which finally resulted in the emergence of Afghanistan as a buffer state and in the demarcation of its frontiers. The result was the demarcation of Afghanistan's Northern Border by a Russian-Afghan-British Boundary Commission in 1885 through Panjdeh treaty.

Security of the British Empire became the prime objective. The British responded by declaring the settled districts as part of India and took steps to dominate the Tribal Territory in the hills and by occupying the passes. Within the next few decades, the British Forces occupied the Wana Plain, Tochi Valley, Samana Crest, Turi Kurram and got the boundary demarcated between Afghanistan and India and Sir Mortimer Durand signed the agreement with the Amir of Afghanistan on behalf of the British in 1893. This Demarcated boundary became the famous Durand Line.

The Pathans retaliated and incendiary response happened in 1890 by all the tribes. Traditions of hospitality and sanctuary were violated as British civilians were ambushed and killed. The British replied in callous way as tribesmen were transported to the Andaman Islands; villages and crops were burned; wells and fruit trees destroyed, women and children starved by blockade (Spain,

1962, p. 34). The British were, however, able to restore order, to put down the rampages and to control roads and passes but weren't successful in establishing control over the hills.

Consequently, for administrative reasons a new province was created in 1901 by Lord Curzon, Viceroy of India; that is The North-West Frontier Province which embodied all the settled areas beyond the Indus, and forming a narrow land belt between Afghanistan and the province completely coming under Indian government's authority.

The above were the arrangements which were constitutionally passed on to Pakistan at the time of independence. There is a need of in-depth study for exposing the agent-structure parameters and to expose the fault lines accordingly. This study will analyze whether the weak structure has allowed the agent to surpass the power limits and consequently the locale have been bereft of their basic human rights.

Fault Lines- an Analysis

Pakistan became an independent country on 14th August 1947, but simultaneous of its emergence the country was governed by the Government of India Act 1935.

There is an analysis of constitutional status of Federally Administered Tribal Areas being enshrined in legal provisions as these firstly included in the Government of India Act 1935, as 91 and 92 sections of this document were related tribal belt being described as 'Excluded Areas' and 'partially excluded areas'. This provision got resettled by 1956 constitution with article 218 and 104 and again article 223 of 1962 constitution more specified Pakistan Tribal Areas.

Accordingly, article 246 of 1973 constitution illustrated Tribal Areas as **(a)** Pakistani areas, immediately prior its commencement were Tribal Areas comprised Balochistan Tribal Areas and of Khyber Pakhtunkhwa (N.W.F.P. at that time); and states of Swat, Amb, Dir and Chitral. "**(b)** Provincially Administered Tribal Areas signifies: The Districts of Dir, Swat and Chitral (comprises Kalam) {the Tribal Area of Kohistan District} Protected Areas of Malakand, the adjacent to Mansehra tribal areas, Amb old district and former states as per article 246 of 1973 constitution of Pakistan.

Besides, FATA Tribal Areas of the Frontier Regions, adjacent the districts of Bannu, Dera Ismail Khan, Bajaur Agency, Orakzai, Mohmand, Kurram, Khyber, North Waziristan along with South Waziristan agency.

Tribal Areas can be divided into protected, inaccessible and administered territories of FATA. Whereas, Administered areas are where judicial jurisdiction under Frontier Crimes Regulations (FCR) is by political agent.

In case of un-administered areas the control in both criminal and civil cases are through Jirgas under tribal customs but however the indirect hold of political agents still exists. There are two categories of Inaccessible areas (i) inaccessible areas by factor of geography and (ii) inaccessible areas by considering administrative and political factors. Governance or control on part of government, direct or indirect does not exist whereas tribesmen themselves settle all of criminals and civil disputes.

All the articles do not differ much in significance of describing executive authority of a province to Provincially Administered Tribal Areas (PATA). Whereas, Article 247 empowers the President to give directions to the Governor of the concerned province relating to whole or any part of the Tribal Area in his province as deemed necessary and the constitution makes it compulsory for the Governor to comply with the given directions.

Furthermore, article 247 mainly exclude FATA to come under Parliament legislation until the President ordered so and similarly Parliament act/provincial assembly shall apply to provincial administered.

Article 247 give authority to president and the governor to order regulations for the purpose of societal welfare of PATA coming under law making of Provincial Assembly whereby same powers for FATA are guaranteed to President.

Furthermore, it comes under the ambit of president's power to term or direct the legality of whole or any part of tribal area and the order may embody incidental and consequent provisions as appears appropriate and mandatory. The president deemed the view of the people as necessary in this regard.

For fully comprehending the legality of the articles and that how it departs sharply from the laws of the settled areas besides its subjugation of tribal people against the absolute authority of the state – normally exercised by a conquering power – reference be made to Article 247(7) which described that Supreme Court and High Court jurisdiction does not extends to Tribal Areas until allowed by Parliament (The Constitution of Pakistan, Article 247 (7)).

By contemplating these constitutional provisions, basic human rights are not provided to the people of tribal areas. Rather they are entangled by century's old power structure settled by their immediate elders as for instance FCR and Jirga system. The people of tribal areas are rendered pariah who can never think to access judicial structure of the country as high courts or supreme court. The dilemma is that instead of institutions, the agents were domineering, and the human have had come to the ruling where each decision was based on the commonly prevailed norms and traditions and the rational factor had been overshadowed. The Jirga had remained the same archaic as was founded by Britain.

The British government had made administrative relationship with these areas through various treaties under which tribesmen were collectively responsible for peace and order in their territories and to fully protect means of communication passing in their areas along with interests of the British. The British government paid them incentives and bounties in greater amount through Maliks to them for their services. A Pathan Malik is equal in stature to his tribal men but only his endeavor makes him supreme. The tribes operating structure is based on malik or influential selected by tribes and then the series connected with officials called political agent who works on government behalf and put forward cause of local governance (Nawaz, 2009, p. 6). Political agent is senior most bureaucrat working under governor of Khyber Pakhtunkhwa while he is appointed by federal government and has authority over judicial, executive and revenue in tribal areas (Wazir & Khan, 2013).

Under political agent there is no proper check and balance henceforth the Khans and Maliks have monopoly over funds directed by federal government for developmental works which have dire

consequences. Political agent solves disputes in tribal areas because there is no judicial system and the decision of political agent cannot be challenged elsewhere. Furthermore, the prisoner even after the completion of his imprisonment duration cannot be released until and unless he makes payment of bail amount to political agent (Sustainable Development Plan, 2006).

The government of Pakistan has done no any headway in eradicating the fault lines. The gaps existed as were before. As FATA has nominal participation in the political system of Pakistan. Until 1997, its representatives in National Assembly were selected on the good will of tribal maliks then universal franchise was stretched to tribal areas. Prior to 2011 political reforms, political parties act was not extendable to FATA and there was no liberty for political campaign there (Nawaz, 2009).

With military deployment in tribal areas, the limited access of indirect administration has also vanished as the sway of military commander over political agent (Aziz, N.D. p. 4). This had disrupted civilian control and power structure in FATA. In 2004 political agent was mere a puppet.

Local government reforms had proved breeding ground for militants by weakening executive authority of provincial government. There are constitutionally guaranteed two tiers of government that are federal and provincial whereby third tier of district government was established. The troubled exacerbated further by abolition of magistracy because the magistracy system was guarantee of law and order and to curb the criminals. The next worst task being performed was when the office of commissioner had come to naught, who was linkage of tribal areas and district with carrying of all necessary duties.

The Jirga System

In settled areas is actually signifying a stern legal code and system which recently having existence in Baluchistan, Peshawar and parts of Sindh along with tribal areas of Punjab. Seemingly the system worked smoothly in old times and societies which facilitated the chieftains mostly at the expense of tribesmen. Who remained in utter suppression and agonies under the absolute command of their Maliks.

These dark sides were highlighted to the utmost by print media over span of time which exposed cases mostly women issues and sufferings manifesting the ruthlessness of Jirga justice system.

Anyhow it is not true in totality because the traditional jirga is argued by so many valid points in its support. The Jirga has its origin in centuries old conventions and traditions. Jirga is Pathans assembly which must be attended by every adult pathan where decisions are unanimously taken endorsed by collective tribal sanction.

The traditional Jirga has been evolved greatly over time with full vigour and rhythm through long hold traditions and conventions. It is a democratic gathering , a round table among equals which can be held under a tree a school whereby affected are provided a chance of providing their standpoint. Majority based decisions are carried which ends by prayer. Without these requirements the Jirga ends in vain. The ultimate end of Jirga seems to decide cases peacefully without taking the right and wrong aspects and to describe guilt, or to pass sentence.

While for decision of any matter, the Pukhtunwali requirements the circumstances of the issue under discussion, the individuals features and the generally acceptable scale of compensation are contemplated.

Today's Jirga has different functions as it regulates daily life of tribesmen whereby it discusses the resolving of blood feuds, new mosque site decision and interaction with tribesmen; It provides source of dialogues in capacity of mediator between government and the people and authorities specified discussions are covered under Jirga. Moreover, it works as official Jirga comprised of tribesmen appointed by government officials hence the Jirga assist an official in covering surpluses under the domain of Frontier Crimes Regulations.

The dilemma is that the traditional Jirga system has lost its originality in the decade of soviet invasion of Afghanistan because that invasion has had upset the apple cart of not only Afghanistan, but the bordered areas of FATA was also hub for Mujahideen recruitment and consequently established new leadership in FATA. So, Jirga has become pawn in the clutches of political administration and got corrupted. Furthermore, other important factor which has triggered the transformation of traditional Jirga status is the reshaping of Mullah role. Before the geo-strategic dynamics Mullah was confined to traditional role within the domain of mosque, that is to deliver religious sermon and he was subservient to tribal elders in the whelm of political affairs. Mullah was negotiating but without weapon. The foreign intrusion dominated Mullah to the extent that he ordered for Jihad and furthermore the new trend and transformation in 2001 onwards had shifted Mullah from mosque to Hujra. Recently, his voice is domineering in tribal society (Nawaz, 2000, p. 26).

Jirga under the Frontier Crimes Regulation.

FATA was ruled through a code of conduct namely FCR contracted between tribesmen and British rulers through treaties (Rumi, 2012). This is comprising severe punishment to control tribes. It came to be known as a 'Black Law' due to its extremely harsh, inhuman and discriminatory provisions. Frontier crimes regulations as a law, is devoid of due process in its wider sense. The minimum acceptable requirements of law, i.e. evidence, examination, cross examining, right to engage a counsel, too, are all absent. Appeals to superior judiciary – which is the constitutional right of every Pakistani – are barred to the Tribals. The emphasis is on the infliction of severest possible punishment and the FATA citizens are thus subjected to retrogressive and repressive laws. The British realized that according to tribal structure and societal norms it is indispensable to include Malik or Khans into the legal framework in order to ensure peace in tribal areas which had given rise to system of collective responsibility (Asmatullah & Mohmand, p. 27). According to this provision the tribal chief was made responsible for wrong perpetrated by any individual. For execution of this policy the already prevalent civil and criminal laws were cancelled in 1871 from tribal areas in order to introduce FCR (Shah, 2012, p. 27).

Britain consciously kept these tribes underdeveloped and uneducated and FCR was a tactic in their policy options. Albeit the FCR has been amended various times as in 1928, 1937, 1938, 1947, 1962, 1963, 1995, 1997, 1998, 2000 and recently in 2011.

The FCR based Jirga is not a traditional Jirga because it lack that soul and furthermore this sort of law code was the creation of British for fulfillment of their purpose, to inflict horrific punishment on erratic pathan and to curb their incendiary grudges. The system of administration

enforced by the British via the FCR was to select a class of local notables who enjoyed social status. Paramount condition was their loyalty to the British Crown. While enforcing the law, the British grappled to portray that they have promulgated rules and regulations which embodies tribal customs. But the real purpose was the enforcement of the British writ to subjugate and to deny the Tribals a fair judicial system. The members of the Jirga, under the FCR, were nominated by the rulers and the Deputy Commissioners were empowered to refer cases to them. As opposed to the traditional Jirga, the FCR Jirga did not apply customary laws of the area.

After Independence, the Pakistani authorities deemed fit to continue with the said 'Black Law' and the system is still in vogue in the Tribal Areas. There is no apparent change in this inhuman code of conduct. Constructivism as theory state that anarchy is the product of state own policies as Alexander Wendt's words 'anarchy is what state make of it' (Wendt, 1992) so the anarchy take place by the prevalent norms and the interaction of agent and structures. Constructivism is combination of sociological institutionalism(structure) and transnationalism (agency). In case of sociological institutionalism that comprised norms, institutions, organization and enforcement of norms which give rise to societal structure. While on other hand the agency embodied actor as state and non-state actors.

Federally administered tribal areas are peculiar for their archaic norms and traditions. Their society structure is based on Jirga and FCR and the basic institutional agents at their disposal are political agent and tribal chief. They have no access to judicial structure of the country rather draconian law entrusted by century's old British established FCR. The resistant agents active there are non-state actors in the shape of militants of Uzbek, Chechen and Turks origin.

Basically, the state writ do not exist in FATA and the governance has not been strong enough to reform the norms there. The weak structure has allowed the agent to exceed power limits which has deprived the people of their basic socio-economic provisions. Structure was authorized to shape the agent but currently the agent is grappling to transform the structure. The biggest folly on the part of state is to allow non-state actors to flourish on its soil. Due to weak domestic policy the transnational agents are acting as sponsor group in FATA and are striving to weaken the structure of Pakistan methodically.

Policy Options

FATA is of paramount strategic significance which has been alluring to the world super powers and they have tried to rule these areas possible. By analyzing fault lines, it would better if FATA integration with mainstream Pakistan should have taken place simultaneous to independence. The matter has been aggravated by both internal and external factors and now it is ready to devour the state structure.

The geo-political dynamics as Durand Line is major cause of infiltration of militants to FATA because there is a clause in Durand Line agreement. Under this agreement easement rights are guaranteed which permits unrestricted access to same tribes on both sides of the Durand Line. The top most requirement is that Afghanistan should concede with administrative status of Durand Line and to make an arrangements on this border for certain crossing under the check posts carved for the same very purpose. The recent problem has happened during Pakistan military operation in North Waziristan, where the top foreign militants and militants of ruling TTP and TNSM have taken shelter in Afghanistan by crossing the border. Pakistan has long border with Afghanistan, which is not well-

managed and people sometimes move without visa. Some of that movement is healthy while other are unhealthy so the situation in Afghanistan has direct effect on Pakistan (Perveen, Khalil & Ahmad, 2015). For example people after Swat operation were flee to Afghanistan and Pakistan government of PPP repeatedly asked Afghanistan to handed them over. Therefore, Pakistan has always asked neighboring countries to play their role in this regard by fixing intelligence devices, deployment of military check posts on the Afghan side of Durand line so as to curb militant's infiltration (The News, 2008).

Constitutional Reforms

Constitutional amendment is the only way to ensure stable FATA because article 247 has hampered not only basic human rights to these tribes but also the liberty to develop and work for their region. Furthermore, the FCR and Jirga under it should be modified and the positive omen in this regard is that people of FATA are also despising this legal code of conduct which was enforced by British. Albeit there can be no altogether change in FCR and neither abrupt course of changed events will be apt for these tribes but necessary modification are indispensable for mainstreaming of FATA to national life.

Economic Strategies

It should be clear by now that effective control of the Federally Administered Tribal Areas by the Federal Government has become a dire necessity. But by simply extending the Government's writ would lead nowhere. The initiation of the processes of economic development and political reforms must precede control measures. The irrigation system should be incorporated. Canals and tube wells are indispensable for irrigation and control of waterways are necessary to impede the flash floods and small dams are must to save rain water. Industrialization of the area, too, needs to be considered afresh. This policy was tried in the past but the experience left much to be desired. It could not succeed, because amongst others, a trained labour force was not available. Therefore, while putting up new industry it be insured that vocational and technical institutions at prime locations be opened.

FATA economy revolves around tribal Malik and radical Mullah (Nawaz, 2000, p. 28). There should be proper dispensation of funds so that circulation of wealth should be ensured and only then the development can ensured.

Political Strategies

Good governance and the writ of state is indispensable for settlement of militancy in FATA. Like the British model the writ of state should be strengthened despite the ongoing insurgencies because it is the best possible way possible to counter terrorism. Moreover, to evolve structure according to local people value system, because abrupt turn of situation cannot end in positive goals.

The system of check and balance is crucial for FATA to ensure transparency of government policy. Governance can be strengthened by stretching writ to FATA so that incendiary grudges can be curbed. Prior to 2011 reforms political parties act was not extendable to tribal areas and candidates elected to national assembly were independent members. According to 2011 reforms political parties act was stretched to FATA and political campaign were allowed to present their manifestos to the tribals in order to ensure them that they have significance for national politics (Sajjad, 2013).

Pakistani government introduced most important reform in 2013 by stretching the federal ombudsman authority to FATA which is conspicuous because the jurisdiction will encompass tribal areas. Through this provision the people of FATA can anytime access federal ombudsman against any

encroachment. Ombudsman can play vital role in conflict resolution and to expose any fault line in FATA administration (FATA Reforms, 2013).

Conclusion

Pakistan is at critical juncture and further alienation of any part of the country can be fissiparous to the entire system structure. Pakistan internal security has been trembled by directly or indirectly through weak domestic policy and by attitude of negligence towards FATA. This region had been under unlawful codes and of archaic nature which do not match with the trends and transformation of the 21st century. Undoubtedly the demands of these tribes whether about FCR withdrawal or other matter cannot met in full but the maximum possible reforms should be done. The reshaping of religious actors be replaced to the original place because the region has been troubled by this sort of happening. The structure has undoubtedly overpowered the agent hence the check and balance is the only way leading to ensure the proper working of government machinery there.

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