

FATA reforms: journey so far and the way forward

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The Federally Administered Tribal Areas (FATA) are governed through the 1901 Frontier Crimes Regulation (FCR), which was enacted by the British to promote their own interests. This system was once lauded as a success and liked by the tribesmen. However, at present the system is widely seen as authoritarian—both in its form and essence—resulting in socioeconomic and sociopolitical stagnation of the area. It has engendered serious problems relating to governance, social change, human rights and democratization.

After the creation of Pakistan in 1947, FATA's special status was given constitutional protection and no serious efforts were made to allow for the organic growth of this important document. Hence the entire area remains outside the mainstream. The apathy of successive governments towards FATA could be blamed for the chaos that reigns there today. Although some modifications were made to the FCR, they did not seriously change its essence.

Since 1947, the FCR has been amended on 11 different occasions. However, all these amendments have been devoid of real substance. For instance, the word “commissioner” was substituted for “court of the commissioner” and the definition of the word “governor” was added to it in 1997. Likewise, in 1962, punishment by confiscation of property in case of conviction under sections 302 or 306 of the Pakistan Penal Code (XLV of 1860) was added to the FCR.

1. Exploring the FATA reforms journey

The FCR was given constitutional protection in all three constitutions that Pakistan has had. In the 1956 constitution the protection was given via articles 103 and 104. The two articles provided for the administration of “Excluded Areas” and “Special Areas”, referring to the Provincially Administered Tribal Areas and Federally Administered Tribal Areas, respectively. Article 104 empowered the President of Pakistan with administrative control. The governor of Khyber Pakhtunkhwa (KP), then called the NWFP, was the

representative of the president and exercised the executive powers in FATA (Chaudhry, 2011).

The federal government appoints political agents (PAs) to all seven agencies or tribal districts of FATA. The PA is the senior-most bureaucrat in the agency. He works under the KP governor and enjoys extensive judicial, executive and revenue powers. Under a preventive clause that provides for “security and surveillance for the prevention of murder or culpable homicide or the dissemination of sedition,” the PA can require an individual believed to pose such a threat to provide a bond or surety “for good behavior or for keeping the peace.” If the bond is rejected, the PA can impose a three-year jail term (ICG, 2009).

The PA also has the authority to penalize an entire tribe for a crime in its territory by imposing huge fines, making arrests and seizing property. He can order the detention of a member or the access of the whole tribe to the settled areas if he believes that they are acting in a suspicious or unfriendly manner. His decisions cannot be challenged in any court of law. This is a gross violation of human rights. Neither the National Assembly nor any of the provincial assemblies have any legislative authority over FATA. Until the introduction to adult franchise there in 1997, the FATA residents did not even have the right to vote.

In the 1970s, a few more minor amendments were made to the FCR. The word “centrally” was replaced by “federal” in the 1973 constitution. However, the system and mechanism of governance remained unchanged. In the 1970s, the Pakistan Peoples Party (PPP) government introduced some development schemes in the tribal region resulting in the improvement of physical infrastructure and establishment of schools and colleges in FATA. The Federal Ministry of State and Frontier Regions (SAFRON) and the FATA Development Authority were also established. The FATA residents’ share in government jobs and educational institutions in the rest of the country was also increased. General Zia’s military government (1977-1989) did not start any major developmental projects in FATA. Instead, religious radicalization was injected into the region with the assistance of the US and Saudi Arabia with a view to promote a proxy war against the Soviet Union. The lack of development schemes, deprivation of locals of basic human rights and the interests of the army in utilizing the strategic importance of this region for the

proxy war in Afghanistan made FATA a breeding ground for militants (ICG, 2009).

The PPP government pursued the reforms agenda but it failed in creating a real impact. Consequently, FATA could not be brought into the national mainstream. A lack of legal and political reforms from 1970 to 1990 not only kept FATA out of the mainstream but also resulted in exacerbating militancy and extremism in the region.

The promulgation of the 1996 Adult Franchise Act was the first real reform aimed at political empowerment of the FATA residents. For the first time in history, the people of FATA were given the right to vote. The 1997 elections were indeed unique in the history of this trouble tribal region. Unfortunately, elders and religious leaders tried to prevent female participation by threatening punishment against tribesmen whose women registered, leading to under-registration among the women population (Talbot, 1998: 2-3). In addition, political parties were not allowed to operate in FATA (Sajjad, 2013).

Before the introduction of the 2011 reform package, the political parties were not allowed to engage in any activities in the tribal belt of Pakistan and independent candidates were directly elected to the National Assembly. This system had helped the *maliks* (tribal elders) to exploit the situation to their advantage. It was in their interest to keep FATA away from the national mainstream so their utility continued. Moreover, the independent parliamentarians from FATA in the National Assembly could not influence any legislation regarding FATA. According to Article 247 of the 1973 constitution, the legislative authority for FATA rested with the president of Pakistan. However, the PPP government extended the Political Parties Act to FATA in 2011. The lifting of curbs on political campaigns in FATA not only allowed the political parties to offer their manifestos to the people, they also brought the deprived people into the national mainstream (Ibid).

Although the legislative authority still rests with the president of Pakistan, the parliamentarians can now influence the legislation regarding FATA by using their party platforms. Moreover, the FATA parliamentarians can now stand up for the prosperity of their people and can mobilize them over their socio-economic problems (*The Express Tribune*, 2012). The role of political parties in mobilizing the FATA residents can be judged from the fact that in

2013 the overall turnout was 36% of the total registered voters in FATA, illustrating a 5% increase from the earlier elections with enhanced female participation (fatareforms.org, 2013b).

Moreover, in continuation of the reforms package for FATA, the government of Pakistan has decided to introduce the local government system to FATA as Article 140 of the 1973 constitution supports the implementation of the local government system (FISP, 2012). The introduction of the local government system will help ensure the transfer of power from the tribal elite to the marginalized sections of society. This can play a vital role in mobilizing the locals. Similarly, they can also play a vital role in effective utilization of the developmental funds and can also pressurize the federal government for more reforms for the region's prosperity.

Most of the real reforms in this region were introduced during the late 1990s and after 2000. Some of the reforms led to the creation of institutions which will go a long way in promoting the interests of the tribal people. The following are some of the reforms introduced after 1999.

- **Establishment of FATA Secretariat**

Prior to the 2002 reforms package, the governor's decisions with regard to FATA were routed through the KP Secretariat and were implemented by the provincial government's line departments. However, in 2002 the FATA Secretariat was established, and in 2006 it became the Civil Secretariat of FATA for the implementation of different development projects. The KP governor plays an intermediary role between the federal government and the FATA Civil Secretariat.

- **Establishment of Agency Council**

Another important development in 2000 was the establishment of the Agency Council as a local representatives' body. The members of the Agency Council were selected and nominated by the political agent without any executive powers and the council's term expired in 2007 – without any announcement regarding its future (Safi, 2013).

- **Extension of federal ombudsman's authority to FATA**

In 2013, the federal government introduced another important reform by extending the authority of the federal ombudsman to FATA. This enabled the FATA residents to approach the ombudsman against the FATA Secretariat and its subsidiary organizations (fatareforms.org, 2013c).

- **Establishment of FATA tribunal**

In FATA, the political agent is the judicial authority and criminal and civil cases are decided by him. After the initial inquiries and investigations, a jirga is called with the consent of both parties. The political agent or his representative heads the jirga and hands down the judgment.

Before the introduction of the FATA tribunal, the PA's decision used to be final and the aggrieved party could not challenge it. Thus the residents of FATA were deprived of their right to lodge an appeal against the decision in any judicial forum. However, in 1997 the FATA tribunal was created, amending the FCR. The 2011 reforms—instituted by the PPP government—increased the independence and visibility of the tribunal. The reforms made in 1997 and 2011 empowered the locals to challenge the decisions made by the political agent in appeals to the commissioner of the adjacent district. Moreover, the reforms empowered the locals to challenge the commissioner's decisions in the FATA tribunal (*Dawn*, 2011).

According to Section 48 of the 1997 FCR, the membership of the FATA tribunal was limited to the federal interior and law secretaries. However, the 2011 reforms took the court out of direct administration of the federal government. The reforms specified that the FATA tribunal must consist of a chairman, who had to be a civil servant at least in basic pay scale (BPS) 21, having the experience of tribal administration, and two other members out whom one should be qualified enough to be a high court judge and should be familiar with the local traditions and the other member should be a civil servant at least in BPS-20 (Chaudhry, 2011). The reforms also empowered the FATA tribunal to review its own decisions, if requested by any individual.

- **Qaumi Jirga**

The 2011 package also included reforms regarding the Qaumi Jirga, which says that “the political agent or district coordination officer may take knowledge of any offence or civil dispute in exceptional situations, if so recommended by a Qaumi Jirga of the tribe in the interest of justice and public peace” (*The Tribal Times*, 2013).

The 2011 reforms do not, however, transfer any of the political agent’s judicial powers to the Qaumi Jirga. Rather, it recommends the political agent to take into consideration any of the recommendations or suggestions of the tribes in a particular dispute.

- **Civil Power Regulations**

In 2011, another vital reform was introduced which was warmly welcomed by the residents of FATA. The reform exempted the elderly and children from arrest under the FCR. They were equally satisfied with the new ban on sealing off or confiscating residential and commercial properties under the same clause.¹

In June 2011, the Actions in Aid of Civil Power Regulation was decreed which provided legal cover to the armed forces for unlawful acts committed during the military operations in both FATA and Provincially Administered Tribal Areas (PATA) with retrospect effect from February 2008. This regulation shattered the confidence of those who were quite optimistic about the reform process.² The regulation tarnishes the reforms introduced by the PPP government. The present government needs to come up with an accountability mechanism because in case the authority under this regulation is misused, the tribesmen would be further alienated. This will indeed be an irreparable loss.³

¹ Yousafzai, Naemullah, television host. Interview by author, Peshawar, December 27th 2013.

² Ibid.

³ Marjan, Malik Khan, chief patron, FATA Grand Alliance. Interview by author, Peshawar, January 4th 2014.

2. Socio-economic impact of FCR

The slow pace of the reforms process could be easily linked to the below par performance of FATA vis-à-vis social and economic development. This region is one of the most underdeveloped in the country, with 60% of its population living below the poverty line and the unemployment rate ranges between 60-80%. Only 62% of the FATA population has access to electricity, the average road density is 0.17 compared to the national average of .26 kilometers. Although agriculture is the main source of income, only 7% of the total area is cultivable (Government of Pakistan, 2006).

Likewise, due to the absence of the state's writ in large parts of the tribal region, the healthcare conditions are abysmal. According to a study, there are 577 doctors for a population of four million and 280 lady health visitors (LHV) for 1.8 million women (PRDS, 2011). There are 33 hospitals, 302 dispensaries and 56 mother-and-child healthcare centers in FATA (Khyber Pakhtunkhwa Bureau of Statistics, 2011).

The literacy rate is the lowest in the country. The overall literacy rate is 21.40%; the ratio of male literacy being 33.80% and of women a mere 7.50% (Fata.gov.pk., 2012). The increased militancy in the region has further weakened the education system in FATA. In 2013, around 485 schools were ravaged along the western border of Pakistan, depriving 500,000 children of the opportunity to get educated (*Pulse*, 2013).

The state's failure to provide these basic services and economic opportunities, i.e. infrastructure, hospitals, irrigation facilities and electricity has exacerbated poverty, which has in turn fueled the militancy. In the absence of proper courts and economic opportunities FATA has become a hub of black marketeering and weapons and drugs' trade. The war on terror has further deteriorated the economic backwardness of the region as violence has reduced the economic opportunities, making the people even more susceptible to the militancy. According to a FATA analyst, "ideological recruitment [in the tribal region] is few and far between. Most of the reasons [for recruitment] are related to economic and political marginalization" (ICG, 2009).

At present, it is the security situation that is impeding the development process in FATA. In real terms, it is the FCR that has been obstructing the process of development by limiting the freedom of choice. For example, the political administration has been enjoying unfettered financial powers, resulting in massive embezzlement of the developmental funds. Although the funds utilized by the political agent are audited, the question is whether the auditor general would be able to put an end to the practice of giving development work contracts to Taliban and their sympathizers. This seems unlikely as the Taliban networks are deeply rooted. This situation leads to the accumulation of wealth in the hands of a few people, widening the gap between the rich and the poor rather than alleviating poverty.

The FATA Development Authority (FDA) was established in 2006 to implement development projects. This was supposed to attract public and private investment. So far, it has not been able to achieve the desired objective. The lack of cooperation between the FATA Secretariat and the FDA is a big hurdle in developing the region. It is generally said that huge funds were allocated for the tribal region, but they were never used for the prosperity of the people. In order to ensure the proper use of the allocated funds, the audit mechanism should be extended to all public institutions working in FATA, including the FDA, FATA Secretariat and security forces such as the FC. Commercial banks are not allowed to operate in the tribal region. Consequently, the informal banks and money lenders exploit the residents by sometimes charging more than 100% interest annually and commercial contracts are enforced by local jirgas (ICG, 2009).

In 2003-2004, a few economic reforms were introduced in FATA. For instance, industrial estates were exempted from the jurisdiction of the FCR to promote industrial development in the region. Similarly, in 2005 the US government proposed a reconstruction opportunity zone (ROZ) for the economic prosperity of the region as 80% of the economy of FATA had been destroyed after 9/11. But so far no concrete measures have been taken for the establishment of the ROZ. In 2006, the Pakistan government in collaboration with the US and other international donors initiated a sustainable development program to improve the socio-economic conditions of the tribal region. A sum of \$2.46 billion was pledged for the nine-year sustainable development program with five years of actual development and four year of consolidating development to improve the literacy rate from 17% to 30-40%

by 2015. But no concrete steps have been taken by the government of Pakistan to realize these goals (Orakzi, 2009).

3. Building case for furthering the reforms agenda

The announcement of a presidential ordinance regarding a reforms package, including amendments to the FCR on August 12, 2011, was an important event. The reform package will not only help the FATA residents join the national mainstream, it will also guarantee their constitutional, legal and basic human rights. The 2011 package brought some positive changes to the FCR, but much work needs to be done to bring FATA into the mainstream and to ensure economic development in the region.⁴

The most significant problem that the FATA residents face is the lack of access to an independent judiciary as the executive and judicial powers rest with the political agent. He is the final dispenser of justice in all cases, including those in which he himself is involved. Therefore, more reforms are needed with regard to the extension of jurisdiction of the higher courts to the tribal region (fatareforms.org, 2013a).

Likewise, Article 247 of the 1973 constitution is a big hurdle as it prevents the FATA parliamentarians from participating in the legislative process for their own region. Moreover, under this article FATA is beyond the jurisdiction of the Supreme Court and the high court. So the 2002 Political Parties Act in this case becomes useless as the residents of this region do not have any decision-making power (*Dawn*, 2012).

The FATA residents are of the view that the FCR has deprived them of their democratic, economic and other human rights and forced them to live in the Stone Age.⁵ Therefore, they demand the government to give FATA either the status of an autonomous province or integrate it into the KP so they can get rid of the notorious FCR.⁶ Although an autonomous status can bring FATA

⁴ Khan, Raza Shah, Executive Director, Sustainable Peace and Development Organization (SPDO). Interview by author, Islamabad, January 3rd 2014.

⁵ Wazir, Ajmal Khan, senior vice president of the Pakistan Muslim League-Q. Interview by author, January 5th 2014.

⁶ Marjan, Malik Khan, interview.

into the national mainstream and possibly bring prosperity to the region, there is a possibility that the area might further go into the hands of non-state actors.⁷

The tribal areas of Pakistan can achieve a degree of prosperity if the government introduces some further reforms, which would also be suggested in this paper. The government should also ensure the availability of basic necessities of life to the FATA population.⁸

4. Conclusion and recommendations

The FATA reforms process has been the victim of the geopolitical situation. However, it is not prudent to block the way of any positive change along the way. The winds of change have started blowing in the region. Therefore, there is a need to choose the available options wisely. The recent reforms were warmly welcomed by the residents of FATA, yet they were too little and came too late. Therefore, in order to bring FATA at par with the rest of Pakistan, the government needs to introduce further reforms. However, in this whole process the government needs to be respectful of the wishes and desires of all stakeholders. Reforms need to be devised through consultation and general consensus as the FATA population's input is fundamental. Similarly, reforms should be introduced in an incremental way as any abrupt change has the potential of rupturing the social fabric of the tribal region, which has already suffered a great deal.

1. The current administrative system is law-and-order-oriented, exploitative, non-participatory and unaccountable. It lacks all the ingredients of good governance. It has to be reformed to ensure the rule of law, transparency, accountability, responsiveness, and common citizen's participation in the decision-making process. In that regard, the jurisdiction of the Supreme Court of Pakistan and the Peshawar High Court should be extended to FATA forthwith.

⁷ Daraz, Umer, correspondent for Radio Free Europe, Radio Liberty. Interview by author, January 5th 2014.

⁸ Khan, Muhammad Nazir, Member National Assembly (MNA) from North Waziristan Agency. Interview by author, January 5th 2014.

2. Under Article 247 of the 1973 constitution any laws passed by the parliament do not automatically apply to FATA. However, on the president's direction these can be made applicable to FATA. The authority of the parliament should be extended to FATA.
3. The people of FATA should be given a say in all major decisions relating to the region. They have been kept marginalized and seldom get access to their political representatives, obliging them to seek relief from non-state actors. Therefore, political parties and political representative should take a proactive approach to resolving the issues of FATA and its people. They should truly represent the aspirations of the local residents. This will curb the militancy in the area and help improve the socioeconomic conditions of FATA.
4. The security vacuum often gives impetus to violence. Therefore, the government shall develop efficient conflict-prevention and conflict-transformation tools in FATA in order to fill the current security vacuum in the region. Conflict-transformation initiatives are often characterized by long-term interventions at multiple levels, aimed at changing perceptions while addressing the roots of conflict, including inequality and social injustice. Besides conflict transformation there should be parallel conflict-prevention mechanisms through functional governance in the area which should actively function in making and enforcing rules and delivering services.
5. The media should play a positive role in the peace-building efforts by painting a true picture of what is happening in FATA. The government shall provide security to journalists, and they should be regularly briefed on the policies and initiatives on FATA. The government should also take policy input from the civil society organizations. This will help boost the acceptability and endorsement of any state policy by the FATA residents. The civil society organizations also need to reform their conduct to match the social and cultural atmosphere of FATA.
6. The FCR clause dealing with collective responsibility and collective punishment needs to be repealed.
7. The traditional institutions shall be revitalized because they can play an important role in the mobilization of public to act collectively against social evils in FATA.

8. In accordance with the federal government's rules of business, the Federal Ministry of State and Frontier Regions (SAFRON) is responsible for the overall administration of FATA. However, it only has a limited role in channeling funds to FATA. It also has virtually no role in policy formulation and implementation. Therefore, it is recommended that necessary steps should be taken to allow the ministry to play its due role in the affairs of the tribal belt.
9. The system which is currently in vogue is not based on the principle of separation of power. It bestows enormous powers on the political agent, which are often abused. He acts as an executive officer, as a magistrate and also as a revenue officer. These powers need to be separated to make the system more accountable and responsive.
10. The decision-making process for development activities is too centralized. The public needs to be involved in the process, so that the locals have ownership of the decisions. Moreover, the audit mechanism for the funds utilized by the political agent must be strengthened.
11. In 2004, the government established the Agency Councils as local government institutions in the region to facilitate the participation of people in governance and development schemes. However, political agents were made the chairmen of these councils, making a mockery of the whole process. The previous arrangement should be reviewed and local bodies' elections held in FATA under the Revised Local Bodies Act.
12. The National Accountability Bureau Ordinance should be extended to FATA and accountability through elected representatives of the area should be instituted.
13. The Pakistan Electronic Media Regulatory Authority (PEMRA) laws should be extended to the tribal region so that access to information, which is the basic democratic right of all citizens, is ensured.
14. In order to attract investment, the ambit of laws such as the 1984 Companies Ordinance should be extended to FATA.
15. An elected body or FATA council should be set up on the basis of adult franchise. It should be given the power to spend development funds and oversee the affairs of the FATA Secretariat.

16. There is an urgent need to improve the education system in FATA. The practice of awarding schools to tribal elders as a bribe must be stopped forthwith.
17. The Levies force needs to be reformed and organized at the FATA level. The FATA Secretariat should control it.
18. In order to mainstream FATA, a package on the pattern of the 2010 Balochistan package should be extended to it.
19. The quotas in job as well as the share in different educational institutions for FATA residents should be increased.

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