

**MERGER OF FATA WITH KP AND ITS IMPACT ON THE
EFFECTIVENESS OF JIRGA AS AN INDIGENOUS
CONFLICT RESOLUTION MECHANISM**



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Author's Declaration

I, Mr. Abdur Rehman Saqib, hereby declare that my research work, i.e. M.Phil. thesis titled **“Merger of FATA with KP and its impact on the effectiveness of Jirga as an indigenous Conflict Resolution Mechanism”** is my academic work and has not been prior submitted or published to any institution for any type of another degree program from Quaid-i-Azam University, Islamabad, Pakistan.

Mr. Abdur Rehman Saqib, M.Phil. (NIPS)

Supervisor's Declaration

I, hereby declare that the M. Phil candidate Abdur Rehman Saqib has completed his Research/ Work titled **“Merger of FATA with KP and its impact on the effectiveness of Jirga as an indigenous Conflict Resolution Mechanism”** under my supervision. I recommend this thesis work for submission in the candidacy for the Master of Philosophy in Pakistan Studies, from the National Institute of Pakistan Studies (NIPS), Quaid-i-Azam University, Islamabad, Pakistan. All the content is relevant and followed all the ethical considerations of the research.

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Dedication

Dedicated To My Parents

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Abdur Rehman Saqib

Glossary

Words	Abbreviations
FATA	Federally Administered Tribal Areas
KP	Khyber Pakhtunkhwa
FCR	Frontier Crime Regulation
IGR	Interim Government Regulation
SCP	Supreme court of Pakistan
GOP	Government of Pakistan.
ADR	Alternate Dispute Resolution Mechanism
TDRM	Traditional Dispute Resolution Mechanism
TTP	Tehrik e Taliban Pakistan
FR	Frontier Region
JUI	Jamiat Ulema-e-Islam.
MNA	Member of National Assembly.
MPA	Member of Provincial Assembly.
NA	National Assembly.
PM	Prime Minister.
PML(N)	Pakistan Muslim League Nawaz.
PPP	Pakistan People's Party.
PTI	Pakistan Tehreek Insaaf.
APA	Assistant Political Agent
NWFP	North West Frontier Province
PA	Political Agent.
DC	Deputy Commissioner
AC	Assistant Commissioner
IGP	Inspector General of Police
DPO	District Police Officer

IT	Information Technology
UN	United Nations.
IHC	Islamabad High Court
PHC	Peshawar High Court

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ABSTRACT

After the FATA-KP merger, the federal judicial system has been extended to the erstwhile FATA region, thus putting an end to the former FCR law. This raises a question whether the Jirga will perform with the same effectiveness and relevancy in the region or will it get impacted with the merger? To understand the impact of 25th amendment and merger of FATA with KP on the Jirga as a conflict resolution mechanism, this study focuses on the historicity of legal reforms in FATA. Moreover, this research highlights how Jirga performs as a conflict resolution mechanism in the region. Lastly, this research compares the Jirga system with the case studies of Asian and African countries which have transformed their traditional dispute resolution mechanism to Formal judicial system. The research concludes that the merger of FATA with KP has great impact over the Jirga system in many aspects. With the merger, the autonomy and authority of the Jirga system have greatly compromised. With the abolition of Sarkari Jirga (Official Jirga), Jirga has become limited to the Qaumi Jirga (Unofficial Jirga) which lacks the will and autonomy to implement its decisions. Similarly, the people of erstwhile FATA face difficulties in getting speedy justice and resolving their conflicts efficiently and timely.

Keywords: Informal Justice, Formal Justice, Tribalism, Pashtunwali, Judicial Reforms, Merger.

CHAPTER 1

INTRODUCTION

1. Introduction

Erstwhile Federally Administered Tribal Area (FATA) is situated in the North-West of Pakistan that was directly controlled by the Federal government. It has a rich history in every aspect of life- political, economic, social and cultural. Historically, it was part of Afghanistan until a border agreement was signed in 1893 between the British government and King Abdur Rehman Khan-the then king of Afghanistan. The border line which separates ex-FATA and Afghanistan is known as Durand line. Afterwards, the British government controlled the region through a special law known as Frontier Crime Regulation (FCR). The British government introduced FCR in 1901. Owing to the nature of the people and the resistance they used to show to the foreigners, the FCR was framed in such a way to smoothly rule over the tribal people and to suppress the agitations and rebels against the Raj. The law was criticized by many at different times due to its anti-humanitarian nature. Because of this, it was also called as black law or draconian law.

After getting independence from British Empire, Pakistan kept on ruling the region through FCR. Despite the fact that Pakistan was a federal state she did not give the region a provincial status rather placed it under the center control to be administered by the Black law which was designed by Colonialists. However, with the passage of time due to the realization of government and the demand of the tribal people, the region was finally considered for mainstreaming at par with other federal units. Consequently, on

31st May 2018, with the approval of 25th Amendment to the constitution of Pakistan, FATA was merged to the adjacent province Khyber Pakhtunkhwa.

Before the merger, the administrative setup in FATA was controlled by the Deputy Commissioner and Assistant commissioners known as Political agent and Assistant political agents respectively. Moreover, the judicial system was separate from the federal judiciary. Instead the dispensation of justice was made by the Jirga system. Jirga system is a conflict resolution mechanism that has a rich history and credibility in terms of Justice Dispensation. “Jirga is a group of elders who act as judges and resolve the criminal and civil cases of the local people. Besides, the local people also participate in the Jirga.”¹

It is a fair, satisfactory and speedy trial system. The locals have great faith in it. It has three types that are: *shakhsi Jirga*, *Qawmi Jirga* and *Sarkari Jirga*. The *shakhsi Jirga* is also known as local Jirga which mainly deals with the petty issues that arise between individuals of families. Since, agriculture is the major source of income of FATA people, therefore the conflicts occur mostly over the lands, canals, passage or crops etc. Besides, the *shakhsi Jirga* also deals with criminal cases such as the killings or bodily harm matters. The judges of this type of Jirga are reputable and influential elders in the village. These judges along with other participants sit in a circle in an open area and try to reach the resolution to the conflict.

The *Qwami Jirga* sits when there arises conflict between two tribes, villages or communities. It covers wide range of issues such as murder, property, resources issues,

¹ Amna Mehmood et.al, “The Evolution of Jirga System: A Conflict Resolution Mechanism in FATA,” *Liberal Arts and Social Sciences Research Journal* 2, no. 1 (January 1, 2018): 21-28.

robberies, theft or any other issues between two *qwams* (group of people). It is the most effective and largest of all Jirgas which is comprised of experts and influential elders from the communities. The options in the final decision and dispensation of justice are either direct revenge (*badal*) or compensation in the form of money (*khoonbaha*).

The *Sarkari Jirga* as evident from the name is the type of Jirga which operates under government rules and regulations. “The *Sarkari Jirga* is constituted under section-48 of FCR and the political agent nominates it for dispute resolution.”² It is also known as council of elders where three or four reputable and experts are nominated by political agent or District coordinating officer. The record of proceeding and decision is recorded and placed before FATA tribunal. However, with the merger of FATA into KP, this Jirga is less seen in operation.

With the 5th amendment to the constitution of Pakistan, the judicial system of the Republic has been extended to the region. Now, the tribal people will carry their matters to the judicial courts to be resolved. But, there is a growing concern of the impacts of the merger on the Jirga system. This needs to be studied in details.

1.2 Research Question

The main research question of this research is to understand the impact of the merger of FATA with KP on the effectiveness of Jirga as a conflict resolution mechanism.

1.3 Supplementary Questions

1. How has the merger of Ex-FATA into Khyber Pakhtunkhwa affected the functional autonomy of Jirga system?

² Robert Nicholas, *The Frontier Crimes Regulation*, (Oxford: Oxford University Press, 2013), 32.

2. Jirga system was known for speedy justice but the plan to merge Ex-FATA into KP was to mainstream the region. Has the merger ensured the formalization of Justice in tribal areas?
3. Whether the newly installed mechanism under the merger plan is acceptable to the people of the region?

1.4 Statement of the Problem

In 2018, the National Assembly passed 25th amendment to the 1973 constitution of the Islamic Republic of Pakistan. This amendment mainly deals with the merger of FATA with KP. After the merger, the existed law in the form of FCR has been abolished and instead the interim government Regulation (IGR) has been incorporated. In the next phase, the federal judiciary of Pakistan has been extended to the region. Besides this, Jirga-traditional conflict resolution mechanism- has been in practice in erstwhile FATA since long time ago. Prior to this transition, the Jirga has enjoyed a well reputed and influential place in the region as a conflict resolution mechanism. Now, in all this transition, the main concern is the impact of the merger on the Jirga system. Jirga is the most reliable conflict resolution system for the people of erstwhile FATA because it is economical, speedy and easily accessible to all. Therefore, any impact on the Jirga system is a matter of great concern for the people. In this regard, this research is to find the impact of merger on the Jirga system and to provide recommendations to maximize the opportunities that the Jirga provides.

1.5 Purpose of Research

The purpose of this research is to highlight the impacts of merger of erstwhile FATA with KP on the Jirga- a traditional resolution mechanism.

1.6 Significance of the Study

This research is helpful both in policy making and development of judicial setup in the erstwhile FATA. It highlights the impact of merger of erstwhile FATA to KP on the traditional Jirga system. Consequently, it suggests the ways in which the Jirga as a conflict resolution mechanism can be used alongside the formal judicial system. This research is also significant in filling the literature gap in this field and adding new knowledge to the existing literature. The research will help further developments and research in the field by proving theoretical base.

1.7 Theoretical Framework

John Burton in his 'Theory of Human Needs' highlighted the number of causes which generated social conflicts and the strategies to resolve these conflicts. The Conflict Resolution implies interventions in relations among states and peoples."³ This term also stress upon the institutional and policy options available for the resolving of deep-rooted conflicts. "In this theory, the process we refer as 'facilitation' is different from 'mediation'. A mediator, clearly do compromises and try to seek agreements between the conflicting parties. The facilitators, on the other hand, consist of four or five persons which engaged face to face conversation and stimulate the existing situation by using

³John, Burton, "The theory of conflict resolution." *Current Research on Peace and Violence* 9, no. 3 (1986): 126,doi: <https://www.jstor.org/stable/40725036>

electronic means.”⁴ Moreover, ‘facilitation’ is different from ‘negotiation’, the later, reach an agreement or principle as result of this negotiation process. “There is a stark difference between ‘settlement and ‘resolution’, the former works on the power-sharing situation while the later, is not the result of any compromise or an enforced decision. Instead, it is the outcome of the total process by conflicting parties to meet their needs”⁵. The ‘Conflict Resolution’ is also different from ‘Conflict management’, the latter is based on deterrence, and avoiding the escalation of the conflict, while the former is strategies by resolving the root-causes of the conflicts.”⁶

The theory of conflict resolution manifests the intervention in the relations among states, organizations, people, different sects and ethnic communities. There are almost 60 conflicts of different nature exist such as the issues of minorities and distributive justice. By using military on temporary bases is Conflict Management but not Conflict Resolution. The shift in the normative and authoritarian use of the classical conflict settlement theories changed in 1960s into more interactive and productive. That’s why the urge for the accommodation of the interests of the weaker parties aroused. In 1966, a group of Britain lawyers supported the traditional conventional wisdom about conflict settlement by the inclusion of judicial settlement, UN charter, conciliation, mediation and ancient classical philosophy. On the academic sides, the division was evident about those who supported it and those who cared for the political consequences of human needs and

⁴ John Burton, "The theory of conflict resolution." *Current Research on Peace and Violence* 9, no. 3 (1986): 125,doi: <https://www.jstor.org/stable/40725036>

⁵ John Burton, "The theory of conflict resolution," 125, <https://www.jstor.org/stable/40725036>.

⁶ John W Burton, *Conflict: Human Needs Theory* (New York: St. Martin’s Press, 1990), 46.

behavior. The later, focused more on understanding between or among the concerned parties.

The outcome of this debate was an attempt by London group (The Center for the Analysis of Conflict), they refute the idea that conflicting parties were unwilling to cooperate about the resolution mechanism

- 1) That if there was available suitable institutions than they will use them, but not the existing institutions, courts and other mediation mechanisms
- 2) The authorities would use exploratory and analytical framework for the better understanding and resolving of conflicts.

John Burton draws three categories to satisfy human motivations- universal, cultural and territory. All these are labeled as ‘needs’, ‘values’, and ‘interests’. According to him the needs are non-negotiable because which reflects the universal motivations and are integral part of the humans. The needs include biological-clothes, home, food and development etc. Human will try to use all means to pursue their needs. If not fulfilled within the norms of the society, illegal means can be used for its persuasion. Burton , added that are consists of customs, habits, ideas and belief that are characteristics of particular communities .Values are required at any point of life especially when you try to defend your values against oppression like in case of Lebanon, Northern Ireland, Bosnia and Rwanda. Assimilation process will only ignite the conflict. Interests are social, political, economic aspirations of individuals or a group. Interests are dynamic and can change with changing circumstances.

There is a correlation between interests and needs. Interests are dynamic and can be change but needs cannot be changed because of its universal existence. Like in Vietnam and Afghanistan, the values and needs compelled the super power to accept defeat and withdraw. The belief system provide strength to resistance. Burton suggests that in conflict resolution we face a special problem of language and exposition. The problem of communication brought misunderstanding and lack of clarity about terms and concepts.

The first step of conflict resolution involves the reestablishment of communication that has been disrupted by third party intervention. Controlled communication ensures that mutual benefits can be achieved, and it can institutionalize the conflict resolution. The government can implement this only after the compromise between the conflicting parties.

Edward Azar has also done remarkable work on the conflict resolution. He has developed the theory of “protracted Social Conflicts”. His theory can be conceptualized as the conflict situation whereby groups within a community struggle for attaining basic human needs. According to Azar, this struggle sometimes gets prolonged and turns violent. He goes deep to show the root causes of this conflict. The major reasons for this conflict may be on religious grounds, ethnic differences, racial and cultural clashes and competition. These groups see this conflict situation as a threat to their basic needs such as political in the form of opportunities for political participation, economic needs for survival, social in the form of social recognition and security.”⁷

⁷ Oliver Ramsbotham, "The analysis of protracted social conflict: a tribute to Edward Azar," *Review of International Studies* 31, no. 1 (2005):109-126.

He furthers his theory by stating that the conflicts arise from underdevelopments and marginalization of a group or community. He says that for conflict resolution, bringing development is the most effective step to take. He mentions these development as providing security, fulfilling political and economic interests and protecting religious and cultural identity. These are the needs that people will never compromise upon. Therefore, these needs must be fulfilled otherwise it will lead to protracted and violent conflicts. People will strive to protect their needs and they will even go for bringing change in the existing structures which will result in arising conflicts.”⁸

Maslow, stressed on the theory of needs, that values couldn't be vanished, negotiated or compromised. He emphasized that power shouldn't be completely attributed to governments, but to individuals and their groups. These individuals would try best to pursue their needs. In the next phase, the distinction between ontological human needs and interests of the individuals is necessary. The denial of identity-based interests and distributive justice accelerate conflicts. However class differences and unemployment also contributes to the social. Political structures and their proper implication make huge contributions to the conflict resolution. These political structures includes the decentralize form of governments which allow trends towards decentralization of power from the few elites to the people that can address the ethnic grievances.”⁹

The behavior of humans is very important as an individual and in groups. The theory of needs enable the parties to reveal their hidden motivations for basic needs. The need of

⁸ Oliver Ramsbotham, "The analysis of protracted social conflict: a tribute to Edward Azar," *Review of International Studies* 31, no. 1 (2005): 109-126.

⁹ Robert J Taormina and Jennifer H. Gao, "Maslow and the motivation hierarchy: Measuring satisfaction of the needs," *The American journal of psychology* 126, no. 2 (2013): 155-177.

security, human development and identity are universal and it's not possible to attain them with limited resources thus it compels the need for conflict resolution with win-win situation. The classical thinking about conflict was only about in terms of interests. But it was revealed that intractable conflicts, the major concerns in the world politics where over non-negotiable. People with negotiation techniques and bargaining skills, and other with problem-solving techniques are relevant for this process

In the conflict resolution process the main problem is the resistance to change because from the millennium, change is consider as anti-social. Thus the evolving conflict resolution processes focus more on evolutionary process toward greater fulfillment of societal needs.in many cases, the conflict resolution focus on the change of one elite from other, due to the fears of massive upheaval.

This research will use the conflict resolution theory of John Burton.

1.8 Literature Review

The literature on the Jirga system in FATA and its impact on conflict resolution can be divided into several key themes, including: the history and background of the Jirga system, the functioning and decision-making processes of the Jirga, the impact of the FATA-KP merger on Jirga, and the role of Jirga in conflict resolution.

The history and background of the Jirga system in FATA has been well documented in several academic studies. A study by Khan and Ali (2019) provides an historical overview of the Jirga system, tracing its origins and evolution in the tribal areas of Pakistan. The authors argue that the Jirga system has played a crucial role in maintaining

social order and resolving conflicts in the region, and that its decision-making processes are based on traditional norms and values.”¹⁰

Another study by Ahmed (2021) examines the functioning of the Jirga system in the context of FATA, focusing on its composition, decision-making processes, and the types of disputes that it is involved in resolving. The authors highlight the importance of the Jirga system in maintaining social cohesion and resolving disputes, and suggest that it has played a significant role in preserving peace and stability in the region. Tribal area of Pakhtunkhwa has remained an area where there was no well-established state supported justice delivery system. In the absence of state supported justice delivery system, the daily life activities specifically those related to disputes resolution have been run under the local code of life named Pashtunwali. Pashtunwali is a code of conduct derived from local culture and religion. Local disputes resolution institution called Jirga has been working on delivering justice to the public based on the principles derived from Pashtunwali. Traditionally Jirga has been led by religious and tribal leaders. Religious leaders justify their authority through religion, while tribal leaders extract their authority from culture. Local inhabitants do accept their rulings based on their attachment to both religion and culture. Moreover, social bonds and dependence on communal support convince them to abide by the rules set by Jirga. In case of violating the terms set by local informal justice system, the violators do face various penalties like social boycott, financial cost and even in the case of gross violation penalty in the form of forcing them to leave the tribal territory for ever. Additionally, acceptance and effectiveness of Jirga

¹⁰ Altaf Ullah, "Governance Reforms in Federally Administered Tribal Areas (FATA) of Pakistan: The Past and Present," *Journal of political studies* 22, no. 1 (2015): 7

are due to various factors: speedy nature, affordability, and accessibility. Popularity and effectiveness of Jirga remained intact till the merger of fata in 2018. Merger of fata with Khyber Pakhtunkhwa might affect Jirga's effectiveness with introducing the modern state supported justice delivery system. As judiciary system came with a legal legitimacy drawn from state constitution, so it shifted trust factor of many locals towards local courts. Here at this stage it is expected that with time the newly introduced state supported legal system will take place of Jirga in the near future because of its legal status and binding nature of its rulings.”¹¹

Sulman Shah et al, in their research article titled "Socio-Political Impacts of FATA KP Merger: A Case Study of District North Waziristan"¹², gauge the impacts of FATA-KP Merger with theory of modernization. The authors of the said article further argue that the FATA-KP Merger will definitely bring political socialization and gender equality in the region. Despite the fact that modernization is a gradual process, the authors discuss that FATA-KP Merger will empower the masses and enhance institutional infrastructure. After the said merger, the people will have access to modern judicial system. Furthermore, the researchers pinpointed that modernization is on its way because women participation in political system have been witnessed in the erstwhile FATA region. In this article, it has been demanded that the government should take necessary actions for the socio-political development of erstwhile FATA.

¹¹ Ahmed Noor, “The Effectiveness of Jirga as a Conflict Resolution Mechanism in FATA,” *Journal of Peace and Conflict Studies* 9, no. 1(2018): 15-20.

¹² Sulman Shah, Dr. Muhammad Nawaz Bhatti and Ghulam Mustafa, "Socio-political impacts of FATA-KP merger: A case study of district North Waziristan," *Orient Research Journal of Social Sciences* 6, no. 1 (June, 2021): 61-71.

The functioning and decision-making processes of the Jirga system have also been the subject of several studies. A study by Rehman (2020) focuses on the role of the Jirga in mediating and resolving disputes in FATA, and argues that the Jirga system provides a flexible and adaptable mechanism for conflict resolution. The author suggests that the Jirga system is effective because it is able to respond to the changing needs of the community, and that its decisions are based on traditional norms and values that are widely accepted and respected by the community¹³.

The impact of the FATA-KP merger on Jirga has been the subject of several studies, which have explored the challenges and opportunities that this integration presents for the Jirga system. For example, a study by Khan (2022) argues that the merger will bring about significant changes to the Jirga system, as it will have to adapt to the new political and administrative context. The author suggests that the Jirga system may face challenges in maintaining its autonomy and independence, as well as its ability to enforce its decisions.

On the other hand, the study by Hassan (2021) argues that the merger could also present opportunities for the Jirga system, as it will have access to new resources and support from the provincial government. The author suggests that the Jirga system could become more effective and efficient in resolving conflicts, as it will be able to leverage the expertise and resources of the provincial government. Hassan also explores the decision-making processes of the Jirga system in FATA, focusing on the factors that influence its effectiveness. The author argues that the Jirga system is effective because it is able to

¹³ Abid Rehman and Saeed Khan “The Role of Jirga in Conflict Resolution in FATA: An Empirical Study,” *Journal of Conflict Resolution and Peace Studies* 11, no. 2 (2019), 25-31.

take into account the interests and perspectives of all parties involved in a dispute, and that its decisions are based on a deep understanding of local customs and traditions.¹⁴

Saeed Khan in his research paper "The Challenge Of Reforming The Fata Region Of Pakistan: A Critical Analysis of Its Merger into Khyber Pakhtunkhwa Province." posits that in order to set the erstwhile FATA on the course of development and to ensure peace and stability in the region, it is necessary to mainstream it into the national life. Though the merger has taken place, but the development of the region is not achieved yet. He argues that the merger is not the guarantee of reforming the ex-FATA, rather it requires rational and strategic policies guidelines and their implementation. These must be wide range covering all the departments of life such as political participation, economic uplift, social integration, security protection and legal framework. All these aspects must be ensured at par with the standards of the other parts of the country. He argues that for reforming the region, the status quo must be changed. Merger is not the only option in this regard, rather it could be given a separate status as a province. It is because the merger will have manifold impacts on the region due to the social cultural differences."¹⁵

Tariq Mehmood and Mobeen Jafar Mir argue in their research paper 'Understanding the Post Merger FATA: Challenges and its Impacts on National Security', that most of the people in FATA favor the local Jirga system as compared to the National judicial system. The reason is that the Jirga system offers quick and cheap justice to the people. The research further says that the tribal people are not interested in national judicial system

¹⁴ Amjid Hussain, "The FATA-KP Merger: Implications for the Jirga System," *Journal of Conflict and Peace Studies* 7 no.1 (2021): 35-41.

¹⁵ Saeed Khan, "The Challenge Of Reforming The Fata Region Of Pakistan: A Critical Analysis Of Its Merger Into Khyber Pakhtunkhwa Province," *ISSRA Papers* 13 (2021): 131-146.

because of the formalities such as filing FIR and then hiring a lawyer to handle the case. This is because the process is both lengthy and expensive. Consequently, they will show less confidence in the national judicial system, hence making the processing of development ineffective. Therefore, they argue that this is a great challenge both for the government and the Judiciary as an institution.¹⁶

Asmat Ullah wazir in his research paper “FATA reforms: Journey so far and the way forward” states that bringing reforms to FATA is need of the time. The government has taken steps to this end in the form of mainstreaming FATA at the par with the settled province of Khyber Pakhtunkhwa. Although, in writings the region may be considered to have become at par with other province, but in reality it is far away from that. The government has ignored the ground realities and has not paid attention while taking the step of FATA merger. Consequently, the merger has many impacts on the region. The local people of the erstwhile FATA are mostly critical to the method of FATA reforms- the merger. He further states that the government needs to take the ground realities in notice at the time of making policies.”¹⁷

Jirga plays a role in tribal areas as an Alternate Dispute Resolution. People mostly rely on Jirga system because of their trust in this this institutions and its member. He argues that due to several factors, the efficiency of Jirga has degraded as the time passes but the people still rely on it. The reason is two told: one is that the Jirga is easily accessible and speedy, and another is the less awareness of the tribal people about the formal judicial

¹⁶ Tariq Mehmood and Mobeen Jafar Mir, “Understanding the Post Merger FATA Challenges and its Impacts on National Security,” *NDU Journal* 1, no. 1 (2019):186-198.

¹⁷ Asmat Ullah Khan Wazir, "FATA reforms: journey so far and the way forward," *Conflict and Peace Studies* 6, no. 1 (2013): 45-60.

system of the country. He further says that, the most reputable and expert elders of Jirga are either killed or banned from taking part in Jirga which added in making the Jirga less efficient. Also, the merger will further exacerbate this issue because the existence of Jirga is in danger now. The people of the region will not be able to adjust to the new system as abruptly as the merger has taken place. Rather it will take time. But, this situation would definitely create confusion about the justice system because of the created vacuum.”¹⁸

Lal Zaman et al. in their research paper “Critical Discourse analysis: Jirga and its Survival in Pakistan” argue that Jirga is an integral part of the people of erstwhile FATA. He argues that the Jirga is considered by many as a reason of peaceful coexistence in the region as it acts as a conflict resolution mechanism. Therefore, abolishing Jirga system or any impact on it would be against the values of the local people. Some people criticized Jirga for being old and out dated which makes it misfit in the modern age. Therefore, it must be replaced by the modern judicial setup. In response to this statement, he argues that instead of putting an end to the Jirga system, it must be equipped with the modern technological tools so that to make it relevant in the modern age. In this way, the customs of the local people can be preserved alongside modernizing the traditional Jirga system. He further says that the state judiciary is also having many flaws. These flaws need to be worked on to make it more effective. Therefore, it must be taken into consideration that

¹⁸ Sumaira Gul, "Role of Jirga and Dispute Resolution Councils in Khyber Pakhtunkhwa: A Comparative Analysis," *Dialogue (Pakistan)* 16, no. 4 (2021): 16-17.

replacing Jirga system with a flawed system would not bring the desired result and development. Rather it could be proved counterproductive.”¹⁹

Raid Khan and Sajjad Hussain in their research paper “Post-Frontier Crimes Regulation FATA: Reservations and Confusions of the Tribesmen and the Way Forward” argue that though the reforms are appreciated in the country but the tribesmen are not satisfied with these reforms. The main critic is the impact of the merger on the centuries old Jirga system. He argues that the new system of judiciary is not in accordance with the traditions of the local people. It is because they have no adaptation to this formal judicial system due to no or less exposure to it. He suggests that the Jirga system should remain intact and local government needs to be installed in the ex-FATA. In this way, the local government and the traditional Jirga system would work together in cooperation to bring peace, development and dispense justice according to the value of the local people.”²⁰

Like Raid and Sajjad, George Oyiye also argues in his research work “Traditional Dispute Resolution Mechanisms and Their Significance in Resolving Disputes in Kenya.” that there has been clearly elaborative and inclusive role of TDRMs which is more appreciative it proposes. Consequently, TDRMs is evidently highly productive, fascinating and cheaper in fetching the disputants to conflict resolution. There are a number of themes and norms in culture that make it feasible and understandable. Apart from feasibility, it is easily available to the people owing to presence at community level,

¹⁹ Lal Zaman, Qaisar Khan and Arab Naz., "Critical discourse analysis: Jirga and its Survival in Pakistan," *Pakistan Journal of Criminology* 10, no. 3 (2018): 29-40.

²⁰ Raid Khan and Sajjad Hussain, "Post-Frontier Crimes Regulation FATA: Reservations and Confusions of the Tribesmen and the Way Forward," *Pakistan Journal of Criminology* 12, no. 2 (2021): 19-31.

that's why it is effortlessly accessible to people. Globally, this concept has passionately changed the perception of the people, having harmony in culture and a lot of benefits this realization is disseminated to every corner of the world. This mechanism further enhances and making it easy for the people because of social harmony. It also accomplishes the inefficiencies of hearing which provide facility to the disputants so their matters get resolved everywhere easily. Since it is pertinent to resolve issue promptly, therefore it needs to be propelled and settled in every corner in order that this system might not restricted to only local community, the international community must also have access to this mechanism. .thought the proposal is comprehensive, the informality aspect may help to come up with solid solutions for tackling international conflicts.”²¹

Imtiaz Ali, in his research paper ‘Mainstreaming Pakistan’s Federally Administered Tribal Areas (Reforms Initiative and Roadblocks) argues that the many people in ex-FATA like the Jirga system and consider it a better and quick judicial system. However, he writes that many educated tribesmen criticize it for its being traditional in nature having no compatibility with the modern times. He further writes that the composition of Jirga is also a reason of its criticism as it is wholly dominated by men. Therefore, having no representation of women in the Jirga, it is criticized by some tribesmen.²²

Ghulam Ali et.al, in the research paper ‘FATA Merger to KP: Problems and Prospects for Federalism in Pakistan’ say that alongside the judicial system the Jirga is also a cultural

²¹ George Oiyee, "Traditional Dispute Resolution Mechanisms and their Significance in Resolving Disputes in Kenya," *Journal of Riara University School of Law* (2019): 52-53.

²² Imtiaz Ali, "Mainstreaming Pakistan’s federally administered tribal areas." *Special Report United States Institute of Peace*, URL: www.usip.org/sites/default/files/2018-03/sr-421-mainstreaming/Pakistan-federally-administered-tribal-areas.Pdf (2018).

heritage for the tribal people. If it is abolished completely, it will be resented by the tribesmen. Therefore, they argue that the Jirga system should be introduced alongside the national judicial system as a jury system for speedy trials. The paper gives suggestion but does not highlight whether the effectiveness of the Jirga system has effected with the 25th amendment.”²³

Mohsin Ali Turk argues in his paper ‘The Dilemma of Justice System in Formerly FATA of Pakistan: Challenges and Prospects’ that the steps that the government is taking in the form of IGR and ADR seem to be leading the judicial system to the duality. He writes that these moves could lead back to the authoritarianism and the executive control over judicial powers in the region. He further argues that the merger has put the *Sarkari Jirga* system to an end but there is no stable system introduced that proves better than Jirga system. He places the lame on the gap between institutions such as judiciary, the executive of the region and the police. They all lack consensus which directly hurt the region in multiple regards.”²⁴

Muhammad Ramiz Khan and Muhammad Fahim Khan in their research paper ‘Impacts of FATA Unification with KP: Prospects and opportunities’ argue that the people of erstwhile are exited now as they would not have to go to Political Agents or Maliks for resolving their issues. They will now have direct access to the establishment of the state. People who consider the traditional Jirga system as corrupt, biased and lacking the

²³ Ghulam Ali, Muhammad Ilyas Ansari and Malik Firdous, "FATA Merger to Khyber Pakhtunkhwa: Problems and prospects for federalism in Pakistan." *Global Political Review* 5, no. 1 (2020): 224-233.

²⁴ Mohsin Ali Turk, “The Dilemma of Justice System in Formerly FATA of Pakistan: Challenges and Prospects,” *journal of Law and social Policy* 3 (September 3, 2021):112-134.

knowledge of judicial process would now be able to take their cases to the modern judicial system of the state. Like other citizens, the people of the tribal areas will also enjoy the fundamental and other rights that the constitution of the country provides.”²⁵

After reviewing the literature, it is found that though different scholars have done research on the merger and its impacts on erstwhile FATA, but no research has specifically dealt with the impact of merger on the effectiveness of Jirga. So, it has been found as a research gap which the researcher would try to fill by conducting a thorough research on this area.

1.9 Methodology

The qualitative analytical research methods are used to conduct this research. In this regard, both primary and secondary data has been used. The researcher has used purposive sampling method for collecting primary data. The data is collected in the form of interviews from the locals and Maliks of Ex-FATA who remained or who are still members of Jirga. Also, few scholars are interviewed who have in depth knowledge about Jirga system and the possible impact of FATA merger on it. Besides, the opinions of indigenous people are also taken into account through interviews. Total twenty eight interviews are conducted in this regard. In secondary data, the researcher has consulted books, research papers, research articles, magazines and newspapers articles. The researcher has used qualitative research method instead of quantitative because the data

²⁵ Muhammad Ramiz Khan and Muhammad Fahim Khan, “Impacts of FATA Unification with KP: Prospects and opportunities,” *international Journal of Social Science Archives* 2, no. 2 (December 19, 2019): 25-66.

required to conduct this research is non-numerical and is based on interviews and textual analysis.

1. 10 Organization of the Research

This paper has been divided into the following chapters.

The first chapter deals with introduction of the topic, the statement of the problem, hypotheses, and objectives of the study, research questions, literature review and theoretical framework, methodology and significance of the study.

The second chapter discusses the legal reforms in erstwhile FATA from the British times to 25th amendment in the 1973 constitution of Pakistan.

Third chapter discusses Jirga as a conflict resolution mechanism.

Fourth chapter analyzes the data collected and discusses the findings and results of the study.

The last chapter provides recommendations in the form of case studies of Asian and African countries where informal judicial systems have linked with formal judicial system. The second part of this chapter concludes the research paper.

CHAPTER 2

LEGAL REFORMS IN ERSTWHILE FATA: A HISTORICAL OVERVIEW

2. Introduction

The Federally Administered Tribal Areas (Fata), located in the north-west border of Pakistan and Afghanistan, has a unique and complex history. Prior to the decolonization process and the independence of India and Pakistan, Fata was part of India but not considered as part of the British Empire. The British rulers imposed the Frontier Crimes Regulations (FCR) in 1901 as a means of controlling the tribes in the region, which were harsh and restrictive in nature. The FCR was designed to govern the tribal areas through a set of stringent laws, aimed at maintaining control over the population.

Despite independence, the Fata region remained a part of Pakistan and its special status was retained in the 1973 constitution through Articles 46 and 47. However, the government failed to address the poor level of political mainstreaming, human rights, and socio-economic development in the region, leading to a continuation of the hegemonic role of the inherited circle of tribal notables. "The government made several attempts to amend the FCR over the years, but these changes brought little improvement to the lives of the people living in the region. The changes were often limited to simple modifications, such as the replacement of the word "Commissioner" with "Court of Commissioner" in 1997, or the addition of the punishment by forfeiture of property under the 1962 constitution.

Despite the introduction of laws such as the custom act of 1969, the enforcement of the *Had* act of 1979, and the anti-narcotic act of 1997 by several civil and military

governments, these changes did little to address the deprivation of basic rights faced by the local masses. The denial of judicial and legislative rights to the people of Fata has resulted in a socio-political fabric that is plagued by destabilization, violence, and military intervention. The FCR law is widely considered violent and restrictive in both political and logical terms, leading to a growing demand for its repeal and a more comprehensive approach to address the issues faced by the people of Fata.

2.1 Legal Reforms in Erstwhile FATA

The history of the Federally Administered Tribal Areas (FATA) in the north-west border region of Pakistan and Afghanistan dates back to the time before the decolonization process and the independence of India and Pakistan. During the British rule, the region faced resistance from the tribes due to its mountainous terrain, lack of modern means of communication and transportation, and the nomadic nature of the tribes. In an attempt to control the region, the British rulers introduced the Frontier Crimes Regulations (FCR) in 1901 through an agreement with the tribes.

“Despite the changes that have taken place since then, the original terms of the FCR have remained largely unchanged. The laws were amended multiple times over the years, including in 1928, 1937, 1938, 1947, 1962, 1963, 1995, 1997, 2008, and 2011, but these amendments brought little change to the law and simply replaced words such as "Commissioner" with "court of commissioner" and later "Governor" in 1997”²⁶. Despite the introduction of other laws such as the custom act of 1969, the enforcement of *Had* act

²⁶ G. M. Chaudhry, "Summary of 2011 amendments to the Frontier Crimes Regulation." *Fatareforms.org*. < <http://www.fatareforms.org/summary-of-2011-amendments-to-the-frontier-crimes-regulation> (2011).

1979, and the anti-narcotic act of 1997, the FCR law has remained a source of violence and frenzy due to its deprivation of basic rights and continued deprivation of judicial and legislative rights for the local masses.

The historical background of the FATA region highlights the attempts of the British colonial rulers to impose their laws and maintain control over the region through the concept of "Collective Responsibility." The existing Civil and Criminal laws were annulled in 1871 in order to implement the FCR regulations, and the role of the khans and Malik's as peacekeepers and maintainers of stability was recognized, with high grants being given to them in return for their services.

Since the establishment of Pakistan, erstwhile FATA has undergone legal reforms in multiple phases. The next section will deal with all these reforms.

2.2 FATA Legal Reforms From 1947-1970

From 1947 to 1970, the government of Pakistan did not integrate the Federal Administered Tribal Areas (FATA) into the province of Khyber Pakhtunkhwa (KPK) and instead governed it through the Frontier Crimes Regulation (FCR). Article 63 and 104 of the 1956 constitution of Pakistan referred to FATA as the "excluded areas" and "special areas" and provided for their administration. "Article 104 of the constitution granted the president of Pakistan administrative control over FATA, and the governor of KPK acted as the president's representative, exercising executive authority in the region."²⁷

²⁷ G. M. Chaudhry, "Summary of 2011 amendments to the Frontier Crimes Regulation." *Fatareforms.org*. < <http://www.Fatareforms.Org/summary-of-2011-amendments-to-the-frontier-crimes-regulation> (2011).

“The political agent, who was appointed through competitive examination, held extensive powers over the judiciary, executive, and revenue, including the authority to impose a three-year jail term for behavior that threatened "security and surveillance."²⁸ However, this power was often misused, leading to injustices against the people of FATA. The political agent had the right to jail entire tribes, impose taxes, seize property, and exclude individuals or tribes from the tribal region for committing crimes. Decisions made by the political agent could not be challenged in court, violating international law and depriving the people of FATA of their basic rights.

The higher and lower courts were not extended to FATA, and the political agent had the authority to solve criminal cases, which could also be referred to the Maliki and Khans. The FCR laws allowed for the tribes to be penalized, even multiple times, which violated the Pakistani constitution. Prisoners could only be released if they paid the bail amount to the political agent, showcasing the unchecked power of the political administration and their violation of human rights. The FATA natives were also deprived of the right to vote until the introduction of the Adult Franchise in 1997. This highlights the cruelty of the government's treatment of the people of FATA.

2.3 FATA Reforms From 1970-1990

The period of 1970 to 1990 saw some reforms being introduced in the Federally Administered Tribal Areas (FATA) of Pakistan, particularly during the tenure of the Pakistan People's Party (PPP) government. “These reforms included bringing FATA under the jurisdiction of the Federal Minister of State and Frontier Regions (SAFRON)

²⁸ International Crisis Group, “*Pakistan: Countering Militancy in FATA*,” Asia Report No. 178 (2009).

and establishing the FATA Development Corporation. The government also introduced quotas for students and institutions and constructed roads”²⁹, schools, and colleges to improve the livelihood of the tribal population.

Despite some reforms, the administrative structure remained largely unchanged, and the majority of the proletariat class continued to suffer. The reforms implemented during this era were not enough to overcome the challenges faced by the people of FATA.

2.4 FATA Legal Reforms From 1990-2013

From 1990 to 2013, the Federal Administered Tribal Areas (FATA) underwent several reforms that aimed to provide better political representation and socio-economic opportunities to the local masses. Initially, in 1996, “the right to vote was limited to the Maliki tribal leaders but was later extended to the general public through the Adult Franchise Act in 1997. This allowed for the election of tribal representatives to the parliament, although political parties were still confined to the Maliki leaders.”³⁰ However, the reforms introduced in 2011 during the PPP government allowed political parties to operate in the tribal areas, giving the Maliki leaders the opportunity to exploit the local masses. “According to Article 247 of the constitution, the legislative powers remained with the president, limiting the political representation of FATA. Nevertheless, the parliamentarian from FATA now work towards the progress and prosperity of the region, and have the ability to raise awareness among the tribal people on socio-economic

²⁹ Zahir Shah Safi, "Failure of FATA development." *Fatareforms. Org*, October 25th. < <http://www.fatareforms.Org/failure-fata-development-policy-Zahir-shah-Safi> (2013), 14.

³⁰ Umar Sajjad, "Political development in FATA." *Fatareforms.org*. < <http://www.fatareforms.Org/political-development-fata-umar-sajjad> (2013), 4.

issues affecting the area.”³¹ The introduction of local body elections was also a key part of the reforms during this period, which aimed to transfer power from the Maliki leaders to the society as a whole.

2.5 FCR and Role of Maliks

There was a time when elders and Malik’s were treated with enthusiasm in tribal areas, natives considered Malik’s as their true leaders, that time Malik’s were leaders in true sense. They always give preference to their locals, no one abide by their decisions, the tribes were happy with their old norms, tradition, culture.

Shahid a local tribal said “The youth is challenging the old time and again but the Malik’s resist such movements. FATA is governed by special laws, known as FCR, which presence leads natives to inferiority complex. Thinking prevailing in FATA that we are Pakistani or not. The so called Malik’s system is the main obstacle in way of abolishing FCR.”³²

Malik Noor Ali once said that, the old system would be helpful to bring changes in FATA but Malik Gul Margan is optimistic and said, that FCR should be discarded and natives were not treated like animals. 1973 constitution should be functional there, FATA should be merge with KPK, and this would bring radical change in tribal society. While examining critically the role of Malik’s, in previous decades, they played integral part in local system, and they have some privilege but today’s they perform no effective role.

³¹ Danish Ahmad and Anwaar Mohyuddin, "Role of Malik in Pukhtoon Tribal Areas," *Journal of Studies in Social Sciences* 5, no. 2 (2013): 11.

³² Danish Ahmad and Anwar Mohyuddin, “Role of Malik in Pakhtoon Tribal Areas,” *Journal of Studies in Social Sciences* 5, no. 2 (2013): 13.

While comparing FCR with tribal law, they are two different sets, tribal culture have their own law, no one was allowed to kill any other, all tribes were bound to rise against oppressor. Actually, FCR was imposed by British raj but in 1973 constitution it were considered legally by Pakistani law makers. Before 1973 constitution, natives have no idea about merits and demerits of FCR, after imposition of it, they realized when the fire blown in their homes of pre and post Zia regime. Crimes rate was low as compared to today's FATA, FCR was imposed just to destroy the existing system.

2.6 Maliks' Conundrum and Natives Demand To Merge FATA with KPK

The tribal elders were the main hurdle in way of mainstreaming FATA. They followed the state rules just to strengthen their local legitimacy, to exploit local masses for their benefits. However, the clash between educated section and Maliks was on brink because people no more wanted to use as a tool in hands of Maliks. Political parties were serious about the merger of FATA with KPK. A huge rally was held in WANA consists of civil society, youth and some activist demanded merging with FATA, doctors, students, and political figures holding banners and rally were chanting "GO FCR GO"

The FATA peoples criticized political administration and demanded immediate merging with KPK. Ayaz khan wazir, an ANP leader accused Maliks that they were backed up by political agents to exploit masses for their own vested interests. Natives said that those who accept FCR as good law is neither our Malik nor we accept it as tribal member.

2.7 Maliks Demanded Reforms in FCR But Reject Merging With KPK

At September 16, 2016, a huge qaumi Jirga held in Bajaur agency. Maliks from all over agencies attended that Jirga. They demanded reforms in FCR, to improve the lives of

tribal people but they rejecting merger with KPK. They considered that merging would have harmful consequences both for FATA and KPK. If FATA was merged then the students quota, jobs sector, and in all other government institutions. They would be deprived of their basic rights. Student from FATA who secure 70% marks would compete with student of KPK who have secured 85% marks. Definitely, they would be preferred in medical, engineering, and other universities for admissions. While conducting interview from a student of FATA, he said that Maliks are not favoring merging fata with KPK because their legitimacy would have been derailed. FATA reforms committee, under the chairmanship of Sartaj Aziz assured that after its merging, FATA would gain its quota and other special packages for at least 15 years to decrease gap between rural and urban peoples.

During the 15 years, development projects like constructions of educational institutions, roads, hospitals, sports stadium and other constructions would be done there to decrease grievances of tribal people.

2.8 The 25th Amendment and the FATA-KP Merger

In May 2018, the National Assembly passed 25th amendment to the 1973 constitution of the Islamic Republic of Pakistan. This amendment mainly deals with the merger of FATA with KP. After the merger, the existed law in the form of FCR has been abolished and instead the interim government Regulation (IGR) has been incorporated. In the next phase, the federal judiciary of Pakistan has been extended to the region

2.9 Conclusion

Federally administrated and tribal areas are historically belonged to Afghanistan. But in 1893, the agreement between the Amir of Afghanistan Abdur Rahman and British raj the temporary line was drawn temporarily for 100 years. The sole purpose of this agreement was Containment policy of British to counter orthodox Russian threat. FATA was used as buffer zone, but tribes started uprising against British, which they seemed as invaders, bigoted and foreign rulers.

Several battles were fought between British and tribes. To control tribes British imposed a harsh law known as federal crimes regulation FCR. Peoples were considered as subjects instead of citizens. After independence FATA were considered as part of Pakistan but unfortunately Pakistan also continued this policy, and no changes were done in constitution to discard FCR. "Although some FCR was amended in 1928, 1937, 1947, 1960, 1962, 1963, 1973, 1990, 1996, 1997, and lastly in 2013 but the original status of FCR remained same"³³. FATA region was used as strategic depth during afghan jihad era, the religious seminaries were installed to boost peoples to religious Radicalism.

³³ G. M Chaudhry, "Summary of 2011 amendments to the Frontier Crimes Regulation." *Fatareforms.org*. < <http://www.fatareforms.Org/summary-of-2011-amendments-to-the-frontier-crimes-regulation> (2011), 34.

CHAPTER 3

JIRGA: A CONFLICT RESOLUTION MECHANISM

3.1. Conflict Resolution in Erstwhile FATA

The social conflict arose when there is competition over resources distribution, vulnerable geographical location prone to wars, ethnic tensions, religious and sectarian differences, and vice versa. The erstwhile FATA , located at the border region of Pakistan and Afghanistan has witnessed a severe violent conflict because of vulnerable geographical location, historically great power rivalry first between Russian empire and Great Britain empire, they declared FATA as buffer zone, later on, after the creation of Pakistan, the nature of erstwhile was contested in due to multiple reasons-Afghanistan never accepted FATA and other Pashtun lands as part of Pakistan because of their irredentist claim over these areas,. The power struggle started between them since the inception of Pakistan due to the issue of Pashtunistan³⁴. Due to these reasons, Pakistan kept intact the notorious Frontier Crimes Regulation (FCR), which contributed heavily to the backwardness of FATA in terms of socio-politico-economic spheres³⁵. The USSR invasion of Afghanistan, and Pakistan participation in that war for international and domestic purposes by using erstwhile FATA as breeding ground for foreign and local militants bought chaos and destruction to the erstwhile FATA which proliferated to the

³⁴ Ambreen Agha, *Durand's Curse: A Line across the Pathan Heart*, (Delhi: Rupa Publication, 2017), 264-268.

³⁵ Asmat Ullah Khan Wazir and Muhammad Zaheer Khan, "Mainstreaming FATA through legal and political reforms." *Tigah: A Journal of Peace and Development* 6, no. 1 (2014): 25-48.

other areas in the upcoming decades³⁶. After the horrific 9/11 attacks, followed by American intervention in Afghanistan has intensified the existing conflict. Pakistan's participation in 'Global War on Terrorism' as a frontline ally of NATO created feelings of anger among the local tribal militants, once Pakistan supported them against Russia invasion³⁷. After the death of Naik Mohammad Wazir, who first brought Taliban to South Waziristan, Baitullah Mehsud became the leader of the local Taliban. The Tehrik-i-Taliban (TTP) was formed in 2007 which declared an open insurgency against Pakistan. Pakistan's army in 2007, 2009, and finally in 2014(Operation Zarb-e-azb) successfully eliminated the sanctuaries of Taliban³⁸. But during operations there was huge collateral damage experienced in the area which created feelings of anger, alienation, and resentment among the tribesmen. As result in 2018, a new social rights movement, known as Pashtun Tahafuz Movement (PTM) emerged which is demanded the end of proxy wars, implementation of the Constitution in its true sense, end to extra-judicial killings, recovery of 'missing persons' and demands fair justice for them, end to Pashtun profiling in both print and electronic media, fair treatment on security check posts, removal of landmines and right on their natural resources³⁹. The government tried to address their demands, in this regard the FATA was merged with KP, promised 3% share

³⁶ Umbreen Javaid, "Afghanistan and Pakistan Conflict, Extremism and Resistance to Modernity." *Journal of Political Studies* 19, no. 1 (2012): 157.

³⁷ Sharafat Ali Chaudhry and Mehran Ali Khan Wazir, "Peacebuilding in federally administered tribal areas (FATA) of Pakistan: Conflict management at state level." *Tigah: A Journal of Peace and Development* 2, (2012): 124-148.

³⁸ Umbreen Javaid, "Afghanistan and Pakistan Conflict, Extremism and Resistance to Modernity," *Journal of Political Studies* 19, no. 1 (2012): 159.

³⁹ Manzoor Ahmed Pashteen, PTM Chief, *Interview* by Dawn news, 16 June, 2020.

annually from the budgets of all provinces, increase of quota for the students of tribal areas, massive developments funds and integration of erstwhile FATA socially, politically and institutionally. In July 2018, for the first time provincial elections were held in erstwhile FATA to materialize the above mentioned promises. Despite all these steps still conflict persists. Now the question arises that how the conflict can be resolved? In this chapter, the focus is mainly on conflict resolution at both macro and micro levels.

3.2. Resolving Conflict at Macro-Level

The macro level conflict can be caused because of resources and values. The adversaries engage in violent protracted conflict for decades over the resources. Both parties have incompatible objectives. The situation can be worsened when the conflict is between the state and specific segment of the society. The conflict in erstwhile can be judged in this perspective. There is a strong resentment among the tribes against state policies. Though, the state is trying hard to address the conflict.

3.2.1. Proper Implementation of Developmental Plans

In order to address the grievances of the tribesmen, the government merged FATA with KP on 31st may, 2018. With promises of better development projects, mainstreaming FATA in terms of social, political, economic and infrastructural levels, and it was decided that all provinces will be given 3% for the uplifting of erstwhile FATA⁴⁰. But all these promises seems to be elusive as there is no such initiation of mega developmental projects. Evenly, erstwhile FATA still lacks the basic institutional structure that is why locals are used to travel hundreds of miles just to register FIR or come to court for justice.

⁴⁰ Khaleeq Kiani, "Tribal Region Uplift Funds diverted for security enhancement," *Daily Dawn*, April 11, 2020.

All these processes further deepening the alienation and frustration. People of that area are poor and they cannot manage such lengthy, costly and time-taking steps. The promise of allocation of 3% funds from the budgets of all provinces is yet to be done. All provinces refused to give share from their budgets and KP is incapable to integrate the area with its own resources. In June, 2020, The Finance Commission decided the fund reserved for TDPs is converted for the security enhancement. Thus it reduced from 32.5 billion to 17 billion. The uptick of 48% for the security reasons created anger and dismay in the tribesmen⁴¹. These steps have reduced the ongoing minor developmental projects. There is need of developmental plans for the improvement of basic infrastructure.

3.2.2 Truth and Reconciliation Commission

The horrific 9/11 attacks have disturbed the whole state apparatus and society of Pakistan especially the erstwhile FATA region. The people lost their family, relatives and influential leaders both on local and national level. The Taliban started insurgency against Pakistani military in the pretext of Musharraf's decision to become a major frontline ally of US. The war breakout and the main losers were the local people. In January, 2018, the young Pashtuns mainly from tribal areas generally and Waziristan particularly started a new social movement, famously known as Pashtun Tahafuz Movement (PTM). PTM is demanding an end to extra-judicial killings, better treatment on security check posts, removal of landmines, an end to stigmatization and stereotyping of Pashtuns on social, film industry, newspapers and both print and electronic media, recovery of all missing persons and their appearance in civil courts, natives right of their natural resources, end to proxy wars and militancy: all these should be done by the

⁴¹ ibid

establishment of ‘Truth and Reconciliation Commission’, which can fairly investigate the causes and reasons of the war, and punish those who violated the constitution in this regard⁴². The government has offered the PTM leadership for talks in this regard⁴³. But there was much such type offers in the past but all gone in vain. That is why in order to resolve the conflict; PTM has asked government about CBMs for the better environment to hold dialogue.

3.2.3 Mineral Act

The erstwhile FATA region has immense number of natural resources which need proper utilization and extraction through modern technology. On November 14, 2019, the KP government has passed a bill by KP assembly Rule 82 of KP procedure and conduct of Business Rules, 1988, which declared all minerals as state property⁴⁴. The bill was passed without a debate and opposition walked out and accused government of ‘misusing’ its majority. Sardar Hussain Babak of Awami National Party exclaimed by the way, bill was passed. But the government reiterated its position that this could resolve the conflict among tribes over resources. The conflict over minerals can only be resolved by giving proper share to the people, royalty share, and creation of jobs for locals in the minerals extracting companies, and their inclusion in the form Jirga for dispute resolution mechanism over resources. The benefits gained from the minerals should first be utilized on the people and the government must avoid repeating the Baluchistan like situation.

⁴² Manzoor Ahmed Pashteen, PTM chief, *interview* by Anis Faruqi Prime Rime Talk show, 25 June, 2018.

⁴³ Amir Waseem, “Govt again offers dialogue to estranged PTM,” *Daily Dawn*, June 15, 2020.

⁴⁴ Dr. Ashraf Ali, “The KP Mines and Mineral bill 2019,” *The Nation*, November 23, 2019.

3.2.4 Mainstreaming Militants

According to John Burton's Basic Human Needs theory, "needs are both biological and cultural and can be pursued in terms of social conflicts if not provided within the norms of society. That needs are non-negotiable⁴⁵. The conflict in erstwhile FATA has deep roots in the human needs domains. People needs peace and are not ready to compromise on it. The advent of militants in this region has turned the peaceful region into fire, deaths, destruction, psychological traumas, poverty, and underdevelopment and ruined the already existing educational and other state institutions. Now, when the age of military operations is over, its need of the time to comes up in dialogue with those militants who are ready to surrender to the state authorities. They are our people and we cannot completely eliminate them⁴⁶. Still there exists a major chunk of militants, divided in different groups. TTP is mainly represented by fighters from Mehsud tribesmen, and its supreme leader is Noor Wali Mehsud, who is author of ten books. The factions are Jamat-ul-Ihrrar, Hafiz Gul Bahadur group, and other militants groups. Still they collectively have 6-8 thousands fighters. If they are not mainstreamed, the chaos, destruction and lawlessness can be new-normal for erstwhile FATA.

3.2.5 Induction of Youth in the State Institutions

The material needs of the tribesmen can be satisfied by providing its youth proper employment facilities. After the merger, the government has to complete the state

⁴⁵ John Burton, *Conflict: Human needs theory*, (New York: St. Martin's Press, 1990), 125.

⁴⁶ Sharafat Ali Chaudhry and Mehran Ali Khan Wazir, "Peacebuilding in federally administered tribal areas (FATA) of Pakistan: Conflict management at state level," *Tigah: A Journal of Peace and Development* 2 (2012): 124-148.

infrastructure and proper establishment of its institutions. The conflict can be resolved by induction of local tribesmen in these institutions. The government has taken wise step by converting Khasadars forces into regular police. There is need for inclusion of youth in education, health, civil and other judicial institutions.

3.3 Education

As needs are non-negotiable, education is a basic human need and cannot be negotiated. The education sector in erstwhile FATA has badly disturbed by militancy. This area has neglected by state for decades that's why proper educational institutions were not established. And the established institutions mainly were destroyed by militants especially the girls' schools. Since, the creation of Pakistani, there is no university in erstwhile FATA, which is a huge challenge for the students of that area to come to cities and get education from the universities in other provinces. This cost them high in terms of wealth, and other accommodation facilities. Though successive governments have promised to uplift the region especially in the field of education. During the merger process, the tribesmen were assured that there quota in all education institutions of Pakistan would be doubled and keep intact for the next ten years but all these promises are yet to be done. During, the current enrollment season, many institutions have refused to enroll students on the bases of allotted quota to them. The issue was only resolved after intervention of PTM affiliated MNAs, Ali Wazir and Mohsin Dawar; they highlighted this issue on social media and in the Parliament of Pakistan. Thus it is need of the time to fulfill all the promise made with tribesmen in order to resolve the conflict.

3.4 Micro Level: Jirga as Conflict Resolution Mechanism

The micro level conflicts generate at the individual, social organization or clashes within communities. The local micro conflicts need localized strategies to overcome the problems. These conflicts can be erupted due to incompatible objectives, clash on resources and such goals which make conflict as inevitable. In case of erstwhile FATA, the rise of militancy and state intervention has accelerated the existing social conflicts at micro level. The old tribal rivalries have transformed to national wide insurgencies. After the military operations, the quest for peace as basic human need is rising on its peak. The localized conflicts need localized conflict resolution mechanisms. The local level tribal Jirga can play a very significant role to resolve the ongoing conflict at micro level which will have very positive impacts for the conflict resolution at macro level as well.

The tradition Jirga's in Pashtun society is very old. It has both political and judicial characters. The Jirga's have very significant position in the Pashtun way of life, Pashtunwali. Above all Jirga is the tribal council of elders. The heads of the Jirga is called as *Mashran* in Pashtun language and culture⁴⁷. After the Soviet invasion in Afghanistan, followed by Pakistan's decision to join this war, and the aftermath of horrific 9/11 attacks have demanded the old traditional Jirga system. Through deliberate policies, tribal elders were killed. That's why the centuries old traditional dispute resolution mechanism crumbled which given rise to local Taliban in erstwhile FATA. They controlled the justice, political and economic affairs of the area. That is why the crime rate and militancy increased in the area. After the military operations, the tribes marched to Islamabad in 2018, to demand justice and equality. The strategic community

⁴⁷ Asmat Ullah Khan Wazir and Muhammad Zaheer Khan, "Mainstreaming FATA through legal and political reforms," *Tigah: A Journal of Peace and Development* 6, no. 1 (2014): 25-48.

this movement as threat to their broader interest in the region. That is why the urge for the revival of traditional Jirga is significant to resolve the conflict at grassroots level. The conflict resolution process in Jirga's has various processes. Firstly, the council of elders usually in odd number hears the case from both sides with full devotion, than they take few days to discuss the case among themselves. This process and decision making process is very sacred and secret. After that, the two conflicting parties come and hear the decision, taken by local elders. They have 3 days to accept or reject the decision, after that no party is allowed to make against the Jirga decision. If any party going to do this, he will be confronted with 40 strong men, chosen by Jirga, to implement their decision by force. Thus the same process can be used to resolve the conflict between the state and the PTM⁴⁸. The *Wazir Loya Jirga* is the significant development in this regard.

3.5 Local Bodies

Local bodies are very significant for the peace, prosperity, development and justice of any area. After the merger of FATA\with KP, the government has promised to introduce local bodies at earlier bases. Along with Jirga, local bodies can resolve conflict. As the political activities would be started, devolution of funds would be done, the grassroots leadership would emerge who would be able to understand the problem which would make the resolution more conducive.

3.6 Conclusion

The social conflict can occur over improper resources distribution, incompatible objectives, values, interests, needs and religious or ethnic issues. The conflict in erstwhile FATA can be seen in the context of the rise of militancy after horrific 9/11 attacks,

⁴⁸ Interview with Dr. Gul Alam Wazir (chief of Wazir grand Jirga), 15 June, 2022.

values, interests (both material and non-material), and needs which includes peace, life with dignity, education, and development. The rise of Talibanization has disturbed the social fabric of otherwise strong hierarchical society. The traditional system crumbled which pay the way for militants to control the system. The state intervened militarily by launching operations like Rah-i-Nijat and Zarb-i-Azb. Though infrastructure of Taliban has destroyed but the ‘collateral damage’ was so high which generated the feeling of resentment and alienation against the state institution primarily the military. The rise of new social movement famously known as PTM has openly challenged the state institutions, demanding an end to extra-judicial killing, enforced disappearances, truth and reconciliation commission for the atrocities committed in the war and removal of landmines and strongly opposed the profiling of Pashtuns. The state is response is ambivalent towards PTM. However, still there are opportunities which can resolve the conflict at grassroots level. The macro local conflict resolution includes allocation of promised funds, developmental projects, mainstreaming militants, and education and health facilities. Micro level conflict resolution includes the role of traditional Jirga, and introducing local bodies. The people of erstwhile FATA suffered a lot and they must be uplifted and integrated with the rest of the country. Their voices for justice and life with dignity should be paid heed to instead of declaring them as traitors or agents of foreign agencies. Political parties must come in these troubling times and should fill the gap created by destruction; chaos and uncertainty of the Taliban era. The complete integration of tribes will ensure enduring peace and tranquility in the region.

CHAPTER 4

THE IMPACTS OF FATA MERGER ON THE EFFECTIVENESS OF JIRGA SYTEM

FATA merger with Khyber Pakhtunkhwa under 25th amendment to the 1973 constitution of Pakistan was carried out in irrational manner. The plan to merge FATA with Khyber Pakhtunkhwa was developed without taking ground realities into consideration. Though it got recognition at national level but backlash and resistance to the aforementioned amendment came out from many regions of the tribal areas. The researcher also found that multiple people in the tribal areas are of the view that they lost their royalty rights and preferential quotas due to merger of Ex-FATA into Khyber Pakhtunkhwa. Many scholars and experts also consider the merger as a political stunt of the-then PMLN government and regard it as a plan designed and executed in haste. Like its impacts on royalty rights and preferential quotas system, this amendment has also affected the Jirga system in multiple ways. An indigenous response of local people regarding the imprints on FATA merger on Jirga system is hereby presented as follows:

4. The Case of Autonomy and Authority of Jirga

Although the merger has brought the region under the jurisdiction of the National Judicial system, it has also limited the domain of the traditional judicial institution-the Jirga System. Prior to the merger, the Jirga system used to be the sole authoritative judicial body. Historically, Jirga has resolved not only criminal offences but it enjoyed a wide-ranging autonomy in resolving cases related to land disputes, distribution of natural resources like forests, water canals and mountainous minerals. Water distribution

between Baka khel and Janikhel has been settled historically through the decisions of Jirga. Land distribution between Ahmadzai and Utmanzai tribes has also been settled historically through the decisions of traditional Jirga. Similarly, the flow of water from River Tochi and Kurram was also managed through the decisions of traditional Jirga. In recent years, many local Jirga were held in the tribal areas for addressing the issue of militancy. It is worth considering that Wazir tribes residing in South Waziristan held several Jirgas in 2007 when the Islamic Movement of Uzbekistan (IMU) created severe security concern for the peace of the region. In those set of Jirgas, these tribes collectively decided to deal the militants with iron hands. These examples clearly depict that the traditional Jirga enjoyed greater leverage in deciding issues of pertinence and concern.

In the post-merger scenario, the Jirga system lost its autonomy and authority. The district administration has replaced the traditional set up and the Jirga system has lost its recognition and power. Malik Marjan, a tribal elder from South Waziristan stated that "with transition under the recent amendment, the Jirga system is totally a defunct body. The authority of Jirga to settle issues of political, economic and social nature has been curtailed."⁴⁹ Gul Baz Khan, a tribal chief also endorsed the above view that Jirga has greatly lost its significance due to the installation of new structures under the 25th amendment."⁵⁰ Dr. Mohib, a prominent scholar from North Waziristan stated that in the contemporary context the district administration doesn't pay as attention to the Jirga system as it paid in past. Major cases of criminal and civil nature are now not directed

⁴⁹ Malik Marjan (a tribal elder from South Waziristan), interviewed by the author, D.I. Khan, June 21, 2022.

⁵⁰ Gul Baz Khan (A tribal chief from Utmanzai tribe Baka khel), interviewed by the author, Tehsil Baka Khel Bannu, June 22, 2022.

towards Jirga to settle it while taking tribal codes into consideration. He cited the example of recent disputes between *Zerakai* and *Musakhel* tribes as a most recent land dispute which is still hanging due to its petition in local courts rather than Jirga.⁵¹

Different respondents were of the view that the 25th amendment curtailed the powers of Jirga system and in turn gave birth to the rise of past conflict. Many respondents were claiming that issues regarding sharing of resources like water, forest, and lands were previously resolved by the Jirga system among different tribes in effective manner. However, the Jirga system is not recognized to be a valid legal institution in the current scenario due to which all those conflicts which were once resolved by this institution has resurfaced again. Mr. Idress Khan, a lecturer from the tribal region of Bajaur was of the view that “*kakazai* and *salarzai* tribes of Bajaur had a prolonged confrontations on forest area and the Jirga system continuously resolved conflicts among these tribes in past but with the introduction of 25th amendment that old disputes has been resurfaced again.”

⁵²Likewise, the land in the peripheral *Kashu* area of Frontier Regions of Bannu was divided by the traditional Jirga among various tribes of *Ahmedizai* Wazir like *Hathikhel*, *Khandadkhankhel*, *Patoolkhel*, and *Serkaikhel* but this division is no more accepted by the people due to the fact that the Jirga system lost its legality as a result of the mentioned amendment. The water conflict between Kakki, Mandan and Mirakhel area of Bannu was also resolved by a Jirga system in past through the periodical sharing of water but it is the opposing factions are today demanding division of water in new ways. However, with the transitions under the mentioned amendment the prolonged issues of conflict has yet

⁵¹ Dr. Mohib (chairman Pushto department Bacha Khan University, Charsadda), interviewed by the author, Bannu, July 3, 2022.

⁵² Idrees Khan (Lecturer from Bajaur District), interviewed by the author, Peshawar, July 3, 2023.

resurfaced again and with no legal authority the Jirga system is now not a position to deal these issues effectively.

The autonomy of the institution of Jirga is a complex issue and there also exists an alternative view on this theme. Shahid Jamil, a student from tribal region of Tank was of the opinion that "Jirga is primarily divided into two categories i.e. *Qami* Jirga (the national Jirga) and political Jirga. The fabric of the political Jirga was discarded after the region of Ex-FATA was merged into KPK while *Qami* Jirga is still actively striving for the resolution of issues of grave importance without being affected by the process of merger."⁵³ Mujahid Khan, a Primary School teacher from North Waziristan endorsed the above view and stated that "the political Jirga in past was an influential body whose decision were bounded on parties in conflict but in the current scenario the political Jirga has been abolished and *Qaumi* Jirga is playing effective role in addressing the issues of utmost importance."⁵⁴ Faheem Zaman, a peasant from the newly Erstwhile FR Bannu region was of the view that "25th amendment only affected the political Jirga rather than uprooting the whole fabric of Jirga from the Ex-FATA. He cited the example of his own self whereby the *Qaumi* Jirga resolved the issue of *Badal* (blood revenge) of his brother Aleem Zaman. He also referred to the example of Bannu *Aman* Jirga (Peace Jirga) whereby people from all across the Pashtun belt were united to address the varying issues of Northern and Southern belt of Pashtun residents of KPK through a mutual consensus."

⁵³ Shahid Jamil (A student from Tank District), interviewed by the author, D.I. Khan, July 5, 2023.

⁵⁴ Mujahid Khan (A teacher from North Waziristan District), interviewed by the author, Bannu, July 8, 2023.

⁵⁵The example of revenge highlight that *Qaumi* Jirga has taken over the role which political Jirga was playing in the past regarding preservation of individual liberties. These respondents were of the view that the merger system only affected that kind of Jirga which had legal and political status in past but it has no impacts on that category of Jirga which has socio-cultural legitimacy and recognition. This view is unique in a sense that it provide an alternative insight whereby it distinguish two different kinds of Jirga and segregate the impacts of the new amendment on these forms of Jirga system.

4.1 Dispensation of Justice

The Jirga system was widely popular for speedy justice in tribal region. Cases were decided on urgent basis without indulging in formalities like drafting and filing it as like in the modern judicial set up. The mechanism of traditional Jirga system was too easy and convenient. A simple process was followed in cases of both major and minor scale. Before deciding a case the Jirga would direct the parties to submit '*Waak*' (a verbal statement given in front of witnesses as an assurance to comply with Jirga's decision). In cases of ceasefire, the Jirga would direct the parties to submit *Baramta* (Money or any precious commodity which was to be confiscated in case any party violate the ceasefire agreement). After these assurances, the Jirga would allow both parties to present their plea and would decide the case within days.

The merger was carried out with the pretext to abolish FCR and assure the dispensation of justice to the residents of tribal areas. However, the absence infrastructure of any

⁵⁵ Faheem Zaman (A peasant from FR Bannu), interviewed by the author, Tehsil Domel District Bannu, July 9, 2023.

criminal or civil court at any region of Ex-FATA clearly depict that the government not only failed to install new structures in the region but also deprived it of the already operational historical institution. Though the formal judicial setup has been extended to the region but no physical structures are installed so far. It also signify that the justice which was available at door step is now far distant away from the citizens of that region. Malik Riaz, a tribal Chief from North Waziristan region was of the view that "the Jirga system was mainly known for its timely and speedy justice system. But after the merger, the Jirga system gradually lost its influence heavily. For seeking justice, people are now forced to rely on the new judicial set up. If we analyze both the judicial system comparatively, the new judicial system lagged behind in terms of the swift dispensation of justice."⁵⁶ Previously Jirga system was very strong because it was accompanied by social, and cultural norms of tribal areas. Now, the current machinery is, however, completely new and foreign to tribal and for some people, it is not even in accordance with tribal values. Umar Wazir, a Voice of America based reporter also endorsed the view that the new system created many complexities for the people because the majority of the people are illiterate and had no knowledge of the newly installed district machinery."⁵⁷ The new system is still in the interim phase and the process of creating an alternative mechanism is very slow. Moreover, the government is implementing a system that is unfamiliar to the locals. Hence, it has been a major source of distress in the resolution of key issues and future developments. Many respondents considered the

⁵⁶ Malik Riaz (chief of Dawar tribe in North Waziristan), interviewed by the author, Bannu, July 4, 2022.

⁵⁷ Umar Wazir (Voice of America based reporter from Jani Khel), interviewed by the author, Bannu, August 17, 2022.

newly introduced system as complicated in its nature, and time-consuming. For them, the Jirga system was a simple, speedy process whereby it did not take years to reach a conclusion.

Aimal Khan, a student from North Waziristan is of the view that “the merger has greatly impacted the dispensation of justice mechanism which used to be ensured through Jirga system. He said that prior to the merger of FATA the people would get their conflicts resolved in days or weeks through Jirga. But, in the new judicial setup the same cases would take months and years to be resolved. In this way, the merger has greatly impacted the mechanism of speedy justice dispensation.”⁵⁸ Another respondent named Zia Ullah from Mohmand Tribe expressed his views that “though the merger has impacted the element of speedy trial with the abolition of *Sarkari* Jirga, but it is still available in *Qwami* Jirga where people brought their social issue and get resolved over there.”

⁵⁹Analyzing the views of the above two respondents it can be said that the *Qwami* Jirga still provides speedy justice but that is limited as it has no legal authority at state level. On the other hand, with the abolition of *Sarkari* Jirga the speedy dispensation of justice is no more available rather people will have to go to formal judicial courts where it takes years to resolve a conflict. But the structures of formal courts have not been installed so far in the region of erstwhile FATA which makes the problem more intricate. There are people who have stuck in the court cases for years. For example, Mati Ullah Jan a resident of FR Lakki shared his views over the comparison of Jirga system and the formal judicial setup. He said that “my first cousin has been murdered in 2019 by our villager.

⁵⁸ Aimal Khan (A student from North Waziristan), interviewed by the author, Tehsil Baka Khel District Bannu, June 18, 2023.

⁵⁹ Zia Ullah Khan (A student from Mohmand Tribe), interviewed by the author, Peshawar, June 21, 2023.

We took the case to the District Court Lakki which is still under trial. He added that the same case could be resolved through Jirga in few months, but in courts it is still in process despite the fact that four years have been lapsed.”⁶⁰ No doubt that the dispensation of speedy justice can only be attributed to the Jirga system as there are numerous evidences in place in this regard.

4.2 Losses Related to the Cultural Essence of Jirga System

Being an in-built and inherent structure of the tribal society the Jirga system operated over *Pashtunwali* codes (customs followed in Pashtun society at large). For Instance, the early elders prefer to sit in a circular pattern so to share equal attention towards each speaker present in the assembly. Likewise they would dressed in local tribal dress with a turban over their head which symbolically represented the dignity of his tribe. The medium of conversation was a local language so that the tenants of the dispute is easy for everyone to grasp and understand. Similarly, retribution and forgiveness would have separate rules follow. In case any party would seek forgiveness, it was customary that elders of that party would either remove their Turban of their heads and would keep it in the lap of the elder of the other tribe. Symbolically, this process was to show that they are greatly ashamed of their crime and the act of the offender has distorted their dignity and integrity. Another way was that any party seeking forgiveness would visit the Hujra of the affected person and would proclaim publicly that they seek forgiveness. All these codes of indigenous origin were simple and easily understandable. Even a tribal child would have greater clarity about these codes and customs.

⁶⁰ Mati Ullah Jan (A resident of FR Lakki), interviewed by the author, Lakki city, June 24, 2023

With the merger of Ex-FATA into Khyber Pakhtunkhwa, many people are of the view that the Jirga system lost its cultural essence and lineage. Gohar Wazir, a Khyber News based correspondent criticized the loss of cultural essence of Jirga as a result of transition under the 25th amendment. Malak Lalai Wazir, a Ahmadzai based tribal chief stated that "over the ages the Jirga would follow a same dressing codes, established set of norms and operated entirely over verbal assurances among different stakeholder."⁶¹ Presently, a common layman is in a grave state of confusion as under new set up he has to approach officials with entirely dressed in entirely different way and speaking a totally different language and tune." In interview and casual discussion with common people of different segments of tribal society, the researcher revealed that people consider the new setup as unhealthy for the future of tribal region as the new structures pay little heed to indigenous customs and codes.

Many respondents discarded the view that the traditional Jirga system had more social recognition due to the fact that it was a cultural institution and the merger resulted in installation of such system which doesn't pay regard to the cultural fabric of Ex-FATA region. The alternative view was that the merger as a result of 25th amendment has no impacts on the cultural essence of the EX-FATA region. Different respondents claimed that the merger of FATA into KP has nothing to do with the cultural essence of the Jirga system. Abdullah Akbar, a student from Valley *Tirah* of Ex-Khyber Agency was of the view that "the merger has no implications on the cultural fabric of the tribal society as there was same value system exercised in both EX-FATA and regions of KPK even

⁶¹ Malak Lalai Wazir (A tribal chief of Ahmadzai tribe), interviewed by the author, Bannu, July 11, 2022.

before the 25th amendment."⁶² Kifayat Ullah, a resident of FR Lakki Marwat was of the opinion that the *Qaumi* Jirga (Jirga for addressing issues of utmost national importance) even today follow the same codes and procedures which were followed by the traditional *Sarkari* Jirga in past such as "*Qaumi* Jirga of today gathers in a circular pattern as like the traditional Jirga of the past did and follow same cultural terminologies as were used in the past."⁶³ The alternative view reject the opinion that the new structures has curtailed the cultural essence of Jirga system and will hamper the cultural outlook of the region in future.

4.3 Grievances Redressal

FATA merger was done under a pretext that it would relieve the distress of the tribal people by modernizing the machinery of governance. The ulterior motive was that the system of governance will be more indigenous and would involve ground realities into consideration. More specifically, the narrative behind merger was that justice system would get more refined, electoral processes would become much effective, representation of the region in legislation will enhance, resources allocation will extend to the alienated segments of the society and the issue of security will be addressed in orderly way. Unfortunately, the merger plan backfired and failed badly in all the above targets due to its poor execution.

Before the aforementioned amendment, Jirga system was not only a setup resolving dispute but was a sort of healthy organization which worked in effective ways to ensure

⁶² Abdullah Akbar (A resident of Tirah Valley in Khyber District), interviewed by the author, Peshawar, July 12, 2023.

⁶³ Kifayat Ullah (A resident of ex-FR Lakki Marwat), interviewed by the author, Lakki city, June 18, 2023.

the availability of speedy justice at door step, address issues and grievances related to unfair management of resources and generate indigenous response by mobilizing people in case of any catastrophic situation. Latif Afridi, a prominent lawyer stated that "Jirga in tribal areas not only worked as a dispute resolving body but it operated like a governance machinery. The amendment passed in a haste to change the fate of the tribal region in a midnight was deemed to have drastic consequence. PMLN government move to replace traditional structures with modern one without extending the umbrella of governance and installing all departments in the region has inflicted huge loss upon the people of FATA."⁶⁴ Before the inculcation of Frontier Crime Regulations Jirga would act as body solely for addressing different issues of the community and after the enactment of FCR the Political Agent had specified monthly stipend for elders to resolve community problems. In both cases Jirga acted as an authoritative body with some powers in its hand. In this scenario, the authoritative nature of Jirga has been curtailed badly. When interviewed professionals of different working in different sector endorsed the above viewpoint.

Noor Ullah Mehsud a resident of South Waziristan shared his thoughts over the impact of merger on Jirga system. He said that "all the issues originated in the area whether at private level or *Qwami* (village) level used to be addressed through Jirga. The decisions used to be taken in short span of time with careful deliberations. Both the conflicting parties had to abide by its final decision. But now in the absence of Jirga, people face great difficulties to address their issues as they are not familiar with the new judicial

⁶⁴ Latif Afridi (A lawyer in Peshawar belonging to Zakka khel Afridi Tribe), interviewed by the author, Peshawar High court, August 2, 2022.

setup.”⁶⁵ With the abolition of *Sarkari* Jirga people are now placed in a vacuum like situation where they do not have alternative platform to address their grievances as no structures of judicial setup are installed in the region so far. A resident of Bajaur agency named Najeeb Ullah said while interviewing him that “there is alternative to the *Sarkari* Jirga in the form of *Qwami* Jirga where people can address their grievances”. However, with the absence of any legal authority, it lacks the will to make people abide by its decisions.”⁶⁶ Thus, anyone not satisfied with the decision can override it. For example, two tribes in FR Bannu named *Narmi khel and Takhti khel* have dispute over water which is used for irrigation purpose. To address the issue, the *Qwami* Jirga had multiple sittings and finally arrived at the decision. Through its decision, the Jirga had divided the water between the two tribes through canals and channels. At start, the tribes were satisfied with the decision, but later few groups raised their voices against it. The *Qwami* Jirga has no binding authority to compel the tribes to abide by its decision. Now, the dispute has reinvigorated and no efforts are made yet to address it. Hence, it can be concluded that the *Qwami* Jirga cannot fill the vacuum created by the abolition of *Sarkari* Jirga.

4.4 Individual Rights

Traditional Jirga system was widely considered to be an alternate dispute resolution mechanism but a major critique over its functioning was that it was considered to be a setup which doesn't pay regard to individual rights. At national scale, many academician

⁶⁵ Noor Ullah Mehsud (A resident of District South Waziristan), interviewed by the author, Tank, July 13, 2023.

⁶⁶ Najeeb Ullah (A resident of Bajaur District), interviewed by the author, Peshawar, June 21, 2023.

and scholars have written a great deal over the infringement of personal liberties and fundamental rights in Jirga. Even the Supreme Court of Pakistan has declared both Jirga and Panchayat as an organization which pay little heed to gender equality, women rights and other individual liberties. When asked about the disregard of Jirga system towards individual rights, a member of Provincial Assembly from tribal areas "Malak Shah Muhammad Khan" said that " Jirga is usually connected with misogynistic character and trait but this critique is somewhat unsound as Jirga has not decided many cases in history regarding land settlement in which land ownership was given to female householders due to their acclaimed right in inheritance. He stated that Jirgas at Baka khel region acknowledged the right of Zareena Bibi in a land dispute and even helped Resham Zada in getting back her land from feudal lords of Bajaur area."⁶⁷ Regarding the infringement of personal rights in Jirga, Noor Behram, a journalist from North Waziristan regarded that " critique that Jirga system is highly dictatorial and avoid basic human rights like right to vote, right to work, freedom of speech and right to property is highly unfair and rest on illogical ground." Masto Khan, a Tehsil Chairman stated that the base of Jirga system lies in free speech and it work through consultation and consensus. Jirga allows each member to speak freely and share his thoughts regarding the issue under consideration. Regarding rights to work, he was of the view that Jirga members do not include the elite of the community but each member no matter whatever profession he has can participate in it, hence, Jirga pay huge regard to right of profession and work.

⁶⁷ Malik Shah Muhammad Khan (Minister for Transport in KP, belonging to Utmanzai tribe), interviewed by the author, Peshawar, August 8, 2022.

The merger of FATA into Khyber Pakhtunkhwa has changed structures in entirely new ways. Most of the respondents were of the view that their personal rights were highly protected when the Jirga system was functioning effectively but now in absence of any court or tribunal in the tribal areas after the merger they feel threatened about the preservation of their rights. Malak Aslam Noor, a tribal chief was of the opinion that "the merger has created havoc in a sense that the already practicing rights and obligation under the patronage of Jirga system has now been vanished away. People are in a state of grave confusion and flux. Without the installation of proper governance structures, it will not be far away that the society will lead towards anarchic state"⁶⁸. Noor Wali Mehsud, a teacher in tribal areas cited the examples of the case of *Khasadars* (a term referring to tribal scouts which were historically appointed by British government for the purpose of policing on a fixed monthly salary and then the state of Pakistan retained its status after partition). With the merger of Ex-FATA into KP, units of *Khasadars* were abolished and the government announced that police will instead maintain law and order in tribal areas instead of *Khasadar*.⁶⁹ *Khasadars* have been protesting against the move since years and they demanded that government make proper service structure for them. Abdul Majeed Dawar, a North Waziristan based tribal chief stated "merger has made more

⁶⁸ Malik Aslam Noor (A tribal chief of Sultan zai in Orakzai), interviewed by the author, Kohat, August 3, 2022.

⁶⁹ Noorwali Mehsud (chief of Malak deen tribe Mehsud in South Waziristan), interviewed by the author, D.I. Khan, July 28, 2022.

complications and in near future the protests of Khasadars will create security complications for the state."⁷⁰

Abdul Wali Khan, a student from Jandola (Tank District) was of the view that “due to the absence of proper court system in the area, people of the region are facing severe crisis regarding the assurance of their personal liberties and individual rights. He cited the case study of *Swara* (a social evil) in his area in which a girl named Kashmala was used as a tool of agreement between the rival parties to settle a dispute.”⁷¹ Jamal Noor, another resident of Mohmand District highlighted the case of the cold blooded murder of his brother Shah Hussain which was killed by the people of the rival tribes. He stated that “due to the absence of proper courts in the mainstream FATA as a result of merger and owing to his financial constrains to file a case in the high court division of Bannu district, the chances of getting justice is distant away.”⁷² These case studies clearly reflect that Jirga system was discarded with the claim that it does not pay consideration to the individual rights of people, and merger was carried out on the pretext to secure the liberties of individual but the government grossly failed to develop a proper mechanism for achieving the desired goal.

4.5 Relevance of Jirga System in Question

With the merger of FATA into Khyber Pakhtunkhwa, the relevance of the Jirga system is in question. Certain people are of the view that Jirga is obsolete while other state that

⁷⁰ Abdul Majeed Dawar (A tribal chief of Dawar tribe in North Waziristan), interviewed by the author, Bannu, June 16, 2022.

⁷¹ Abdul Wali Khan (A resident of Jhandola, District Tank), interviewed by the author, Tank, July 7, 2023.

⁷² Jamal Noor (A resident of Mohmand District), interviewed by the author, District Mohmand, July 13, 2023.

Jirga is still relevant due to many reasons. People like Dr. Saeed Khan reject the claim that Jirga lost its charm and relevance due to the merger of FATA into KP. He stated that "before the said political development the Jirga was under direct control of Administration. Due to the "Collective Responsibility" section of FCR, each stakeholder was under pressure. But, after the abolition of FCR, the Jirga has been affected in a sense that now it is not under the direct control of Deputy Commissioner. In a way the Jirga is now more autonomous than being in past."⁷³ Fakhr E Azam, the Member of KP provincial assembly from tribal areas also stated that "Jirga is still relevant because it has long history. In addition, it will take time for the people of FATA to adjust with the judicial system like rest of the country."⁷⁴ The interviewees gave an example of dispute resolved between two tribes i.e. *KHONIKHEL* and *SPERKI*. He also cited the examples of recently held Jirgas for peace in Jani Khel area of tribal belt, Jirga held for claiming royalty rights in a newly discovered gas fields in Baka khel area and the Bannu Qami Jirga (National Jirga) for addressing issues like militancy, representation, and education in both southern and northern belts of Pakhtunkhwa region.

Another dimension explored in the interview was that some people regarded that rather than the merger of Ex-FATA into Khyber Pakhtunkhwa through 25th amendment, the Jirga system has become dysfunctional due to changes like education, urbanization and digitalization. When interviewed, Alam Jan, a social worker by profession stated that "education is more potential tool than legal reforms like amending a constitution. The

⁷³ Dr. Saeed Khan (A tribal chief of Gembati Ahmadzai), interviewed by the author, Bannu, September 3, 2022.

⁷⁴ Fakhr e Azam (Member of provincial assembly KP, belonging to Musa Khel), interviewed by the author, Bannu, August 23, 2022.

people of tribal areas got more awareness when they relocated towards urban areas and got connected with social media and internet. Media, education and digitalization has induced more sense and socialization in tribal people regarding their rights and obligation. After access to these service, the tribal people demanded that they should not be treated as a second class citizens of the country."⁷⁵ Rajab Ali Shah, a tribal elder also endorsed the view that socialization due to education and mass media forced many tribal to regard Jirga as obsolete institution and strive for a justice system designed more on modern lines. He opined that the youth of tribal region follow modern patterns and the flux of modernization has made them to shun Jirga altogether."⁷⁶

On other hand, majority of the respondents were of view that the Jirga system was more effective body which strived for the betterment of the region since ages but the merger of Ex-FATA into Khyber Pakhtunkhwa has made it obsolete and irrelevant. They were of the view that government planned to introduce a new set up but such planning was only a paper work. They opined that Jirga was historically more autonomous, in-built in the traditions of the region, a tool of addressing grievances and an instrument to ensure the availability of speedy justice at door step. They were of view that the merger has pushed the tribal region towards more backwardness as the already functional institution of Jirga was abolished but a huge lacuna has been created as no proper institutions and departments are yet being established in the tribal region. Malik Lalai Wazir states that "without proper installation of governance machinery, the plan to merge Ex-FATA into

⁷⁵ Alam Jan, A social worker belonging to Tarakzai tribe, Mohmand district), interviewed by the author, District Mohmand, Aug 22, 2022.

⁷⁶ Rajab Ali Shah (A tribal elder of Mehsud tribe), interviewed by the author, Tank, Aug 27, 2022.

KP has created more damage."⁷⁷ The researcher also consider that the Jirga system worked as an effective body and the 25th amendment should have carried forward the plan of merger while keeping ground realities into consideration. The installation of courts, tribunals in the region and other necessary department is highly needed to fill the gap created as a result of irrelevance of Jirga system after merger. Likewise, Jirga as alternate dispute resolution mechanism along with modern judiciary should be retained to ensure dispensation of justice in effective manner.

ANALYSIS

The 25th amendment in 1973 constitution of Pakistan which merged EX-FATA into Khyber Pakhtunkhwa province produced serious repercussions for the indigenous communities of the tribal origin. The inherent flaw in the approach adopted by the then PMLN government was that amendment was introduced before bringing the region at par with other regions of the country in terms of development and growth. The region of EX-FATA faced serious turmoil due to series of insurgencies, rising militancy and the black law FCR (Frontier Crime Regulation) which introduced punishment related clauses of collective responsibility and even curtailed the basic rights of people of the tribal region. In addition, the persistent media blackout, worst human rights abuses, insignificant budgetary allocation for development and lack of social welfare related infrastructure strengthened the backwardness of EX-FATA and lagged behind the area than the other regions of the country. In this regard, Jirga system was an institution which made justice available to the residents of the EX-FATA at door step. The Jirga system was operating on traditional lines and was resolving conflicts ranging from the daily life affairs to major

⁷⁷ Interview with Malak Lalai Wazir (A tribal chief of Ahmadzai tribe, Musa khel), July 11, 2022.

cases of land dispute and murder. Historically, the Jirga system resolved cases of paramount nature in a very logical ways such as the land measurement dispute between "*Ahmadzai* and *Utmanzai* clans of the *Wazir* tribe. It is worth-mentioning that the 25th amendment abolished the Jirga system entirely without introducing the discreet system of courts as is available in other parts of the country. Similarly, the already available policing system i.e. *Khasadar* was abolished as a result of the 25th amendment which left many people of the tribal region unemployed. The rational and logical approach which needed to have been adopted was that development of the area should have been ensured first before abolishing those institutions which had indigenous and cultural roots. On foremost basis, the government needed to have enhanced budgetary allocation of EX-FATA in the national kitty and improving the literacy rate of the region was direly needed before merging the region with KP. The supposed merger just over-burdened the infrastructural setup and departments of Khyber Pakhtunkhwa province of Pakistan. In more concise ways, addressing intensive poverty, promoting literacy, provision of job opportunities, and building the system of courts on urgent basis was required before changing the political status of EX-FATA. The proposed aims that the amendment will abolish FCR and the Jirga system without ensuring the development of the region on foremost basis only affected the citizens of EX-FATA in adverse manner.

Another important point which need due consideration is that the approach adopted by the then PMLN government for 25th amendment possesses many flaws. The supposed amendment aimed to upgrade the status of EX-FATA and ensure development in the region but the key question is that 'Was it the only available way which the government adopted for the sake of development? Should the government needed to have adopted an

alternative mechanism for ensuring development in the region? The case study of India shows that rather than abolishing the Panchayat system, it was modernized and made more compatible to the system of governance. Similarly, the *Xeer* System in Somalia, Kenya, and Djibouti is a famous conflict resolving traditional system which even resolved the water dispute between these countries. Rather than abolishing *Xeer* System, these countries made strengthened it further. Pakistan, however, adopted a contradictory approach by abolishing the traditional Jirga System rather than renovating it on more modern lines. The Rational Choice Theory also recommend Pakistan to have enhanced the compatibility and efficiency of Jirga system rather than abolishing it. Similarly, the idea of development as enshrined in the Millennium Development Goals (MGDs) and Sustainable Development Goals (SDGs) suggest that ensuring hundred percent primary literacy, facilitating higher education, improving the status of women, provision of job opportunities, facilitating trades and businesses and alleviating poverty act as ingredients of development rather than dissolving and abolishing a conflict resolving institution in a region. All these arguments clearly depict that the merger plan was pursued by the government without doing research and planning at first hand. It also reveal the fact that the proposed merger only aggravated the issues of tribal belt rather than resolving it effectively.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

The research concludes that the merger of FATA with Khyber Pakhtunkhwa has been done in great haste. At the time of merger, the government had no proper planning for the transformation and for dealing with the challenging impacts that the merger would bring. There was and still is a great resentment in the public for the merger. The reasons are many few of which are the abolishing of preferential quotas and declaration of state's control over the resources of the region. Above all, the greatest impact of the FATA-KP merger is on the judicial setup of the erstwhile FATA. There traditional Jirga system was the sole authoritative body of conflict resolution. People of ex-FATA greatly relied on Jirga system due to its positive attributes such as speedy trial system, easily accessible and dispensation of justice in local language and customs. However, the merger has deteriorated the structure and beauty of Jirga system in many regards. For instance, after the merger the draconian law known as FCR was replaced by alternate dispute resolution in the form of Interim Government Regulation (IGR). But, it was not different than FCR and was soon abolished by the Peshawar High court due to its unconstitutional nature. This created a judicial vacuum in the region.

With the abolishment of IGR, the government had no option but to declare the extension of national judiciary system to the erstwhile FATA. The focus from Jirga system was abruptly shifted to federal judicial system. This placed the people of the region in a confused state who were not used to the formal judicial system. Now, they have to travel a long way to lodge an FIR in case of conflicts. They have to follow the

lengthy and tedious process to get justice from the system. Consequently, the people avoid approaching the formal judicial courts for getting justice. Instead, they get their conflicts resolved through the traditional Jirga system. But, the government no more arrange the sitting of Jirga which makes its decisions not acceptable sometimes. In this regard, the effectiveness of the traditional Jirga system as a conflict resolution mechanism has greatly effected with merger of erstwhile FATA in to KP province.

The findings of the research show that there is still need of the Jirga system. As the alternate dispute resolution system did not survived due to its inherent flaws, the neglect of the Jirga has led the region into crisis situation in terms of justice dispensation. To avoid this, the Jirga system should be preferred to use as a conflict resolution mechanism to resolve the issues of the erstwhile FATA. The coexistence of both informal judicial system in the form of Jirga and the national judiciary system would be more effective owing to the ground realities of the region. Pakistan can take guidelines in this regard from various models of coexistence of formal and informal judicial system implemented in different countries. In this way, the effectiveness of Jirga system can be retained in future.

In a nutshell, the merger of erstwhile FATA with KP has greatly impacted the effectiveness of Jirga as an indigenous conflict resolution mechanism. However, the Jirga can survive if given a role in conflict resolution alongside the formal national judicial system. The following section of this chapter gives recommendations in the form of case studies of various countries that have given constitutional status to the informal justice systems.

5.2. Recommendations

The research recommends that the Jirga should be given a constitutional status so that it may operate alongside the national judicial system. The coexistence of both the formal and informal judicial setup would be effective owing to the ground realities and customs of the ex-FATA region. This section of the study highlights the ways how to endorse and implement mix judicial setup in the region by referring to case studies of mixed judicial systems in various countries.

5.2 Case Study of Ethiopia

Informal justice remains a practice of delivering justice to the general public in Ethiopia. Informal justice is a very broad term. Various terms like traditional justice, community justice, and customary justice are interchangeably used for informal justice. It comprises of a loose system of rules and procedures which differs from state-administered formal justice system. Various aspects make it distinct from other justice system. First, third party in a neutral status resolves various disputes. Second, this third party does not belong to formal justice system. Neutral third party derive its power and authority from community values and pressure, social harmony and similar mechanisms. Third, the third party does not have written documented rules to apply rather it uses customary, mostly oral substantive and procedural rules. As Ethiopia is a diverse nation with multi ethnic groups having diverse customary laws. Given this diversity in cultural norms and regulation there is no single customary law or procedure across the country. The inaccessibility of formal justice system to the far flung rural areas has made informal justice system more in practice. Moreover, the cultural preferences also play a role in

making people inclined towards informal justice system. Even in cities and towns informal justice system has been witnessed in practice.

Paradoxically this informal justice system is both general and specific in Ethiopia. On the one hand, it is widely used in almost all areas of the country specifically in the past when there was no formal state justice system. On the other hand, its limitation to specific localities and ethnic groups makes it more specific.

The most visible mechanism of informal justice system is in the form of forums of local elders who resolve disputes through reconciliation of the disputing parties are present in many regions and settings. Various religious elders and wise men are well known and respected members of the community. Different names are being used for leaders like *Shimagille* which means peace-maker, reconcile or mediator. Even respected women also acts as leaders. In different languages they are named differently.

No strict definition or criterion is set for the jurisdiction of the village elders. As per Constitution of the Federal Democratic Republic of Ethiopia, customary and religious institutions are authorized to a play their mediatory role, provided that the parties concerned give their consent to it.

Art 34(5): This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws with the consent of the parties to the dispute.

Art 78(5): Pursuant to Sub-Article 5 of Article 34 the House of Peoples' Representatives and State Councils can establish or give official recognition to religious and customary courts. Religious and customary courts that had state recognition and

functioned prior to the adoption of the Constitution shall be organized on the basis of recognition accorded to them by this Constitution.

In practice, village elders play their role in resolution of various disputes like homicide, physical injury, insult, adultery, trespass, and divorce, partition of property, succession, theft and cattle riding. While resolving these issues they impose various sanctions like reparation of damage through compensation, reconciliation between the disputing parties and their families or clans, curses, banishment.

Emphasis on community values, repairing damaged social relationships, reaching consensus and restoration of community harmony and consensus are the most distinctive features of disputes resolution by elders of a village. As nature of the Rules and procedures is mostly oral, so the final results are non-binding as seen by state law. However, the literature on it reveals that the parties often comply voluntarily with the decisions of the village elders. Fears of the risk of ex-communication, ridicule, shame or curse for the party (or its family) who is not adhering to the ruling make it more effective even in the absence of formal authority and state-backed enforcement mechanism.

Elders of a village have been using diverse dispute resolution processes. "Litigation at its lowest stages was a voluntary and spontaneous form of arbitration. In civil and even minor criminal disputes parties would call a passer-by to decide the issue between them under a tree. People consider it a civic obligation to play mediatory role and are paid with small fee.

In Ethiopia there are other multiple informal institutions for disputes resolution. Its various examples are religious leaders, tribal and clan leaders, parish headmen or chiefs,

called *chika shum* (“appointed over the soul”). *Affersata*, a traditional criminal institution, is government-sponsored inquiry into crime. It summons all neighbors for digging out the identity of the perpetrator.

5.3 Case Study of India

5.4 Lok Adalat and Panchayat Systems

Twenty five years ago the system of mediation was used which generally known as Panchayat system. This mechanism was used and still being used by the Indian which mostly occurred before the advent of British colonialism period. The settler was known as *Pancha* (a wise person), he was conferred with high status and his decisions were irrevocable. Including criminal matter, all major types of procedures could be liable to solution. The process was very simple the *Pancha* was visited by the disputant member of a tribe, the member thereafter would present grievances and both would sort out the problem. If it was unsuccessful then after that the matters were taken to public forum and were submitted there. That public forum used to consist of all tribal members having voracious interest in the concerned matter. Thereby keeping the claims, objections and interests of the people later *Pancha* would with full concentration render the final decision. Consequently, if the matter was again insufficient to thought of people or not according to the perceptions of the tribe, it would be announced verily pertinent to the tribal law, moreover, both parties were restricted to this ultimate decisions. More importantly, there was no any documented decisions, all matters are liquefied with oral Panchayat proceedings. Regardless of constraints on such proceedings, it is still common, regularly practiced and accepted by Indians. This type of mediation was even

perpetuated in the era of Muslim rule in India. British modified the mechanism of proceeding and arbitration, amid colonization period. However, massive challenges had been faced by Britain for solving the problems through such transplantation. Because the community already had such mechanism of arbitration which was immensely accepted and taken over ahead. Therefore the British faced huge challenges in Dissemination of new courts proceedings. Those smaller courts were run by landlord which caused severe repercussions for poor and unsophisticated people, even minor appeals were left unresolved owing to taking much time in settlement of problems. Intimidatingly, the landlord did not solve the disputes instead they would acquire lands for their owners. This situation is quite similar to Kenyan context where same structure of law was adopted. The procedure and technicalities implemented by British caused further chaos among common people, it was evidently nullifying the Traditional Dispute Resolution Mechanisms in India that worked to some extent and people had more confidence and trust on this mechanism than the imposed one of British. Resultantly, this extreme situation brought Indians and British in confrontation against each other, which later led to direct clash between them. The only way forward that was demanded for pacifying the issue was the re-emergence of TDRMs.

5.5 The ‘Women’s Courts’ Of India

India has several courts that are explicitly made for women, to make it clearer, as mentioned above the existence of Authorities Act and Legal services – where women could present their grievances and concerns primarily related to marriage and family issues. The noticeable role of court is to maintain and keep the relationship alive between wife and husband or play the role of conciliator and mediator between the complainants

to take them to amicable relationships. The counselling courts are generally known as *Mahila Panchayat* or *Mahila Adalat*. Their works are quite similar to *Panchayat* and *Lok Adalat* (People's court). Nevertheless, they give more friendly spaces to women, their fundamental aim is to facilitate the poor, dissident, illiterate and inexperienced women so that they can easily and compatibly express grievances and problems. Moreover, their utmost achievements are pretty obvious just because of having mediators and counsellors that are purely comprised of women members, the essential thing is that they belong to same community and are thoroughly aware of the concerns of women. These women neither belong to nor being authorized by Non-Governmental organization. In a nutshell even they are not funded by any private organization.

5.6 Case Study of China

Confucianism advanced Confucian principles, which led the Chinese people similarly as their Kenyan colleagues and the role TDRMs played in their society for recognizing the essential parts. The founder Confucius (551-479 B.C.), is a school of thought from which Confucianism takes its name which holds that there is harmony between heaven and earth. Additionally, it asserts that earthly harmony takes the form of a hierarchy that sprinkle into the lowest level of society from the emperor. Because it is the source of ethical behavior and is expressed in it, the goal of government and all human relations is to preserve natural harmony. Therefore, it is very ostensible and clear from this that this philosophy backs up the perpetuated use of TDRMs as a dispute resolution method owing to an antagonist mechanism gives meagre consideration to communal relationships amongst disputants after a dispute. Proceeding brings about the struggle for

one to assert his rights over another, and its goal, as already hinted at, is to make sure that one's personal rights have been exercised over those of another.

According to a Chinese proverb, 'It is better to die of starvation than to become a thief; it is better to be vexed to death than to bring a lawsuit'. Additionally, the respect for such a path while pursuing justice is rightly engrossed. There is no consideration given to natural harmony in litigation. This makes sense because the principles of Confucianism are opposed by litigation counters. Ch'in dynasty of 221-206 B.C., having severe exception of the brief and harsh circumstances since the predominance of 'Legalist' school of thought, , it further led to the spreading of the aforementioned tenets when that philosophy turn into a steadfastly established state policy in China. Later on, joining "the *li* and the *fa*", the *fa*, the idea was created, generally known as the Legalist school of thought which resembles Western ideas of law more closely . The creation of the position of a facilitator in all governmental organizations was only caused by the transformation of Confucianism into substantive law.

For the Organization of People's Conciliation Committees after the establishment of the People's Republic of China in 1949, China formalized the informal mediation system in its 1954 Provisional General Rules. There were approximately 950,000 appeasement committees and 6 million peacekeepers, more mediators per 100 citizens lived in China in 1987 compared to the United States, The government's support for this TDRM was further reiterated in 1989 with the publication of a novel customary regulations that usually govern the arbitration committees of China. These regulations provided the mediation committees with more structure and intensified freedom from the

control of the political party China. Consequently, more contemporary, independent, and expert mediation system has developed in China.

5.7 Case Study of South Africa

In South Africa, TDRM also helps resolve disputes, just like in Kenya. Furthermore, the perception of TDRM as a suitable way to resolve disputes in South Africa is merely due to the *Ubuntu* culture. The Ubuntu concept is a worldview cultural that intensely pursue to attract and arrest the spirit of being human. In most of the cases, it is culture that drains the disputes in Africa. In many societies across Africa, Ubuntu culture exists in many forms and structure besides particularly in East, Central and South African languages. With this understanding in Africa is common and align with the principles of Ubuntu, it is said that "I exist for we exist, therefore I exist". The government of national unity has commenced a South Africa's Truth and Reconciliation Commission. It was particularly set up to help and deal with events during apartheid. After the late President Nelson Mandela came to power, the government of national unity was formed and it took place after the 1994 elections, and Mandela later formed the committee with former President F.W. de Klerk and other members of the National Party and the Inkatha Freedom Party, to enable South Africans to come to terms with their past based on moral acceptance and promote the cause of reconciliation.

Archbishop Desmond Tutu, as chairman of South Africa's Truth and Reconciliation Commission, uses these elements of Ubuntu to help lead the country away from the brutality of apartheid. Describing Ubuntu in his book *No Future without Forgiveness*, he pointed out that Ubuntu is difficult to translate into Western languages and speaks to the

essence of being human. In general, the word Ubuntu implies that a specific person is generous, hospitable, kind, caring and compassionate, he explained. In his opinion, this also means that the humanity of one is attracted to that of the other and is inseparable from it. He concluded that with Ubuntu a person is open, available to others, validating others and not feeling threatened by the abilities and well-being of others; for knowing that she belongs to a greater whole when others are being humiliated or belittled, she has a reasonable sense of self when other people are being tortured or oppressed or seen as inferior to them. Yes. 'Ubuntu mandates five stages in the peace process: admission of guilt; demonstration of remorse and remorse; asking and granting forgiveness; Reparations and reparations as a prelude to reconciliation.

TDRM was also adopted by black South Africans due to mistrust of the judiciary during the apartheid era. It was a time when, for decades, the authoritarian apartheid regime fostered a culture of violence and brutality based on hate and fear and espousing negative values of social and political exclusion and economic marginalization. This period of conflict resulted in violence and human rights abuses on all sides, from which no section of society could escape. Black South Africans do not have access to justice because the regime's agenda is to oppress them and primarily serve the needs of white South Africans. This drives them to turn to traditional dispute resolution methods as they are trustworthy and easily accessible.

Bibliography

- Agha, Ambreen. "Durand's Curse: A Line across the Pathan Heart." (2017): 264-268.
- Ahmad, Danish, and Anwaar Mohyuddin. "Role of Malik in Pakhtoon Tribal Areas." *Journal of Studies in Social Sciences* 5, no. 2 (2013). 317-331.
- Ajayi, Adeyinka Theresa, and Lateef Oluwafemi Buhari. "Methods of conflict resolution in African traditional society." *African research review* 8, no. 2 (2014): 138-157.
- Akins, Harrison. "FATA and the Frontier Crimes Regulation in Pakistan: The enduring legacy of British colonialism." *The Howard H. Baker Jr Center for Public Policy Brief* 5 (2017): 17.
- Alam, Jan. "Jirga system and its role in peacebuilding and development in Pakistan's terrorism-affected Pashtun "tribal" districts." *Journal of Peacebuilding & Development* 16, no. 3 (2021): 352-365.
- Alemie, Ajanaw, and Hone Mandefro. "Roles of indigenous conflict resolution mechanisms for maintaining social solidarity and strengthening communities in Afeba district, North West of Ethiopia." *Journal of Indigenous Social Development* 7, no. 2 (2018): 1-21.
- Ali, Ghulam, Muhammad Ilyas Ansari, and Malik Firdous. "FATA Merger to KP: Problems and Prospects for Federalism in Pakistan". *Global political Review* volume 1, 224-233: [https://doi.org/10.31703/gpr.2020\(V-I\).25](https://doi.org/10.31703/gpr.2020(V-I).25)
- Ali, Imtiaz. "Mainstreaming Pakistan's Federally Administered Tribal Areas (Reforms Initiative and Roadblocks)". *US Institute of Peace, Special Report* (2018): 1-18.
- Aneme, Girmachew Alemu. "Ethiopia: Legal and judicial plurality and the incorporation of traditional dispute resolution mechanisms within the state justice system." *Non-State Justice Institutions and the Law: Decision-Making at the Interface of Tradition, Religion and the State* (2015): 80-99.
- Anwar, Zahid, and Muhammad Quraish Khan. "The status of fata in the 1973 constitution of Pakistan and the 2016 report: An explanatory and analytical study." *FWU Journal of Social Sciences* 11, no. 4 (2017): 12-19.
- Avruch, Kevin. *Culture & conflict resolution*. US Institute of Peace Press, 1998.
- Bates, Crispin. "The Development of Panchayati Raj in India." *Crispin Bates und Subho Basu (Hg.): Rethinking Indian political institutions*. London: Anthem Press (*Anthem South Asian Studies*) (2005): 169-184.

- Bekele, Wasihun Bezabih, and Admasu Adraro AKAKO. "Ethiopia: Indigenous Conflict Resolution Mechanism of Shekacho People and Its Role in Promoting Peace and Good Governance." *Conflict Studies Quarterly* 38 (2022). 56-66.
- Burton, John W., and Dennis JD Sandole. "Generic theory: The basis of conflict resolution." *Negotiation journal* 2, no. 4 (1986): 333-344.
- Burton, John. *Conflict: Human needs theory*. Springer, 1990.
- Chakraborty, Namrata. "The Role of Nyaya Panchayat in Delivery of Rural Justice in India: A Critical Analysis." *VIPS Student Law Review* 3, no. 1 (2021): 83-93.
- Chaudhry, G. M. "Summary of 2011 amendments to the Frontier Crimes Regulation." *Fatareforms.org*. < <http://www.fatareforms.org/summary-of-2011-amendments-to-the-frontier-crimes-regulation> (2011).
- Chaudhry, Sharafat Ali, and Mehran Ali Khan Wazir. "Peacebuilding in federally administered tribal areas (FATA) of Pakistan: Conflict management at state level." *Tigah: A Journal of Peace and Development* 2 (2012): 124-148.
- Choudree, Rajesh BG. "Traditions of conflict resolution in South Africa." *African Journal on Conflict Resolution* 1, no. 1 (1999): 9-27.
- Chughtai, Muhammad Waqas. "The Impact of Rising Terrorism and Military Operations on Socio Economic Culture of Federally Administered Tribal Areas (FATA) of Pakistan." *A Journal of Peace and Development* 3, no. 1 (2013): 18-32.
- Dana, Daniel. *Conflict resolution*. McGraw-Hill Education, 2001.
- De Souza, Siddharth Peter. "India's Parallel Justice Systems: Engaging with Lok Adalat, Gram Nyayalayas, Nari Adalats and Khap Panchayats through Human Rights." *Human Rights in India*, 80-101. Routledge, 2019.
- Faqir, Khan, and Malik Amer Atta. "JIRGA: A CONFLICT RESOLUTION INSTITUTION IN PUKHTOON SOCIETY." *Gomal University Journal of Research* 29, no. 1 (2013): 87-95.
- Fayaz, Sadia, Sumaira Gul, Aasia Khatoon Khattak. "Constitutional Status of FATA: Pre and Post Merger comparison of legal and Administrative System". *Global Legal Studies Review* 6, no. 2(2021):1-6.
- Fisher, Ron. "Sources of conflict and methods of conflict resolution." *International Peace and Conflict Resolution, School of International Service, the American University* 1965 (2000): 1-6.
- Ge, Jun. "Mediation, Arbitration and Litigation: Dispute Resolution in the People's Republic of China." *UCLA Pac. Basin LJ* 15 (1996): 122.
- Ghebretেকে, Tsegai Berhane, and Macdonald Rammala. "Traditional African conflict resolution: the case of South Africa and Ethiopia." *Mizan Law Review* 12, no. 2 (2018): 325-347.

- Gohar, Ali. "World Justice Systems: The Jirga." *Asian Perspectives on Peacebuilding*: (1998): 49-56.
- Gul, Sumaira. "Role of Jirga and Dispute Resolution Councils in Khyber Pakhtunkhwa: A Comparative Analysis." *Dialogue (Pakistan)* 16, no. 4 (2021). 71-79.
- Himes, Joseph S. *Conflict and conflict management*. University of Georgia Press, 2008.
- Hussain, A. (2021) "The FATA-KP Merger: Implications for the Jirga System", *Journal of Conflict and Peace Studies*, 7(1), 35-41.
- International Crisis Group. *Pakistan: Countering Militancy in FATA*. International Crisis Group, 2009. "Asia Report No. 178.
- Javaid, Prof Dr Umbreen, and Muhammad Akram Ul Haq. "Political Challenges and Security Issues in FATA and its impact on Economic Development." *South Asian Studies* 31, no. 1 (2020): 367-380.
- Javaid, Umbreen. "Afghanistan and Pakistan Conflict, Extremism and Resistance to Modernity." *Journal of Political Studies* 19, no. 1 (2012): 157.
- Kariuki, Francis. "Conflict resolution by elders in Africa: Successes, challenges and opportunities." *Challenges and Opportunities* (2015): 21.
- Khan, Muhammad Ramiz. "Impacts of FATA Unification With Khyber Pakhtunkhwa: Prospects and Opportunities." *International journal of social Science archives* 2, no.2 (2019): 57-66.
- Khan, Muhammad Ramiz. "Impacts of FATA Unification with KP: Prospects and opportunities". *International Journal of Social Science Archives* 2, no.2 (2019): 5-66.
- Khan, Raid, and Sajjad Hussain. "Post-Frontier Crimes Regulation FATA: Reservations and Confusions of the Tribesmen and the Way Forward." *Pakistan Journal of Criminology* 12, no. 2 (2021). 134-146.
- Khan, Sarfraz. "Special status of tribal areas (FATA): an artificial imperial construct bleeding Asia." *Eurasia Border Review* 1, no. 1 (2010): 63-74.
- Khyber Pakhtunkhwa Continuation of Laws in Erstwhile Provincially Administered Tribal Areas Act, 2018.
- McLeod, Saul. "Maslow's hierarchy of needs." *Simply psychology* 1, no. 1 (2007): 1-18.
- McQuoid-Mason, David. "Could traditional dispute resolution mechanisms be the solution in post-colonial developing countries—particularly in Africa?" *Oñati Socio-Legal Series* 11, no. 2 (2021): 590-604.
- Mehmood, Amna, Shaukat Ullah, and Shughla Ashfaq. "The Evolution of Jirga System: A Conflict Resolution Mechanism in FATA". *Liberal Arts and Social Sciences Research Journal* 2, no. 1, (2018): 21-28.

- Mehmood, Tariq, and Mobeen Jafar Mir. "Understanding the Post-merger Federally Administered Tribal Area (FATA) Challenges and its Impact on National Security." *NDU Journal* (2019): 186-198.
- Mekonnen, Daniel. "Major features of indigenous conflict resolution mechanisms in Ethiopia." *International Journal of Arts Humanities and Social Sciences (IJAHSS)* 1, no. 1 (2016): 1-6.
- Muigai, K. "Institutionalizing Traditional Dispute Resolution Mechanisms and other Community Justice Systems." *Nairobi: Published online.* 2017.
- Muigua, Kariuki. *Alternative dispute resolution and access to justice in Kenya.* Glenwood, 2015.
- Mushtaq, Abdul Qadir, Umer Yaqoob, and Muhammad Usman Javaid. "Role of jirga in Pakhtoon society an analysis with special reference to justice dispensation." *Journal of the Punjab University Historical Society* 29, no. 2 (2016): 11-19.
- Nasrullah, Muhammad and Manzoor Ahmad. "Implication of Reforms for Erstwhile FATA: A critical Analysis". *Global Legal Studies Review* 1, no.1 (2021): 69-76.
- Nichols, Robert. *The Frontier Crimes Regulation.* Oxford: Oxford University Press, 2013.
- Nisar, Muhammad. "Unification, Impact and Future Perspectives of Former FATA with KP on Domestic sanctuary. *Global Journal of Interdisciplinary Social Science* 9, no. 2 (2020): 1-7.
- Oiye, George. "Traditional Dispute Resolution Mechanisms and Their Significance in Resolving Disputes in Kenya." (2019).
- Olowu, Oladejo J. "Indigenous approaches to conflict resolution in Africa: a study of the Barolong people of the North-West Province, South Africa." *Journal of Law and Judicial System* 1, no. 1(2017): 10-16.
- Pant, Saurabh. "The Frontier Crimes Regulation in Colonial India: Local Critiques and Persistent Effects." *South Asia: Journal of South Asian Studies* 41, no. 4 (2018): 789-805.
- Parthak, Samarth. "Khap Panchayat: Informal Justice vs. Formal Justice." *LexForti Legal J* 1 (2019):113-121.
- Price, Catherine. "Alternative dispute resolution in Africa: is ADR the bridge between traditional and modern dispute resolution." *Pepp. Disp. Resol. LJ* 18 (2018): 393.
- Rome, S. I. "Judicial system, judiciary and justice in Swat: the Swat state era and post state scenario." *Journal of the Pakistan Historical Research Society* 49, no. 4, (2001): 89-100.
- Sajjad, Umar. "Political development in FATA." *Fatareforms. org.* <<http://www.fatareforms.org/political-development-fata-umar-sajjad> (2013).

- Sander, Frank EA. "Alternative methods of dispute resolution: an overview." *U. Fla. L. Rev* 37, no. 1 (1985)
- Shah, Ali Shan, and Shahnaz Tariq. "Implications of parallel justice system (Panchyat and Jirga) on society." *people* 2 (2013): 200-209.
- Shah, Syed Akhtar Ali, Saima Parveen, and Jehanzeb Khalil. "Governance Challenges in Mainstreaming of Federally Administered Tribal Areas into Khyber Pakhtunkhwa." *FWU Journal of Social Sciences* 13, no. 1 (2019): 131-145.
- Sulman, S., N. Muhammad, and M. Ghulam. "Socio-Political Impacts of FATA-KP Merger: A Case Study of District North Waziristan." *Orient Research Journal of Social Sciences* 6, no. 1 (2021): 61-71.
- Taj, Farhat. "New FATA Reforms – Good But Insufficient," *Daily Times* (20 August 2011).
- Turk, Mohsin Ali. "The Dilemma of Justice System in Formerly FATA of Pakistan: Challenges and Prospects." *Journal of Law and Social Policy* 3 (2021): 112-121.
- Ullah, Altaf. "Federally Administered Tribal Area (FATA) of Pakistan: Study of a Special Model of Governance." *Pakistan Journal of History and Culture* 34, no. 2 (2013): 65-94.
- Utter, Robert F. "Dispute resolution in China." *Washington Law Review* 62 (1987): 383.
- Wang, Zhiqiong June, and Jianfu Chen. "From alternative dispute resolution to pluralist dispute resolution: towards an integrated dispute-resolution mechanism in China." *International Journal of Law in Context* 16, no. 2 (2020): 165-180.
- Wardak, Ali. *Jirga—A traditional mechanism of conflict resolution in Afghanistan*. Pontypridd, UK: University of Glamorgan, Centre for Criminology, 2003.
- Wazir, Asmat Ullah Khan, and Muhammad Zaheer Khan. "Mainstreaming FATA through legal and political reforms." *Tigah: A Journal of Peace and Development* 6, no. 1 (2014): 25-48.
- Yousaf, Farooq. "Pakistan's colonial legacy: FCR and postcolonial governance in the Pashtun tribal frontier." *Interventions* 21, no. 2 (2019): 172-187.
- Yousuf, Farooq, and Syed FurrukhZad. "Pashtun Jirga and prospects of peace and conflict resolution in Pakistan's 'tribal 'frontier.'" *Third World Quarterly* 41, no. 7 (2020): 1200-1217.
- Yousuf, Farooq. "Jirga, Its Role and Evolution in Pakistan's Pashtun 'Tribal' Society." In *Clan and Tribal Perspectives on Social, Economic and Environmental Sustainability*. Emerald Publishing Limited, (2021): 105-117.
- Zaman, Lal, Qaisar Khan, and Arab Naz. "Critical discourse analysis: Jirga and its Survival in Pakistan." *Pakistan Journal of Criminology* 10, no. 3 (2018): 29-40.

Zeb, Khan, and Zahid Shahab Ahmed. "Structural violence and terrorism in the federally administered tribal areas of Pakistan." *Civil Wars* 21, no. 1 (2019): 1-24.

LIST OF INTERVIEWEES

1. Afridi, Latif. (A lawyer in Peshawar belonging to Zakka khel Afridi Tribe), interviewed by the author, Peshawar High court, August 2, 2022.
2. Akbar, Abdullah. (A resident of Tirah Valley in Khyber District), interviewed by the author, Peshawar, July 12, 2023.
3. Azam, Fakhre. (Member of provincial assembly KP, belonging to Musa Khel), interviewed by the author, Bannu, August 23, 2022.
4. Dawar, Abdul Majeed. (A tribal chief of Dawar tribe in North Waziristan), interviewed by the author, Bannu, June 16, 2022.
5. Dr. Mohib. (Chairman Pushto department Bacha Khan University, Charsadda), interviewed by the author, Bannu, July 3, 2022.
6. Jamil, Shahid. (A student from Tank District), interviewed by the author, D.I. Khan, July 5, 2023.
7. Jan, Alam. (A social worker belonging to Tarakzai tribe, Mohmand district), interviewed by the author, District Mohmand, Aug 22, 2022.
8. Jan, Mati Ullah. (A resident of FR Lakki), interviewed by the author, Lakki city, June 24, 2023.
9. Khan, Abdul Wali. (A resident of Jhandola, District Tank), interviewed by the author, Tank, July 7, 2023.
10. Khan, Aimal. (A student from North Waziristan), interviewed by the author, Tehsil Baka Khel District Bannu, June 18, 2023.
11. Khan, Dr. Saeed. (A tribal chief of Gembati Ahmadzai), interviewed by the author, Bannu, September 3, 2022.

12. Khan, Gul Baz. (A tribal chief from Utmanzai tribe Baka khel), interviewed by the author, Tehsil Baka Khel Bannu, June 22, 2022.
13. Khan, Idrees. (Lecturer from Bajaur District), interviewed by the author, Peshawar, July 3, 2023.
14. Khan, Malik Shah Muhammad. (Minister for Transport in KP, belonging to Utmanzai tribe), interviewed by the author, Peshawar, August 8, 2022.
15. Khan, Mujahid. (A teacher from North Waziristan District), interviewed by the author, Bannu, July 8, 2023.
16. Khan, Zia Ullah. (A student from Mohmand Tribe), interviewed by the author, District Mohmand, June 21, 2023.
17. Marjan, Malik. (A tribal elder from South Waziristan), interviewed by the author, D.I. Khan, June 21, 2022.
18. Mehsud, Noor Ullah. (A resident of District South Waziristan), interviewed by the author, Tank, July 13, 2023.
19. Mehsud, Noorwali. (Chief of Malak deen tribe Mehsud in South Waziristan), interviewed by the author, D.I. Khan, July 28, 2022.
20. Noor, Jamal. (A resident of Mohmand District), interviewed by the author, District Mohmand, July 13, 2023.
21. Noor, Malik Aslam. (A tribal chief of Sultan zai in Orakzai), interviewed by the author, Kohat, August 3, 2022.
22. Riaz, Malik. (Chief of Dawar tribe in North Waziristan), interviewed by the author, Bannu, July 4, 2022.
23. Shah, Rajab Ali. (A tribal elder of Mehsud tribe), interviewed by the author, Tank, Aug 27, 2022.
24. Ullah, Kifayat. (A resident of ex-FR Lakki Marwat), interviewed by the author, Lakki city, June 18, 2023.

25. Ullah, Najeeb. (A resident of Bajaur District), interviewed by the author, Peshawar, June 21, 2023.
26. Wazir, Malak Lalai. (A tribal chief of Ahmadzai tribe), interviewed by the author, Bannu, July 11, 2022.
27. Wazir, Umar. (Voice of America based reporter from Jani Khel), interviewed by the author, Bannu, August 17, 2022.
28. Zaman, Faheem. (A peasant from FR Bannu), interviewed by the author, Tehsil Domel District Bannu, July 9, 2023.

ANNEXTURE

Interview Questions

Question 1: How has the merger of Ex-FATA into Khyber Pakhtunkhwa affected the functional autonomy of Jirga system?

Question 2: Jirga system was known for speedy justice but the plan to merge Ex-FATA into KP was to mainstream the region. Has the merger ensured the formalization of Justice in tribal areas?

Question 3: Is the newly installed mechanism under the merger plan acceptable to the people in the region like Jirga system?

Question 4: Is the newly installed mechanism which replaced Jirga system successful enough to address the grievances and issues of greater public concern?

Question 5: Jirga system was widely regarded as a body paying little heed to individual rights. Is the newly installed mechanism after the merger of Ex-FATA into KP effectively protecting the rights and liberties of people of tribal origin?

Question 6: Is the Jirga system relevant even now after the merger of Ex-FATA into KP?

