

**PUBLIC OPINION ON FATA MERGER WITH KHYBER
PAKHTUNKHWA (KP) IN TRIBAL DISTRICT KHYBER: A
CASE STUDY OF TEHSIL JAMRUD**

By

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(M. Phil)**



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**National Institute of Pakistan Studies (NIPS)
Quaid-I-Azam University, Islamabad
Fall 2020, 2**

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This thesis is submitted to the National Institute of Pakistan Studies (NIPS) Quaid-I-Azam University Islamabad, in partial fulfillment of the requirements for the Degree of Master of Philosophy in Pakistan Studies.

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Fall 2020-2022**

**NATIONAL INSTITUTE OF PAKISTAN STUDIES
QUAID-I-AZAM UNIVERSITY
ISLAMABAD**


CERTIFICATE

This dissertation submitted by **MR. SHAMS UR REHMAN** entitled:


**“PUBLIC OPINION ON FATA MERGER WITH KHYBER
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CASE STUDY OF TEHSIL JAMRUD”**

is accepted in this present form by National Institute of Pakistan Studies,
Quaid-i-Azam University, Islamabad for the Degree of Master of Philosophy
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AUTHOR'S DECLARATION

I hereby declare that this dissertation titled as "Public Opinion on FATA Merger with Khyber Pakhtunkhwa (KP) in Tribal District Khyber: A Case Study of Tehsil Jamrud" is my own work and findings. However, the sources of information that have been used have been acknowledged. This work has not been previously submitted to any other university for award of any type of academic degree.

SHAMS UR REHMAN

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I solemnly declare that the research work presented in the thesis titled "Public Opinion on FATA Merger with Khyber Pakhtunkhwa (KP) in Tribal District Khyber: A Case Study of Tehsil Jamrud" is solely my research work with no significant contribution from any other person. Small contribution/help wherever taken has been duly acknowledged and that complete thesis has been written by me. I understand the zero tolerance policy of the HEC towards plagiarism. Therefore I as an Author of the above titled thesis declare that no portion of my thesis has been plagiarized and any material used as reference is properly referred/cited. I undertake that if I am found guilty of any formal plagiarism in the above titled thesis even after award of M.Phil. degree, the University reserves the rights to withdraw/revoke my M.Phil. degree and that HEC and the University has the right to publish my name on the HEC/University Website on which names of students are placed who submitted plagiarized thesis.

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DEDICATION

I dedicate this study to my Loving parents,
Siblings and Children.

Shams ur Rahman

CONTENTS

| | |
|---|-------------------------------------|
| AUTHOR'S DECLARATION | i |
| PLAGIARISM UNDERTAKING | ii |
| APPROVAL SHEET | Error! Bookmark not defined. |
| DEDICATION..... | iii |
| ACKNOWLEDGMENT | vii |
| LIST OF ACRONYMS AND ABBREVIATIONS | viii |
| ABSTRACT..... | ix |
| CHAPTER 1 | 1 |
| INTRODUCTION..... | 1 |
| 1.1 Background of the study | 1 |
| 1.2 Statement of the problem..... | 7 |
| 1.3 Research Questions | 8 |
| 1.4 Objectives of the study..... | 8 |
| 1.5 Significance of the study..... | 8 |
| 1.6 Justification of the Study | 9 |
| 1.7 Literature review | 9 |
| 1.8 Methodology | 13 |
| 1.9 Organization of the Study..... | 13 |
| CHAPTER 2..... | 14 |
| HISTORY OF GOVERNANCE IN FATA..... | 14 |
| 2.1 Introduction | 14 |
| 2.2 Pre-Colonial Governance in FATA..... | 14 |
| 2.3 FATA Governance Under Colonial Rule | 21 |
| 2.4 FCR: A Draconian Law | 30 |
| 2.5 Post Colonial Governance in FATA..... | 33 |

| | |
|---|----|
| CHAPTER 3 | 41 |
| HISTORY OF REFORMS IN FCR AND ERSTWHILE FATA..... | 41 |
| 3.1 Introduction | 41 |
| 3.2 North West Frontier Committee (1921)..... | 41 |
| 3.3 Justice Naimatullah Committee (1931) | 42 |
| 3.4 Sheikh Abdul Hamid Commission (1958) | 43 |
| 3.5 Law Reform Commission headed by Mr. Justice S.A. Rahman | 43 |
| 3.6 Justice Hamood Ur Rehman Commission..... | 44 |
| 3.7 Naseerullah Babar Reforms Committee 1976 | 44 |
| 3.8 1996 Adult Franchise Act..... | 45 |
| 3.9 Local Government Ordinance 2001 Expansion to FATA in 2002..... | 46 |
| 3.10 FCR REFORMS COMMITTEE 2005 | 47 |
| 3.11 FATA Sustainable Development Plan 2006-2015 | 48 |
| 3.12 Sahibzada Imtiaz Report 2006..... | 49 |
| 3.13 Cabinet Reforms Committee 2008 | 50 |
| 3.14 Frontier Crimes (Amendment) Regulation 2011 Reforms..... | 51 |
| 3.15 FATA Reforms Commission 2014 | 51 |
| 3.16 FATA Reforms Committee 2016 and Merger of FATA with KP | 55 |
| CHAPTER 4 | 58 |
| ANALYSIS OF PUBLIC OPINIONS | 58 |
| 4.1 Introduction | 58 |
| 4.2 Public response towards FATA merger with KP | 60 |
| 4.3 Public response towards new administrative setup (Police and Judicial system) | 66 |
| 4.3.1 Public views regarding new Police system | 67 |
| 4.3.2 Public opinion towards judicial system..... | 74 |
| 4.4 Public Opinion Regarding Separate Province or merger with Khyber Pakhtunkhwa..... | 82 |
| CHAPTER 5..... | 89 |

| | |
|---------------------------------------|-----|
| CONCLUSION | 89 |
| Major Findings | 90 |
| BIBLIOGRAPHY | 93 |
| ANNEXTURE-A INTERVIEW SCHEDULE | 101 |
| ANNEXTURE-B LIST OF INTERVIEWEE | 102 |

ACKNOWLEDGMENT

All praises to Almighty Allah, the Omnipotent, Omnipresent and Omniscient who bestowed upon me moral courage and sustained patience to undertake and conclude this study. To 'HIM' I bow my head in gratitude. I would also like to extend my special thanks to my supervisor, Dr. Muhammad Hanif Khalil Who has not only guided me throughout the entire process of research but has also been a great source of inspiration. His academic guidance helped me enormously during my research and put me on the track.

I must pay my gratitude to the faculty and staff of National Institute Of Pakistan Studies (NIPS), particularly, Irfan Ullah M.Phil /Ph.D coordinator and Library Staff. I am also grateful to Dr. Attaullah Jan Assistant professor Pakistan Study, Qurtaba University of Science and Information Technology Peshawar, who have always been cooperative and guided me to undertake my research work, he always there whenever, I lost my hope during research.

I would also like to extend special thanks to my friends Noorzada Afridi and Professor Fayyaz Ahmad Mollagori who helped me all along in completing this Research Work. Moreover, I cannot forget to acknowledge support and encouragement of my family. The encouragement from parents, prayers of my sisters, moral support of brothers let this work complete.

Last but not the least, I am also very much thankful to my wife my children.

LIST OF ACRONYMS AND ABBREVIATIONS

| | |
|-----------|--|
| PATA | Provincially Administered Tribal Areas |
| FATA | Federally Administered Tribal Areas |
| FCR | Frontier Crimes Regulations 1901 |
| PFCR | Punjab Frontier Crimes Regulations 1887 |
| Jl | Jamat -e-Islami—Religious political party of Pakistan |
| JUI | Jamiat Ulema-e-Islam—Religious political party of Pakistan |
| KP | Khyber Pakhtunkhwa |
| NFC Award | National Finance Commission Award |
| PPP | Pakistan People's Party |
| PTI | Pakistan Tehrik-e-Insaf |
| QWP | Qaumi Watan Party—Sub-national political party of KP |
| SAFRON | Ministry of States and Frontier Regions |
| U.S.S.R. | Union of Soviet Socialist Republics |
| CATA | Centrally administered tribal Areas |

ABSTRACT

Erstwhile FATA (now tribal districts of Khyber Pakhtunkhwa) was previously governed through Frontier Crimes Regulations (FCR) of 1901-referred as a black law- which was considered as the root cause of bad governance and human rights violation. In May 2018, following FATA reforms Committee's recommendations, the government integrated FATA into Khyber Pakhtunkhwa province for durable peace and stability of the country through 31st constitutional amendment. The main argument of this study is to ascertain the willingness and opinions of the residents of Jamrud Tribal district Khyber regarding FATA merger into Khyber Pakhtunkhwa, the new changes (police and judicial setup) implemented and their opinion regarding separate province for FATA. This research study is qualitative in nature. Both primary and secondary data were collected from the respondents and published sources. Non- probability sampling techniques was applied to collect first hand data. Thematic analysis method was used to analyze the primary data sources. The major findings revealed that majority of the respondents opposed FATA's integration into Khyber Pakhtunkhwa because they were not consulted. The study further reveals that majority of the respondents are not satisfied with the new changes i.e. police and judicial system and consider these changes against their customs and traditions. Furthermore, majority of the respondents demanded separate FATA province to preserve their cultural identity and traditional values and avoid exploitation at the hands of Khyber Pakhtunkhwa province in resources as well as employment opportunities.

The study suggest that the residents of tribal areas shall be consulted through referendum regarding FATA unification with Khyber Pakhtunkhwa or separate FATA province to settle this issue as per public wishes and demands. The study further recommend the modification of police and judicial system to be consistent with the egalitarian tribal customs and traditions.

CHAPTER 1

INTRODUCTION

1.1 Background of the Study

The former Federally Administered Tribal Areas (FATA) is a long, narrow territory in the northwest of Pakistan along the Pak-Afghan border that is encircled by Khyber Pakhtunkhwa province in the east, Balochistan on the south and Afghanistan on its west (Ahmed, 2014). It consisted of seven former political Agencies and the 6 FR, which are presently the newly merged tribal districts and subdivisions following the integration of FATA into Khyber Pakhtunkhwa. Bajaur, Khyber, Kurram, Mohmand, Orakzai, North and South Waziristan were the political agencies, whereas FR Bannu, FR D.I. Khan, FR Lakki, FR Tank, FR Kohat and FR Peshawar, were the Frontier Regions in the erstwhile FATA. Its area extended over 27,220 Sq.Km, which constituted 3.4 percent of total area of Pakistan (Ullah, 2016). It has a population of five million people, predominantly Pashtuns, according to the 2017 census conducted by the Pakistan Bureau of Statistics (Pakistan, 2017).

The Tribal region of North West Frontier possess rich history due to its strategically significant location. In the recent past, the two Afghan wars are not the only occasion that the tribal resident had faced the brunt of regional and international politics; they have faced numerous invasion at the hands of Greeks, Turks, Arabs, Sikhs and the British forces (Khan A., 2022). The British annexed Punjab in 1849 (wazir, 2019). After annexation of Punjab In 1849, the British supplanted Sikh rule expanding their control to the borderlands adjacent to the foothills of the Khyber Pass, which were inhabited by autonomous Pakhtuns communities (Devasher, 2022).

Tribal belt of the North West Frontier bordering Afghanistan was strategically very important to the British Empire because it was at a crossroads of major powers' interests and was a gateway to Central Asia, Afghanistan, and the Indian subcontinent (Spain, 1963). Following their annexation of the majority of the areas of subcontinent, the British encountered numerous uprisings and challenges from the tribes of the North West India residing along the Afghan border (Yousaf, 2019). Besides many other concerns, the colonial British wanted peace and order in the newly occupied trans-Indus areas as well as a safe Frontier (Shah S. W., 2012).

The Threefold Frontier Policy of British India defined the Pakhtun belt. It was split into three regions: the settled areas, which were managed directly by colonial India; the tribal territories between the settled districts of the then NWFP and Afghanistan, which were managed indirectly by the Britishers; and the states of Afghanistan and Nepal, which were under British influence. These areas were designated as buffer zones by British administrators (Siddique, 2014).

The tribal belt came into limelight during 19th century Geo-Political rivalry known as Great Game, which involved the Czarist Russia and British Empire vying for influence over Afghanistan and the Central Asian territories (Bangash, 2016). The British was apprehensive about the growing influence of the expanding Empire of Czarist Russian in Central Asia. They feared that Russia might utilize Afghanistan as a means to extend its influence towards British India. In contrast, Czarist Russia saw the British Empire as a threat to its control of the Kokand and Bukhara khanates in Central Asia. The British quickly sensed that an independent tribal belt could only protect India from Czarist Russia (Shoaib, 2018). In an attempt to foil Russian ambitions in relation to India, the British entered into the Durand line Agreement with the ruler of Afghanistan in 1893. This region was referred to as "Yaghistan," "Ilaqa Ghair" and "Qabaili Ilaqa"-tribal territory by the

British colonialists (Shah S.W., 2012). Therefore, rather than the rule of law, the British's prime concern in tribal territories was the preservation of the imperial system. Between the British Empire and Afghanistan, the tribal belt served as a "buffer to the buffer". Tribal belt was one of the sensitive region under the colonial administration, which was critical for British India's security. Special security procedures and patterns were implemented throughout the tribal belt (Bangash, 2016).

Accordingly, the British initiated the Frontier Policy. First, they adopted "the forward policy." As a result of its failure, later on they adopted "the closed-border policy that aimed to control and regulate the autonomous tribes. However, they were given some autonomy to manage their local affairs (Spain, 1963). Historically, the colonial British state did not initiate governance institutions in the tribal region: Instead, they relied on a combination of traditional structures like the Jirga and the infamous FCR law of 1901 to maintain control over the tribal region (Rumi, 2012). Before its final enactment in 1901, the FCR (Frontier Crimes Regulations) underwent a series of preceded legislations of the Criminal Code of Procedure 1861, the Indian Penal Code 1860, and the Criminal Tribes Act 1871. Initially, these laws were referred to as the Punjab Frontier Crimes Regulations when they were introduced in 1872 in the Punjab when NWFP (present KP) and the tribal areas were under the province of Punjab. However, when in 1901, the NWFP was established as a separate province, the name of these regulations became the Frontier Crimes Regulations (FCR) of 1901 (Yousaf, 2019). FCR was a set of civil as well as criminal laws that incorporated essential aspects of Pashtunwali, including significant features like the Pashtun tribal Jirga system and Riwaj-customary practices. One of the main goals of the FCR was to uphold law and order while also facilitating the resolution of conflicts and disputes within tribal communities. However, it provided the tribes with

some degree of self-governance while being subject to federal supervision and authority (Shah K. M., 2018).

Political Agents were assigned to the tribal Agencies under FCR with unlimited administrative power to arrest and punish individuals without trial (Ali I., 2018). The resident of the tribal areas were under his authority. He had excessive authority to punish a person, grant acquittal from trial or arrest. This extensive authority of the PA usually led to corruption, unfairness, and cruelty towards the residents of the tribal regions. The most unfair section of FCR was the punishment awarded under collective responsibility to the family members or blood relatives of an accused individual. No democratic nation in the world would admit to such ruthless as well as cruel governance that deprive them of the fundamental rights. A Political Agent was administrative head of an Agency. There were six frontier regions (FR) in addition to these agencies. These Frontier Regions were under the administrative authority of the Deputy Commissioners of the adjacent settled district. In an Agency, the political Agent was an ultimate decision maker who held the authority as chief executive, session judge, district magistrate and control over all the departments. (Parveen, 2016). The British India had implemented F.C.R to protect her interests in North West Frontier Province, Baluchistan and in the whole tribal areas. Nevertheless, the province of NWFP was lucky to get rid of these harsh and cruel Regulations with the enforcement of the first constitution of Pakistan in 1956, while Balochistan was released from its clutches with the enforcement of 1973 constitution. Likewise, Malakand and Dir were freed in the same year from FCR. But, it was FATA, which remained subservient to FCR till 2018 (Ullah A. , 2015).

The tribal region along Pak-Afghan border came to the limelight again in 1979 when the former Soviet Union intervened in Afghanistan. The US-led war (Afghan Jihad) against the Soviet Union was planned and organized from Pakistan tribal areas (Jan, 2022).

During Afghan- Soviet war, the tribal region served as a training ground for Mujahidins who were being prepared to combat Soviet forces in Afghanistan. From the 1980s onwards, this area continued to be a hub of training for both Mujahidins as well as terrorist who later on use it for conducting terrorist activities (Muhammad N. , 2022). Besides, Pakistan's Afghanistan strategy has centered on strategic depth to counter Indian influence in Afghanistan, which caused severe problems for Pakistan's integrity by sponsoring terrorism, Durand Line issue and Baluchistan insurgency (Shoaib, 2018). Similarly, Pakistan's retention of the FATA as a buffer zone served its national security interests while letting the region cope with its own difficulties. The state of Pakistan was unconcerned with challenges in the tribal areas because they did not contradict its primary interests (Nawaz, 2009).

The 1901 Frontier Crime Regulation (FCR), imposed by the British, served as the legal framework for FATA after independence. Pakistan maintained the independent status of the tribal regions and followed up the FCR's imperial regulations. Unfortunately, more than 70 years after Pakistan's independence, FATA was administered through an outdated legal system, i.e. FCR, which isolated the people of FATA from the system in use throughout the country. (HRCP, 2005). The administrative system established during the colonial era for FATA remained unchanged, with the Governor of NWFP (present Khyber Pakhtunkhwa) serving as the agent of the Governor General for administration of FATA. And after the abolition of the office of the governor General the Governor administered FATA as an agent of the president of Pakistan (Pakistan, 2016).

The 1973 Constitution of Pakistan vested the President of Pakistan the chief executive authority for FATA. The executive authority in FATA was exercised by the Governor Khyber Pakhtunkhwa as an Agent to the President. The jurisdiction of National as well as provincial assemblies and superior courts was barred over FATA under the constitution.

At the federal level, the Ministry of SAFRON was vested with the administrative control of FATA. The FATA Secretariat, which was established in 2006, held the responsibility for planning, executing, and overseeing developmental initiatives in the tribal areas. An Additional Chief Secretary (ACS) FATA was the administrative head of the FATA Secretariat who reported to the Governor KP through the Chief Secretary Khyber Pakhtunkhwa (Ullah A. , 2015). The Political Agent, a member of the federal civil service, administered each agency. The PA's responsibilities included those of an executive, a judge, a tax collector, and a military commander of a Political Agency. An agency was divided into sub-divisions (Tehsils) which was headed by Assistant Political Agent. There had political Tehsildars in each tehsil assisted by political Muharrars (court clerks). The link between the PA and the tribal people was through local elders and Maliks who were paid allowances (Moajib) to remain loyal to the PA. The Frontier Regions (FRs) were administered by the deputy Commissioner (DC) of the adjacent settled districts. The DC in this case, exercised the same power as the Political Agent (Shinwari, 2011).

FATA became a battlefield after 9/11 when Pakistan partnered with the US in the fight against terrorism. Terrorists sought sanctuary in the tribal areas and later formed Tehrik-I-Taliban Pakistan (TTP) and challenged the state. The absence of proper law enforcement mechanisms led to the nourishing of militancy and extremism. The government in response launched different operations to curb militancy in the region (Muhammad N. , 2022). The escalating terrorist attacks within the country resulted in FATA reforms becoming a priority under the National Action Plan (NAP) (Malik, 2019).

As a result of the lethal fighting in FATA, the government of Pakistan was compelled to initiate changes in the administrative system of FATA (Anwar, 2017). The government formed FATA Reforms Committee which recommended FATA Merger into KP over the course of 5 years as a transition period. Eventually, FATA was merged into KP in May

2018 through 25th amendment to the Constitution of Pakistan. The National Assembly pass the 25th amendment of FATA merger into KP on 24th May,2018, the Senate pass it on 25th may,2018 .and the Khyber Pakhtunkhwa provincial Assembly pass it on 28th May,2018. The president assented the FATA amendment bill on 31th May, 2018 and finally FATA became part of KP.

The researcher attempted to ascertain the opinions of the people of tribal District Khyber regarding FATA integration with Khyber Pakhtunkhwa and the new set up (police & Judicial setup) introduced after merger.

1.2 Statement of the problem

The continuous criticism and various decision of Pakistan Courts declaring FCR an inhuman law and in violation of fundamental rights had motivated a number of attempts to reform FATA's governance since 1977, all of which failed to result in any substantial change. Therefore, FATA Reforms were designated as a priority area under the National Action Plan (NAP) against terrorism which was launched by the government after the army public school Peshawar attack in December 2014. To introduce reforms the government formed a FATA reforms committee which recommended gradual integration of Fata with Khyber Pakhtunkhwa. FATA was merged into KP in May 2018 through 25th constitutional amendment. However, while the merger was generally seen as a positive step towards peace and stability, tribal groups within Erstwhile FATA continue to oppose the merger, claiming that their concerns were not properly addressed and that the merger was forced prematurely as proper consensus had not been developed before taking this decision. Some people seemed to be losing hope and grievances have been developed about the new system. A considerable number of people who supported the merger of FATA with KP feel dissatisfied as the merger of FATA failed to

meet their expectations for positive change in their lives. The people of tehsil Jamrud District Khyber being integral part of Ex-Fata have diverse views about FATA integration with KP and the new setup introduced after merger. Furthermore, Dissenting voices are rising in people of various circles of the area against FATA merger with Khyber Pakhtunkhwa. Certain sections of tribal people are not satisfied with the new changes i.e. police, judicial system and tax implementation. As a matter of public importance the researcher wants to conduct a study "To explore public opinion on FATA merger with KP in Tehsil Jamrud of tribal district Khyber.

1.3 Research Questions

- 1) Do the people of district Khyber willing about FATA merger with Khyber Pakhtunkhwa?
- 2) What is the opinion of the people regarding new setup in FATA after merger with Khyber Pakhtunkhwa?

1.4 Objectives of the study

- 1) To know the willingness of the people of district Khyber regarding FATA merger with Khyber Pakhtunkhwa.
- 2) To explore the opinion of the people regarding new set up/ changes in FATA after merger with Khyber Pakhtunkhwa.

1.5 Significance of the study

FATA (now merged districts of KP) is still the most neglected area in almost every walk of life despite its vast area and population. Khyber is an important new tribal district of Khyber Pakhtunkhwa. The opinions of the people of tribal district Khyber are important. This study will bring forward the opinion of the people of district Khyber regarding FATA merger with Khyber Pakhtunkhwa. It will sensitize government and other stakeholders to consider the views and opinions of the people in implementation of Fata Reforms and

introduction of new setup and changes. Efforts will be made to find out the willingness and views of people of district Khyber regarding FATA merger and new setup introduced after merger.

1.6 Justification of the Study

Fata was merged with Khyber Pakhtunkhwa in May 2018 but there is little literature available about the views and opinions of people of District Khyber on the subject concerned, so the researcher has explored the opinions of the people of tribal District Khyber on FATA merger with Khyber Pakhtunkhwa. This study will be a source of information about the opinion of the people i.e. academicians, journalists, educated youth Students, professionals, elders and tribal Maliks of Tehsil Jamrud of District Khyber regarding Fata integration into KP. This research work has been justified by the qualitative analysis. Semi- structured interview schedule provides base for justification of this study. The data, information and people's opinions obtained through such type of analysis is effective for readers and researchers.

1.7 Literature review

The book "The Pathans", written by Olaf Caroe, provides a thorough history of the Pathans. According to the author, tribal society has persisted in FATA and NWFP for centuries and has been open to countless invaders, the most significant of whom were Alexander the Great (356 B.C.–310 B.C.), the legendary Genghis Khan (1162–1227 A.D.), and Taimur Lung. The author goes into detail on the diverse sociocultural values held by the Pakhtuns of FATA and current Khyber Pakhtunkhwa. The Pashtunwali (Pashtun code of life), which still regulates the lives of the Pashtuns, is frequently deeply connected with Riway (traditions) and religious beliefs. The highest ideals of the tribal people were bravery for an honourable life, revenge, courage, and freedom. The main

goals of the unwritten rules and customs followed by Pathans are repentance (Nanawataiy), revenge (Badal), and hospitality (Milmistia). The author also discusses how tribal territories and the then NWFP were established and ruled. He further explains how the British came up with the "close border policy" to keep the peace in tribal areas (Caroe, 1958).

Badshah Gul Wazir and Jehangir Khan Mohmand In their book, "Futuristic of Tribal Administration", provide a brief overview of the past and present of FATA and suggest reforms for future of tribal administration. The authors explain that, to safeguard the settled areas against raids by tribal people, the British allegedly implemented a "close border policy" of non-interference and non-aggression. The authors further elaborated that even after independence in 1947, Pakistan sustained the British tribal administrative strategy. To meet colonial objectives, this system was inherently focused on law and order, with no focus on the development of these areas. The reason behind the least development in the tribal belt was the continued law and order issues in the area. It did not meet the requirements of the residents of tribal areas. The institutions of political agent, Malaki, Khassadari, tribal and territorial responsibility were in the process of eroding, and they no longer function as they did in the colonial era. In reality, it was a century-old system and was not adjustable in the modern era. The authors emphasizes that the administrative system of the tribal areas needs reform (Wazir B. G., 1995).

Robert Nichols in his book "The Frontier Crimes Regulation, A History in Documents," outlines the goals and characteristics of the FCR. According to him, the primary goal of FCR was to cope with the autonomous Pakhtuns (Pathans), a group of tribal people over whom the British asserted sovereignty but did not want to exercise direct control. In this system of shared responsibility, the entire tribe or family on whose land the crime was committed, was held responsible and subjected to various penalties. He further elaborates

that the FCR gives the political administration the authority to prohibit the construction of hamlets, destroy villages and levy steep fines on any tribe or tribesmen who act against the government or as accomplices to crime. According to the author, the FCR is a sophisticated document that makes an effort to understand regional cultural norms (Riwaj) in order to preserve internal harmony and enable regional systems of dispute settlement. The author further explains that Pakistan, after gaining its independence in 1947, paid no heed to eliminating this colonial legacy but instead executed it wholeheartedly. The tribal region is now an essential component of the state of Pakistan and is no longer considered "no man land." The author suggests that it is time to eliminate the FCR rather than alter it after over 70 years of Pakistan's independence, which would be better for the people who are still subjected to it (Nichols, 2013).

A report of the Pakistan National Commission on Human Rights titled "FATA Reforms : Contextual Analysis & Legislative Review" states that FATA continued to be tightly administered and has never been fully brought under the influence of the 1973 Constitution of Pakistan, which is limited by Article 247. The report suggest that the extension of the fundamental human rights to the people of FATA cannot longer be postponed for any reason. There is still a pressing need to properly establish the writ of the state because of the region's rapidly rising militancy, which poses a threat to both national and international security. The report further urges that the reform package be prepared and a referendum be held. The electorate should be permitted to choose representatives for the Khyber Pakhtunkhwa Provincial Assembly or the FATA Provincial Assembly in the 2018 elections (depending on the outcome of the referendum). This is in order to guarantee that the residents of FATA will not be denied proper governance until the 2023 elections. Moreover, the report highlight that the institutionalization of the Jirga is not

fully covered in the FATA reforms Committee's Report. The report further proposed that reforms in FATA shall be according to constitution of Pakistan (NCHR, 2022).

Saba Noor, Arshi Saleem and Syeda Tehreem Bukhari (2018) in their research article, are of the view that the integration of the FATA with KP was an significant step taken by Pakistan to tackle the law and order situation and mainstream the tribal region. They further elaborate the role of structural and cultural variables in disturbing the FATA region, as well as the consequences of the merger. According to their research, majority of people in the tribal areas not only supported the merger decision, but were also enthusiastic to see positive changes. The people expect that integration of FATA with KP will improve administrative and infrastructural development as well as create opportunities for economic prosperity. They argue that this decision will provide different opportunities to FATA's youth. They proposed in their study that local people should be engaged and encouraged to participate in this process of integration for their maximum benefits (Noor, 2018).

Asghar Khan in his book "Mainstreaming the Tribal Areas (ex-FATA) of Pakistan Bordering Afghanistan: Challenges and Prospects" has explored the governance structure in the ex-FATA in historical context while describing the history of tribal lands. The author of the book argues that in societies without formal state governance, informal governance emerges and informal institutions are established as substitute for the limited power of the central state, thereby challenging the state's control and dominance. The book examines the reasons behind the ongoing difficulties faced by the Pakistani state in expanding and strengthening its governance across its many regions, with a special emphasis on the erstwhile FATA. The book provides policy proposals aimed at integrating these tribal areas into the mainstream governance framework of Pakistan. It also highlights the reasons behind the persistent lack of governance in the FATA region, as well as the

various variables that pose challenges to the authority of the Pakistani state in FATA. Despite the official merger, concern persists over the means how the Pakistani state may effectively establish its rule in the tribal territories. It explores the elements and aspects that contribute to these challenges (Khan A., 2022).

1.8 Methodology

The study is a qualitative based on primary and secondary sources for the collection of data and literature. The primary data have been collected through semi structure interview schedule covering different questions about FATA merger and new setup/ changes introduced after merger. The primary data has been collected from relevant experts; journalists, local politicians, tribal elders, educated youth, academic experts in the targeted population. The primary data has been analyzed through thematic analysis. The secondary data and literature have been collected from published sources, i.e. Books, booklets, research papers, articles, reports, news releases, theses and internet sources.

Non-probability purposive/judgmental sampling technique has been adopted for collection of primary data. A total number of 35 respondents were initially selected however, after interviewing 20 respondents the data started to repeat. Data collection was stopped after interviewing 25 respondents due to data saturation. The 25 respondents interviewed included 3 academic experts, 5 tribal elders, 5 local journalist, 5 local politician and 7 educated youth.

1.9 Organization of the Study

Chapter 1 is introduction.

Chapter 2 is about the history of governance in FATA.

Chapter 3 is about the history of reforms in FCR and FATA.

Chapter 4 is the analysis of the public opinion.

Chapter 5 is conclusion and recommendations.

CHAPTER-2

HISTORY OF GOVERNANCE IN FATA

2.1 Introduction

This chapter examines the history and governance of the former FATA during the pre-colonial, colonial, and post-colonial periods. The outdated governance system in the tribal areas led to a security gap. The region was also kept as a periphery, with extreme disparity in economic development. The central government, with its periphery at its disposal, established new production methods that primarily helped the center. In the same manner, the central government left the former FATA as a dependent and underdeveloped region. This chapter further discusses the history of the Frontier Crimes Regulations (FCR), a law that was initially implemented by the British Raj and then retained by Pakistan after its creation until May 2018. The FCR gave the government wide powers to control the tribal areas, including the power to detain people without charge, to impose collective punishment, and to restrict freedom of movement. The British were trying to control a difficult and volatile region, and the FCR gave them the tools they needed to do so. However, the FCR also had a number of inhuman provisions, and it is ultimately a law that is best left in the past.

2.2 Pre-Colonial Governance in FATA

Throughout history, the Pakhtun regions, encompassing both settled and tribal areas, located between the Indus River and Koh-e-Sufaid mountain range, commonly referred to as the Pakhtun Borderland, have consistently attracted significant interest due to its geostrategic significance. Numerous conquerors from Central Asia, Russia, and Britain/Europe have traversed these territories, making them a focal point of attention (Khan A. , 2022).

The Pakhtun regions of the North-West Frontier of Pakistan as well as Afghanistan has been the site of numerous invasions, than all other Asian countries or even the entire world (Ifejika,2023). For an extensive period of time, the region known as FATA (Federally Administered Tribal Areas) has served as the residence of a nomadic tribal society. Throughout history, the tribal region of Pakistan has consistently preserved its autonomy and upheld a traditional power structure rooted in nomadic way of life, thereby successfully withstanding external influences (Khan M. W., 2016). The northwestern frontier region mostly inhabited by the Pashtuns has been witness to the emergence and decline of several developed civilizations throughout history. The region encompassing the Pakhtun lands has been subject to various empires, dynasties, and kingdoms throughout history. These include the Guptas (319–543 CE), Mauryas (322–185 BCE) , Kushans (30 CE - 375 CE), Huns and White Huns (530–590 CE), Persians (518–323 BCE), Alexander the Great of Macedonia (327–325 BC), Tatars (1221–1327), Ghaznavides (977–1186), Ghurides (mid-twelfth to early thirteenth century), Saljuks (eleventh to fourteenth century), Mongols (1221–1327), Mughals (early sixteenth to mid-eighteenth century), Sikhs (1799–1849), and, finally, the East India Company and the British (1849–1947). The influence of these invaders can be seen in several aspects of their lives including blood ties, linguistic patterns, cultural practices, architectural styles, and archaeological sites throughout the Pakhtun territories (Khan, 2022). The aforementioned invaders successfully navigated the rugged mountain passes of the Tribal Areas on their way to western India. In spite of the aforementioned invasions, the tribal society has effectively maintained its nomadic lifestyle and resisted the impact of external forces (Khan M. W., 2016). The historical origins of the Pashtuns resistance to subjugation can be traced back to the fifth century BCE, when the Persian monarchs Cyrus and Darius attacked and occupied the regions surrounding Kabul and the Indus River, which were subsequently integrated into the Achaemenian Empire (Devasher, 2022).

In 323 B.C., Alexander the Great undertook a military campaign toward India, which included the conquest of Afghanistan. During his expedition, he proceeded through the western region of the sub-continent, where he encountered opposition from the Pakhtun tribes. The Pakhtun tribes were brought under the control of Alexander's troops, led by General Seleuces, resulting in the incorporation of the territory into the Macedonian empire. During the year 250 B.C., Ashoka the Great exercised dominion over the territories that encompass present-day Afghanistan and western Pakistan (Shinwari, 2011).

During the period spanning from the demise of Alexander the Great to the expansion of Islam, including almost one millennium, the Pakhtuns region experienced multiple incursions from northern invaders. Throughout this particular era, the frontier region saw alternating periods of Iranian dominance and ruler ship by the Indus Valley (Haq, 2005).

During the ninth and tenth centuries A.D., the frontier regions of indo-Pak and Afghanistan experienced invasions by Muslim forces. The Pakhtun regions were under the governance of the Hindu Raja, Jaypal, who was the final Hindu ruler over the Pakhtuns until his defeat by Mehmud Ghaznavi in Peshawar (Shinwari, 2011). Following the emergence of Islam, the regions of the Indian sub-continent, extending as far as Lahore, fell under the control of the Ghaznavids. In 1206, Sultan Muizzuddin Muhammad of Ghor, a Turkic ruler, successfully seized control of the northern sub-continent, therefore establishing first Muslim empire in the region centered on Delhi. Nevertheless, the Ghorids successfully established their governance in the central regions of Punjab, but they encountered difficulties in maintaining dominance over the Pakhtun territories of the North-Western Frontier. Following the Ghorids, the frontier belt experienced invasions from Central Asian conquerors, notably Ghengis Khan in 1221 and Tamerlane (Taimur) in 1398. However, these incursions failed to establish dominion over the north-western part, presently known as the Pakhtun tribal lands, within the Indian sub-continent. Following the arrival of the Turks, a succession of dynasties, including

the Ghaznavides (1001–1186), Ghorides (1186–1290), Tughlaq (1321–1451), and the Pashtun dynasties of Khiljies (1290–1321), Lodhies (1451–1526), and Suries (1539–1555) also occupied and established their rule over the Indian subcontinent but few of them were successful to establish their dominion over the Pakhtun lands (Haq, 2005). The seat of government was typically situated in either the northern or southern regions of India. For instance, rulers like the Sultans, Mughals, and more recently, the British, governed Pakhtun lands from cities like Delhi, Agra, or Lahore.

The three Pakhtun dynasties of Delhi implemented strategies aimed at garnering the support and allegiance of their fellow Pakhtuns of the North-Western sub-continent and the adjacent tribal areas to consolidating their authority in Delhi. Nevertheless, these policies failed to effectively recruit a significant number of tribesmen to support their cause. The jurisdiction of their power did not encompass the tribal belt. Following the demise of Sher Shah Suri in 1555, the support of Pakhtun troops experienced a further decline. This clearly indicated the resistance exhibited by tribal people against external authorities, even when the ruler shares the same ethnic background (Khan A. , 2022). Occasionally, though, they allied themselves with the invaders during their campaigns to conquer states and principalities in the Indian Subcontinent, yet they never endured permanent subjugation (Hussain, 2023).

The challenging geographical and sociocultural characteristics of the Frontier Region prevented several empires from establishing full governance and control over the mountainous tribal areas. However, there were isolated instances where temporary control was exerted over certain passes within these tribal areas, albeit for a limited duration (Caroe, 1958). The Mughal Empire undertook a significant endeavor to bring the hill tribes under their dominion as subjects; nevertheless, their endeavors ultimately proved unsuccessful. They even employed force in order to defend and maintain the major mountainous routes against the tribes that held authority over them.

Zahir Uddin Babur, the founder of the Mughal dynasty on the Indian subcontinent, conquered India with the support of Pakhtuns. Babur and the subsequent Mughal kings heavily relied on Afghan mercenaries for the consolidation of their empire. Simultaneously, Babur encountered significant resistance from indigenous tribesmen within their native territories. Babur experienced a persistent sense of uneasiness and annoyance due to the disruption of communication lines by the Pakhtuns of tribal region (Haq, 2005).

Both, Zahir Ud Din Babur and Hamayun passed through the tribal regions. Their descendant Akbar the Great, reinstated imperial authority in Peshawar. However, in 1586, the tribesmen revolted against Mughal rule, resulting in the closure of the Khyber Pass and the expulsion of Mughal Governor Kanwar Man Singh (Khan T. M., 2001). The conflict with the Yousafzai and other tribal groups persisted during the rule of Jahangir (1608–27) and Shah Jehan (1628–58) (Haq, 2005). In the year 1620, a tribal uprising occurred against the Mughal army headed by Mughal General Todarmal to Tirah to reprimand the followers of Pir Roshan. The Tribal Lashkar effectively dismantled the Mughal army; however, the Mughal forces managed to regain control over the tribal region of Tirah through successful endeavors in 1632 and 1660. However, the Mughal dominance was short-lived, as evidenced by the events of 1672 during the rule of Aurangzeb Alamgir. The tribesman Lashkar led by Aimal Khan, launched an attack on Muhammad Amin Khan, the Subedar of Kabul, in the famous region of Khyber. This resulted in the complete destruction of Mughal army, which consisted of over twenty thousand soldiers, and the capture of various valuable assets, including treasure, elephants, women, and children. Particularly, among the captives were the wife and daughter of the governor. The Emperor Aurangzeb himself came to the area establishing a camp at Hassan Abdal. He also suffered defeat in a military engagement near Ali Masjid in the tribal region of Khyber. Subsequently, he adopted a diplomatic approach, employing strategies that resulted in the estrangement of tribal leaders and chiefs by inciting discord among them.

According to J.W. Spain, Aurangzeb's policies resulted in the establishment of a territory known as "no man's land", which persisted during British rule and continued after Pakistan's independence until 2018. The Mughals were unable to exert complete control over the tribal territories, despite their hard efforts and strong Army (Khan T. M., 2001). The Mughal Empire employed many strategies, including subsidies, blockades, mobile columns, and vast fortified garrisons, which were adopted by the Britishers approximately 250 years later. None achieved success, and if, as some argue, the decline of the Mogul Empire in India may be attributed to its disconnection from its robust origins in Central Asia, the Frontier tribesmen can assert a significant role in its downfall (Spain, 1963).

In 1838, Nadir Shah Afshar traversed the Khyber tribal route in order to invade India. Following a triumphant conquest of India, during his journey homeward, the tribesman belonging to the Afridi tribe of Khyber blocked his passage. Consequently, he was compelled to navigate an alternative route through the rear path of Tirah, following the payment of a substantial toll in cash to the tribesman.

Ahmad Shah Abdali, a military leader under Persian king Nadir Shah Afshar, separated Afghanistan in 1847 from Persian rule and made it an independent state. He incorporated the western regions of Punjab, Kashmir, and contemporary Khyber Pakhtunkhwa into his empire. However, the tribal belt remained free from his rule because of its inherent independent nature. In 1799, the Durrani ruler Shah Zaman designated Ranjit Singh, a Sikh chieftain, as his viceroy in Lahore. Ranjit Singh was an ambitious leader who successfully established Sikh rule in the region of Punjab in 1806. He could not extend his rule towards south and east due to British. Consequently, he redirected his efforts towards the western region and seized control of the trans-Indus plains, specifically Peshawar and Bannu (Haq, 2005). The administration of the Sikh regime in the frontier region during the period of 1818–1849 was the loosest of its type. The Sikh authority was predominantly acknowledged within the

immediate proximity of their garrisons, which were scattered throughout the region under their rule (Baha, 1968).

The Sikh king, Ranjit Singh, made an endeavor to traverse the tribal region and assert his authority over Jalalabad and Kabul. However, his efforts were thwarted by the formidable opposition of the tribal inhabitants, supported by the Afghan ruler. Nevertheless, the Sikh dominion was expanded to the frontier tribal belt, reaching as far as Jamrud Khyber Pass. This territorial expansion of the Sikh rule to the tribal belt resulted in a fierce battle between the Sikh forces and the Pakhtuns of the tribal belt (Haq, 2005). Amir of Afghanistan, Dost Muhammad Khan's Army supported by the Afridi tribesman of Khyber killed the Sikh general Hari Singh Nalva near Jamrud in 1837 breaking the backbone of the Sikh rule. Hari Singh Nalva is buried in the Jamrud fort Khyber. This defeat weakened their position in Peshawar and in their home at Punjab which after few years ended abruptly in the whole of Punjab and parts of present Khyber Pakhtunkhwa (Khan T. M., 2001). The British also endeavored to exert control over the tribal regions and Afghanistan as part of their efforts to advance their imperialistic design and consolidate their influence in the region. This ambition of the British colonialist led to the first Anglo- Afghan war (1838-42). This campaign was initially succeeded but in 1842, Britain experienced significant losses due to the Pashtun tribes of eastern Afghanistan. The Grand Army of the Indus, consisting of approximately 18,000 individuals (including 12,000 camp followers), suffered a complete annihilation during its rapid withdrawal from Kabul. Only one survivor, Dr. William Brydon, managed to reach the British fort at Jalalabad in a severely injured state. When asked about the fate of the rest of the army, he replied, "I am the army. As a response, a contingent of the British military, including 14,000 personnel, referred to as the 'Army of Retribution', initiated a military campaign by advancing towards Kabul from their strongholds located in Jalalabad and Kandahar. This expedition culminated in the triumph over a tribal force consisting of

15,000 combatants, resulting in the destruction of significant portions of the city, including the renowned covered Bazar. After engaging in an expensive campaign of retribution, committing savagery against the afghan civilian population along the route, the British forces withdrew from Afghanistan in 1842 sensing their independent nature (Akins, 2017).

2.3 FATA Governance Under Colonial Rule

The British acquisition of Punjab in 1849 resulted in the inclusion of the northwestern frontier of India within their dominion. The British rule over the region was met with enthusiasm as the cruel and brutal Sikh rule ended. The British acquisition of the Frontier tribal belt brought them into contact with the Pukhtun tribes, of the vast mountainous range serving as a natural boundary between India and Afghanistan. The north-west boundary of India held significant strategic importance due to its proximity to Afghanistan and the rapidly expanding Russian Empire beyond it. The British administration was cognizant of the fact that peace along the Afghanistan border in tribal belt is crucial for defence and stability of India (Khan R.,2020). The sequence of uprisings and insurrections in the North West Frontier by indigenous tribal population persisted after the transfer of political authority to the British colonialists (Mehsud, 2016).

The distinct governance system in the erstwhile FATA can be traced back to the historical struggle of the nineteenth-century conflict between Britain and Russia, referred to as "The Great Game. This geopolitical rivalry revolved around Central Asia and the Caucasus regions, where the British and Russian empires engaged in a power struggle to assert dominance over these territories. The tribal belt situated along the mountainous border between Afghanistan and British India, was employed by British India as a bulwark against the Russian threat in the great game. The legal framework that governed FATA stemmed from the policies the British colonial administration implemented in the 19th century to

control the tribes along the Afghan borderland. Like other British colonies, in India too, the British established an administrative system that effectively employed local power structures to accomplish political goals at minimum costs. The governance structure in the FATA underwent gradual evolution as the British expanded its authority to the northwest frontier of India (Sammon, 2008). The Frontier policy of Great Britain had two primary purposes: Firstly, at domestic front it aimed to safeguard the settled districts, their lives and property from tribal raids and invasions. Secondly, its imperial objective was to strengthen its strategic position in the northwest tribal belt for defence of India against Tsarist Russia (Bangash, 2014).

The border issues with hostile Afghanistan had already resulted in a contentious war in 1839-1842 with British India (Nichols, 2013). Moreover, effective control over the trans-Indus districts and tribal belt was a serious challenge for the British. Nevertheless, the colonial administration was concerned much about the collective criminal acts, perceiving them as a direct threat to the empire rather than mere individual offences. In order to effectively rule colonial India, the British authorities developed and enacted an extensive system of formal and legal codes in the form of the Indian Penal Code (IPC) and Code of Criminal Procedure (Cr.PC) (Ullah, 2013). Prior to the formation of the separate province of the NWFP in 1901, the Tribal Areas and the then N.W.F.P. (present KP) were governed by the Punjab Government. The colonial administrator responsible for the administration of the area, referred to as "the man on the spot," possessed significant discretionary authority in Punjab, which was categorized as a Non-Regulation Province. Standard laws and regulations were not imposed in Non-Regulation Provinces, until explicitly notified and implemented by the Indian government. By 1867, in the region along India's northwest border, sixteen Europeans had either been killed or seriously injured by Indians. John Lawrence, who served as India's viceroy and had previously been the lieutenant governor of Punjab, argued that these deadly

attacks on Europeans in the frontier region necessitated a harsh response to impart a "lesson of obedience" to the people. During that particular year, the Indian government enacted "An Act for the Prevention of Murderous Outrages in Certain Areas of Punjab. The Murderous Outrages Act (MOA) was enacted in response to the crimes committed by individuals, referred to as "fanatics," engaged in acts of violence against servants of the Queen and other individuals. These acts of violence were not effectively curbed by the prevailing laws in the frontier (Kolsky, 2015). The Indian Penal Code was initially implemented in the settled districts of NWFP by the government (Mehsud, 2016). However, The British authorities quickly realized that the formal codes, regulations, and rules pertaining to evidence and fact-finding capabilities proved to be inadequate in addressing the escalating crime rates, both in the Peshawar valley and especially within the tribal regions along the Afghan border (Ullah, 2013). Consequently, the British devised an administrative and legal framework to keep crime at a low and acceptable level while effectively maintaining control over the frontier tribal territories. The Criminal Tribes Act of 1871 was among the initial legislative measures implemented in tribal region. This statute was framed with the purpose to establish a framework for the registration, monitoring, and regulation of certain indigenous tribes (Vargas, 2022).

After the implementation of the Close Border Policy, the Frontier Region witnessed constant rise in violent incidents. This policy failed to protect colonial interests because it did not ensure peace and stability in the tribal belt. Therefore, the British government examined its policy alternatives. One of the policy measures undertaken by the Punjab Government was the enactment of FCR 1872 by modifying the IPC for the trans-Indus region (Mehsud, 2021). Additionally, the event of the murder of Viceroy Lord Mayo in 1872, by Sher Ali Afridi, ostensibly due to the "tor" case, exacerbated the already precarious situations. Subsequently, the government implemented the Frontier Crimes Regulation of 1872, which established a

distinct legal framework for the Frontier region. This law was based, to some extent, on local traditions and introduced the practice of conducting trials through official Jirgas, appointed by the Deputy Commissioner. Additionally, it allowed for the suspension of conventional rules of evidence and reduced reliance on legal representation (Wazir M. K., 2007). The objective of this regulation was to make accountable Pashtuns for their crimes, a goal that could not be effectively accomplished under the IPC (Mehsud, 2021). The implementation of such a unique governance system, combining elements of Pashtun customs and English legal codes, aimed to control the Pashtun resistance towards the British. In the FCR, the British officials strategically manipulated Pashtun social and cultural norms to make it compatible with Pashtun standards of justice. The primary purpose of the FCR was to enhance the rate of convictions, even in cases where there may have been insufficient or inadequate evidences. Consequently, what emerged was a blend of legal principles and indigenous traditions that never meet the expectations of either party. The initial Regulation underwent reviews in 1873 and 1876, resulting in minor modifications (Mehsud, 2016). This Regulation empowered the DC, with the Commissioner's concurrence, to take measures such as ordering the removal of villages, prohibiting the construction of hamlets without the Commissioner's approval, detaining individuals from a tribe or whole tribe engaged in hostile or unfriendly actions, and imposing fines on village communities in specific situations. Additionally, the DC was empowered to send the case of an individual suspect of murder or some other serious crimes, wherever there were insufficient evidence for a judicial conviction, to be adjudicated by a council of elders following Pathan or Baluch customs. The decision of Jirga (council of elders) would be executed as if it were a court ruling. However, it is important to note that the authority of the council of elders was limited only to imposing fines on the convicted person (Wazir M. K., 2007). Another major purpose of these laws and restrictions was to safeguard British India against the growing Russian menace. The British feared that the Russians might

exploit the insecure northwest frontier of India. Consequently, the defense of British India relied heavily on the security and stability of the Northwest Frontier region (Raid & Tariq, 2020). Thus, the British policy towards the frontier borderland can be divided into two phases: From 1849 to 1876, characterized by a “close border policy”, and from 1876 to 1901, known as the “forward policy”. In their efforts to safeguard against potential Russian threats, the British secured control over key strategic passages like the Khyber, Kurram, and Bolan passes. However, this measure proved insufficient to attain complete dominion over these strategic routes. The settled districts were protected well by the army. However, in the hilly tribal belt, the rebellious tribesmen became more elusive or out of reach, casualties mounted, and the cost of supply increased manifold. The forward policy was initiated in 1876 from Baluchistan. In response to the British forward policy in 1878, Afghan ruler Sher Ali invited a Russian mission to Kabul and denied access to a British mission through the Khyber Pass. As a result, the second Anglo-Afghan War(1878-1880) broke out. resulting in bloodshed and a British policy of advancement in the frontier tribal belt. Treaty of Gandamak was signed in 1879 between the British and afghan ruler, as a result of which the Afghan soldiers were driven out of Kurram and Khyber (khan S., 2010).

The Treaty of Gandamak, which was signed on 26 May,1879 by Afghan Amir Muhammad Yaqub khan and Louis Cavagnari- the British diplomat- resulted in the transfer of several territories to British jurisdiction, including the districts of Pishin and Sibi in Baluchistan, which were vital for Quetta's supplies, as well as the Kurram Valley and the strategic Khyber Pass (Giunchi,2013). Moreover, the colonial government divided the tribal region into Agencies for smooth governance of the tribal belt. The establishment of the Khyber Agency as an administrative unit took place in 1879, when Pierre Louis Napoleon Cavagnari became its first political officer (khan S. , 2010). The occupation of Samana occurred in 1891, and the occupation of Kurram Valley took place in 1892. These annexations were subsequently

followed by additional territorial acquisitions (Idrees, 2013). In 1892, Kurram was officially designated as an agency. Subsequently, in 1895, Malakand was also declared an agency. By 1896, two more agencies, namely North Waziristan and South Waziristan, were established (Bangash, 2014).

The British officers serving on the frontier again felt that the current regulations were insufficient to adequately address the needs and interests of colonial India. The officers administering the frontier would propose modifications in the existing law of FCR to their seniors. Consequently, the law underwent revision in 1887 during the tenure of Viceroy Lord Dufferin, resulting in an expansion of its reach through the addition of new offenses and acts in FCR. The new law was officially called as the Punjab Frontier Crimes Regulation (PFCR) of 1887. The amended regulations (PFCR 1887) was implemented in the districts of Kohat, Peshawar, and Hazara in March 1887 and in the districts of Dera Ghazi Khan, Bannu, and D.I. Khan in July 1887. Twenty one out of fifty four sections of the PFCR 1887 had a broad scope of general applicability, while the remaining thirty three sections were specifically applicable against Balochis, Pashtuns, and other communities as determined and notified in official gazette by the local government with the consent of Governor-General in Council. The new regulation conferred extensive and varied powers upon the district administration. One notable distinction between the Regulation of 1887 and its predecessors was that the new PFCR of 1887 empower the Deputy Commissioner (DC) to impose a maximum prison sentence of seven years upon the accused, based on the recommendation of the Jirga. After some years of the implementation of PFCR 1887, the administration of the North West Frontier region again felt the need to modify these regulations to effectively safeguard colonial interests (Mahsud, 2021). In an attempt to bring under control the tribal belt, previously referred to as no man's land, the Durand Line border settlement was signed by foreign secretary of British India, sir Mortimer Durand and AbdurRehman khan, the ruler of

Afghanistan, in 1893. This agreement established defined boundaries on both sides of the line (Yousaf, 2019). Following the 1893 Durand line agreement, it was likely to think of a tribal region under British authority situated between Afghanistan and the administered border of India demarcated and recognized by both the parties. The Durand line agreement did not explicitly define the boundary of India; rather, it defined the area of the influence of the Amir's dominions. It further stipulated that neither party would exert any form of intervention beyond this demarcation line. The British did not intend to integrate the tribal belt into their administrative framework but their aim was just to expand their own power while excluding the Amir's jurisdiction in the eastern and southern sides beyond the Durand line (Khan S., 2010). Through the Durand line agreement which partitioned the Pashtun population on both sides of the line, while the British administration did manage to establish some authority in the tribal belt, they struggled to maintain effective governance in the region. The British faced frequent uprisings from the frontier tribes, which led them to enforce stringent laws centered around collective accountability and punitive measures (Yousaf, 2021). During the 1890s, British officers administering the North West Frontier under the PFCR frequently advocated modifications in the Regulation (Mahsud, 2021). In subsequent years, the incidence of violent crimes including murders, reached unprecedented levels ever recorded. The Lt. Governor of Punjab advocated changes in the prevailing regulations and emphasized the importance of the Jirga system to be intact in the given circumstances (Wazir M. K., 2007). The FCR Committee constituted in 1899 highlighted the importance of Jirga that meet colonial interests (Khan E. U., 2022). When Lord Curzon was appointed Viceroy of India in January 1899, his frontier policy aimed to uphold law and order in the Tribal Areas (Baha, 1968). Consequently, in November 1901, he established the North West Frontier Province as a new administrative unit that comprised the settled districts, namely Hazara, Bannu, Kohat, Dera Ismail Khan, and Peshawar, as well as Agencies of the

tribal areas, namely Malakand, Kurram, Khyber, North and South Waziristan agencies. The administration of this newly established province of NWFP was entrusted to the Chief Commissioner, who reported directly to the Governor General of India (Noel I. Khokhar, 2014). The tribal areas were intentionally excluded from the authority of provincial administration, functioning as a neutral zone that separated Afghanistan from the districts under direct British administration. Political agents were appointed as administrative head in the tribal agencies to interact with the tribes residing there (Khan R. , 2020). Lord Curzon also undertook a comprehensive review of the existing regulations and eventually reorganized them into the FCR (III) of 1901. A committee of four members, led by C. L. Tupper, began its work in Lahore on October 27, 1899, to propose changes in the regulations based on feedback from officials serving on the frontier. Before presenting its final report, the committee held seven meetings. Consequently, the new Frontier Crimes Regulation was implemented on April 24, 1901. The basic purpose of FCR 1901 remained consistent with that of PFCR 1887 and further increased its scope and powers of Deputy Commissioners (Mahsud, 2021). FCR 1901 was not significantly different from its predecessor, as Sections 8 and 11 retained the power of the DC to transfer cases of both civil and criminal natures to the council of elders for decision. It also increased the authority of DC to award an imprisonment sentence to a person from seven to fourteen years (Wazir M. K., 2007). The FCR of 1901 was a concise law with seven chapters and sixty-three sections. It not only covered penalties for various offenses, but rather a full framework for governance and administrative justice system in tribal areas. It was implemented in the North West Frontier Province (present Khyber Pakhtunkhwa), Balochistan, and in the whole tribal areas (Ullah, 2016). The FCR of 1901 encompassed both criminal as well as civil matters which was markedly different from the criminal and civil laws implemented in the rest of colonial India. It functioned not only as a parallel administrative system but a comprehensive code of governance for controlling

the tribal region to ensure security of the neighboring settled districts (Bangash, 2016). The British incorporated the tribal Jirga and traditional punishment in FCR to make it acceptable to the tribal people and to impress them that British value their tribal sentiments and customs. The majority of the decrees issued by the bureaucrats of Punjab, founded after 1849, were incorporated in the FCR of 1901. Under FCR, the Deputy Commissioner (DC) in settled districts and the Political Agent (PA) in tribal Agencies held all the executive, revenue collector, and magistrate powers. The DC/PA possessed the authority to refer criminal and civil cases to the officially nominated Jirga, in defiance of judicial requirements and evidentiary regulations. The Jirga would conduct a comprehensive investigation, analyze the pertinent evidence, and subsequently convey their verdict to the British official for award of punishment. No appeal could be made to higher colonial courts against their verdicts. If a member of a tribal community were to commit a crime and afterwards flee, the entire village or tribe would be subject to punitive measures under collective responsibility clause of FCR. The tribesmen would be imprisoned and access and trade to Peshawar or nearby settled district would be prohibited. The colonial British implemented collective punishment for the offenses committed by a single member of the tribe based on their notion that these tribes followed a segmentary lineage system who were responsible for one another (Khan R. , 2020). Moreover, the internal autonomy and traditions of the Pashtun tribes were preserved by retaining the authority of tribal Maliks and incorporating the Pashtun code of life in FCR (Akins, 2017). Simultaneously, the office of the Political Agent (PA) was created for administration of each tribal Agency with significant authority and financial resources to cultivate the loyalty of influential figures in the tribal region (Noel I. Khokhar, 2014). In Lord Curzon's view, the Political Agent (PA) was a figure who, like tribal leaders, carried both idealized qualities and dignified manners. The office of PA was initially created for the five tribal agencies. The office of the Political Agent was retained under FCR who was directly

responsible to the governor general, with unrestricted legal power in his respective agency. Due to his wide-ranging power as judge, head of police, and executioner, the tribesmen would be called to the Political agent as "Badshah"-the King (Akins, 2017).

The Maliki system (of tribal elders), was also developed and strengthened during this period which enabled colonial administration to effectively control and govern the tribes. The Maliks played the role of intermediaries between the tribes and government authorities and helped in the implementation of government policies (Khokhar.N.I., 2014). Local people were recruited as khassadar, levies and tribal militia to assist the PA in maintaining law and order in the tribal areas. Tribal militia worked under army to maintain peace and security along the afghan border areas. Levies were recruited on merit and furnished with weapons, while Khassadar were recruited for protection of their areas under territorial responsibility, having their own arms from the local tribes. They protected roads and other government installations, supported Maliks to implement the government orders and assisted the political agent to enforce the sectional responsibilities under FCR (Bangash, 2016). The main purpose of the FCR was to curb criminal activities in tribal and frontier regions. However, in practice, it served as a tool to penalize both individuals and even entire tribes who displayed hostile or unfriendly behavior towards the colonial administration (Naseer, 2015). In spite of numerous policies and strong military actions, the British colonial authorities barely retained a loose control over the tribal belt until 1947 when they left India (Khokhar.N.I, 2014).

2.4 FCR: A Draconian Law

FCR was implemented by the British authorities to control the tribal regions and suppress any potential rebellion in the tribal belt against colonial rule. John William Kay, the Head of the Political and Secret Department of the Indian Office, defended the implementation of Frontier Crimes Regulations while stating, "One cannot control

untamed horses with delicate threads". FCR was infamous for its severe penalties and inhuman provisions (Hussain M. H., 2012). The tribal areas were classified into two categories: 27% of the area was categorized as protected (Illaqa-e-Sarkar) and the remaining areas as non-protected (Illaqa-e-Ghair or non-Government) areas. The British administered the protected areas directly by the Political Agent under FCR, while the second category, unprotected areas(Illaqa-e-Ghair), was governed indirectly through the Jirga system, and Riwayat(customary laws).The governance system in the tribal areas was based on a mix of traditional leadership (Maliks) and customary laws and practices (Shah S. A., 2019). The Jirga frequently imposed penalties on criminals in the form of substantial fines (Hussain M. H., 2012)

The concept of territorial responsibility formed the basis of the FCR. Section 21 of the FCR law hold the entire tribe responsible for the crime of an individual (Saeed, 2016). It applied to anyone in the tribal areas for a crime committed by a an individual, family, or even another member of the same tribe and area, A person's entire family or tribe was held accountable for whatever crime was committed, and they all may be arrested or have their properties seized. The Frontier Crimes Regulation (FCR) also allows for the imposition of fines on entire community or tribe for the crimes of individuals who abet a crime or attempt or commit culpable homicide (section 22-23). If a dead body was spotted in a hamlet, all villagers were deemed accountable for the murder under Section 23 of the FCR (Dil, 2016). Therefore, application of collective punishment disregarded the concept of individual accountability and punished innocent individuals for the crimes of others (Khan E. U., 2022).

Similarly, If a person declared criminal or fined under FCR did not pay his fine, that fine will be paid from the movable or immovable property of any of the person's relatives or fellow tribesmen as per Section 56 of FCR.(HRCR,2005). Moreover, the political

administration under section 31 of FCR was allowed to demolish and put restriction on construction of hamlet, village or town on frontier . Regulation of Hujras and Chauks (section 33) and removal of persons from their places of residence (section 36) was some of the other cruel features of FCR (Haider, 2009). One of the most stringent of the provisions of FCR was Section 40, which granted the Political Agent (PA) the authority to arrest any individual without giving him the opportunity to defend himself. Furthermore, the Political had the authority to detain an individual for an indefinite period of time. Ironically, the Political Agent could arrest or detain any family member or relative in place of the accused or guilty person (Saeed, 2016).

Besides that the basic legal rights including the right to appeal, wakeel (right to have a lawyer), and Daleel (right to present evidence)were prohibited under section 48 of FCR to the accused of crime (HRCP,2005). The repressive FCR wielded unrestricted executive and judicial authority in the office of the Political Agent and his Assistant Political Agent. There was no way to stop political agents from misusing their powers, which often leads to serious violations of human rights. A tribal Jirga or council would conduct the trial of the accused in accordance with the FCR law and the Jirga would then recommend conviction or acquittal of the accused to the Political Agent. The Jirga's recommendations were non-binding on the PA to decide whether to convict or acquit. The FCR has been called a draconian, a dark and un-Islamic law by both the public and the judicial Courts (Dil,2016). These repressive punishments under FCR reflected the goal of British to make the tribal people liable for the security of the colonial empire in India (Haider, 2009).

2.5 Post Colonial Governance in FATA

In July 1947, the Indian Independence Act was enacted by the British Parliament, ultimately resulting in the formation of Pakistan and India. According to Clause 7C of the Act mentioned above, it was stipulated that any treaties or agreements between His Majesty and individuals in authority in the tribal areas, as well as any obligations of His Majesty towards such individuals or pertaining to the tribal areas, would cease to have effect upon the enactment of this Act.

In accordance with the provisions of Clause 7C of the Indian Independence Act, the newly formed state of Pakistan commenced discussions with tribal leaders to facilitate the incorporation of the tribal areas into Pakistan. Prior to the independence of Pakistan, in June 1947, Abdul Ghaffar Khan, a prominent Pashtun leader from N.W.F.P, discussed with Muhammad Ali Jinnah, the Governor-General of Pakistan, the gradual integration of the tribal region into North West Frontier Province (present KP) (Ahmed, 2014)

The tribes of the tribal region signed 30 instruments of Accession with Pakistani government promising their loyalty to Pakistan (Shah S. A., 2019).

These agreements were signed by the tribal jirgas with sir George Cunningham-the governor of the then NWFP (present KP) on the same terms and conditions that had previously made with the colonial government. The agreements with all tribes were signed by A. S. B. Shah, the political secretary of Muhammad Ali Jinnah, on behalf of the Governor-General of Pakistan from November 15-22, 1947. The political agents of tribal agencies arranged meetings with tribal Maliks and individuals and signed agreements of loyalty and cooperation with Pakistan in exchange of tribal allowances and benefits to be continued. The first Governor General of Pakistan M. Ali Jinnah visited the then NWFP and attended tribal Jirga in April 1948 in Peshawar where 200 tribal Maliks declared their loyalty to Pakistan and asked the governor general to placed them under the direct control of the federal

government. On July 3rd, 1948, the request was granted when Jinnah personally took control of the tribal region and established the Ministry of States and Frontier Regions (Khan S. , 2010).

Addressing the tribal Jirga at the government house Peshawar, the Governor General stated that: "Pakistan does not possess any intention to excessively intervene in your internal independence. Contrarily, Pakistan aims to extend assistance in order to facilitate your journey towards self-reliance and self-sufficiency while also contributing to your educational, social, and economic advancement. The objective is to alleviate the prevailing dependency on annual financial aid, which has perpetuated a state of stagnation, leaving you no better off than individuals reliant on handouts, and, if feasible, to improve your circumstances to some extent. Our objective is to empower individuals as autonomous and dignified members of society, providing them with the necessary resources and support to fully realize their potential and contribute to the progress and prosperity of both themselves and their community". In light of the tribesmen's requests for the perpetuation of the allowances they had been receiving during the period of British governance, he acknowledged their expressed desire for the retention of benefits, including allowances and khassadari, which they had previously enjoyed and continue to receive. Both the Government and I do not possess any inclination to alter the current agreements, unless done in collaboration with you, provided that you maintain your allegiance and devotion to Pakistan (Shah,2012).

The address of Quaid-i-Azam to the tribal Jirga is considered as the base of Pakistan's frontier policy. He proposed two-pronged policy for tribal region, emphasizing support for their self-sufficiency and non-interference (Shah S. A., 2019).

His frontier policy has not been realized so far, since Quaid-e- Azam in his speech emphasize the need for education: "I concur with your claim regarding the utmost significance of education. It is my unwavering commitment, as well as that of my

government, to diligently endeavor to facilitate the provision of educational opportunities for your children” (NCHR, 2022).

Jinnah's vision for FATA's socio-economic betterment was neglected after his sudden death, and the subsequent governments could not pay any heed to the development of the tribal region despite its geostrategic importance (Shah S. A., 2019). The state followed the colonial brutal policy of monopolization and exploitation in the tribal belt (Ullah N. , 2022). The colonial system of governance through FCR was retained in the tribal areas (Muhammad N. , 2020). The government opted to interact with tribal leaders via political agents rather than directly with tribesmen at the local level, and the previous allowance system was retained (Shah,2012).

FATA was recognized as a part of Pakistan from 1947 onwards but distinct from the settled districts, with its special status under the FCR which was maintained by the 1956, 1962, and 1973 constitutions of Pakistan (Khan U. M., 2021). The tribal areas of Baluchistan, the NWFP, and the princely states of Chitral, Amb, Swat, and Dir were designated as "special areas" by the "Establishment of West Pakistan Act, 1955. Much like it had been during the colonial administration and under the Government of India Acts of 1919 and 1935, the Governor General was given administrative and legislative responsibility over the special areas (Turk, 2021). The first constitution of Pakistan (1956) introduced parliamentary form of government in the country, however, it did not introduce any political and administrative changes in the governance of the tribal areas (Khan S. , 2016). Article 104 Section 10 Clause 3 of the 1956 constitution of Pakistan, declared the tribal region as ‘Special Areas’ to be administered through FCR 1901 (Naseer, 2015). The Governor of West Pakistan's executive authority was extended by the constitution; however, the approval of the Governor, with the prior sanction of the President, was required for the application of Acts of Parliament or the Provincial Assembly to the Special Areas (Khan E. U., 2022). The President, in accordance

with the powers vested in him by the constitution make provisions for ensuring representation of tribal people in various constitutional bodies. Overall, five general seats for the tribal areas in the federal unicameral parliament were allocated by the 1956 constitution of Pakistan. However, before providing representation to the tribal people in parliament, the constitution was abrogated (Naseer, 2015). Moreover, it is interesting to note that the jurisdiction of superior courts were not restricted over the Special Areas under the constitution (Khan E. U., 2022).

The 1962 constitution of Pakistan introduced presidential system of government in the country through indirect election via basic democracy system. The constitution of 1962 under article 223 defined tribal region of the NWFP as 'Tribal Areas' and retained the colonial system of governance in these areas. The constitution excluded the tribal areas from the jurisdiction of the federal and provincial governments. Furthermore, the tribal areas were governed by the President of Pakistan through the governor of the concerned province where the tribal area was situated. The extension of the Basic Democracy system to the tribal territories resulted in the allocation of representation in the national and provincial assemblies to a single member from an electoral college (Naseer, 2015). The superior judiciary had jurisdiction over the tribal areas under the original constitution of 1962. But, its jurisdictions over the FATA was restricted through an amendment in Article 223 (5) of the constitution (Khan E. U., 2022).

Similarly, article 260 and 261 of the 1972 interim constitution divided the tribal region into PATA and Centrally Administered Tribal Areas (CATA). PATA included the states of Dir, Chitral, Swat, Amb, and the Malakand region, along with the areas adjacent to Hazara. The tribal agencies and FRs were designated as CATA. Both the PATA and CATA were controlled and administered by the president (Naseer, 2015).

Like the previous constitutions, the 1973 Constitution of Pakistan, which was unanimously passed by the National Assembly in 1973, also maintained the special status of the FATA

until it was eventually abolished by the Parliament in 2018 (Khan U. M., 2021). Article 1 of the Constitution of Pakistan defined the territories of the federation of Pakistan, differentiating between provinces and the Federally Administered Tribal Areas (FATA) (Tanguay-Renaud, 2009). Article 246 of Constitution describes Provincially administered areas (PATA) and Federally Administered Tribal Areas (FATA) (PAKISTAN, 1973). While Article 247 prescribed the special status and procedure of administering FATA. Its relevant provisions are discussed as follow:

- i. The executive authority of the Federation extended to FATA, subject to the Constitution.
- ii. The President possessed the authority to issue directives to the Governor of a Province concerning Tribal Areas within that Province, and the Governor was obligated to comply with such directives.
- iii. No law passed by the Majlis-e-Shoora (Parliament) would automatically apply to any part of FATA unless the President directed otherwise. Furthermore, the President had the authority to specify exceptions and modifications to the application of such laws in FATA.
- iv. The President had the power to promulgate regulations for the peace and good governance of FATA, regardless of constitutional constraints.
- v. The President could, through an Order, convert a Tribal Area or part thereof into a non-Tribal Area, with provisions deemed necessary and proper. Prior to making such an Order, the President was required to seek the views of the people of the Tribal Area, typically represented through tribal Jirga.
- vi. The Constitution stipulated that neither the Supreme Court nor a High Court could exercise jurisdiction over a Tribal Area unless Parliament enacted a specific law allowing for such jurisdiction (Tanguay-Renaud, 2009).

The article stated that the federal government had complete authority over FATA and the president through his Agent ,the governor of Khyber Pakhtunkhwa province, administered it (Anwar, 2017) . However, only 27% of the area was under the direct control of the state, administered through FCR law , known as Allaqa-i-Sarkar, while the rest of the area was controlled and governed according to customary laws and Pashtuns traditions (Riwaj), referred to as Allaqa-i-Ghair (Naseer, 2015). General laws passed by the Parliament of Pakistan did not apply to FATA unless the President explicitly extended them to FATA (Zahid & Quraish,2017).Although the federal government extended many of its laws to FATA, none of these laws addressed the parallel legal and governance system that existed in FATA, nor did they address the violation of human rights in FATA (Khan U. M., 2021)..

Furthermore, it was oddly strange that FATA was an integral part of the Pakistani federation and had elected representatives in the Parliament, but the Parliament could not pass any law for FATA. Even if the Parliament did pass a law, it would not apply to FATA. However, the President could direct the Parliament to pass a law, and would then be enforced in FATA (Nagma parveen,2016). The president was authorized under clause 5 of Article 247 to frame rules and regulations for the peaceful and effective administration of FATA (Ullah A. , 2015). Additionally, the President could, after consulting the tribal Jirga, eliminate the special status of the whole or a specific region or agency in FATA and transform it into a settled area (HRCP,2005). Clause 7 of Article 247 had imposed significant constraints on the jurisdiction of courts in FATA. Given this condition of restriction of courts, the judicial system in tribal areas was based on FCR Law and the Political Agent. The tribal people punished under the FCR could not file an appeal in the superior courts against the decision of the Political Agent, despite the fact that the Constitution protects citizens' fundamental rights in the rest of Pakistan excluding FATA (Naseer, 2015).

Likewise, the administration of the Federally Administered Tribal Areas (FATA) was carried out by the governor of Khyber Pakhtunkhwa who acted as the representative of the president of Pakistan under the supervision of the Ministry of States and Frontier Regions in Islamabad (Zahid Shahab,2014). The Governor was the important stakeholder in policy decisions about FATA. The Political Agents of all the tribal Agencies and the Additional chief secretary of FATA reported to him. He also communicated with the federal government and FATA Secretariat, and gave advice to the President on matters pertaining to FATA. Political agent was the authorized representative of the Governor KP who was the political, administrative, judicial and revenue collection officer at agency level. The political agent (PA) was responsible for the administrative and judicial governance of the tribal agency under the Frontier Crimes Regulation (FCR). He was in charge of the agency's line departments and supervise the service providers departments, as well as dealing with inter-tribal conflicts. He also had the authority to appoint Jirgas and examine their decisions. He was main stake holder in distribution and utilization of natural and other resources in tribal Agency, as well as regulated trade with settled areas and other agencies. The political agent (PA) office was often accused of having too much power with no enough check and balance over it, which made it despotic and vulnerable to corruption (Anwar, 2017).

This system of governance in tribal areas indicate that since independence, the tenuous governance in FATA was due to deliberate state policy rather than Pakhtun tribal customs or resistance. The state continued to govern the tribal areas with the outdated political, administrative, and judicial system inherited from the colonial era, which deprived the tribal people of their fundamental constitutional and political rights (Shah S. A., 2019). Like the Colonial rule, Pakistan also used FCR to guard its state interests, rather than providing justice or civil right to the people of FATA, effectively turning them into second-class citizens (Akins, 2017). Moreover, the constitutions of Pakistan retained the colonial law, FCR, to

govern FATA which was notorious for Human rights violations. The collective responsibility under FCR in Particular has kept the tribal people in perpetual state of insecurity, as they could be arrested and imprisoned not for any crime on their part, but for the crimes of their fellow tribesmen (Shah S. A., 2019).

CHAPTER 3

HISTORY OF REFORMS IN FCR AND ERSTWHILE FATA

3.1 Introduction

There have been numerous attempts to alter the FATA's governance and administrative system. In the past numerous committees were formed which proposed sound recommendations in FCR and Erstwhile FATA even before partition of British India and after independence of Pakistan. Nevertheless, there were no consistent efforts made to put those ideas into action and actually transform the colonial governing system. Chief Justice Alvin Robert Cornelius of the Supreme Court declared in a 1954 decision that the FCR was "obnoxious to all modern principles of the justice system (Ali, 2018).

Similarly, various efforts had been made in the tribal region to implement reforms. While some reform efforts were successful, many others were not implemented for several reasons. For example, the Criminal Process Code was extended to FATA in 1979, but with the caveat that it would only be applicable where key rules were missing from the FCR. This virtually nullified the net effect of the extension (Today, 2014).

This chapter discusses the significant attempts of reforms in FCR and the Erstwhile FATA in the last many decades.

3.2 North West Frontier Committee (1921)

Several committees/commissions have looked into the working of FCR and put forward their suggestions. For the first time, in 1921, North-West Frontier Committee was set up to review the civil and judicial administration of the NWFP (Mahsud, 2021).

The committee consisted of six members of legislature of whom no less than five were non-official. Of the five non-official Indians one, belong to UP, one to Madras, one to Bombay,

one to Punjab and one to NWFP. It also included three English civilian members of Punjab commission. The committee thoroughly examined FCR and condemned its excessive use, which had a detrimental impact on the efficiency of the judicial system. However, rather than proposing some proper amendments, the committee recognized the significance of the FCR and opposed its complete repeal. The committee argued that abolishing its civil sections would cause significant hardship for the Pashtuns, who rely on these sections for cost-effective and swift resolution of their disputes through Jirgas. Eliminating the criminal sections of FCR would weaken the enforcement of law and order and deprive the Hindu community, in particular, of an essential safeguard in a region prone to intense emotions, blood feuds, limited access to legal evidence, and the proximity of refuge across the border. Additionally, repealing the trans-frontier sections would disrupt the entire system of trans-frontier control (Wazir M. K., 2007).

3.3 Justice Naimatullah Committee (1931)

FCR was again examined by a committee, led by Mr. Justice Naimatullah of the Allahabad High Court and composed of nine members in 1931. The committee recommended discontinuation of the dual system that was prevalent in the North West Frontier Province at that time so as to remove the Deputy Commissioner's power to exclude cases from the jurisdiction of regular courts. If it was necessary to retain a tribunal for trying certain offenses, it should be headed by a session judge. The session judge would not be assisted by a Jirga(council of elders) but by jurors chosen from a carefully prepared government list. Parties involved in the cases should have the opportunity to be represented by the lawyers as well as the procedures outlined in the criminal procedure code shall be applied to tribunal proceedings. The tribunals should only handle particular offenses, while all other cases should be adjudicated in regular courts. However, the committee's recommendations were not accepted by the government and the existing FCR law remained unchanged (Shinwari, 2011).

3.4 Sheikh Abdul Hamid Commission (1958)

After the establishment of Pakistan, the government appointed a commission in 1958, led by Mr. Justice Sheikh Abdul Hamid from the West Pakistan High Court.

The primary objective of this commission was to evaluate the judicial system in the Kalat and Quetta divisions and propose any necessary changes to align it with the constitution and the legal framework in the rest of the province while also considering local needs. The commission recommended the elimination of the Frontier Crimes Regulation of 1901 in these divisions. Moreover, it proposed the elimination of special areas, then referred to as Tribal Areas. However, if there were compelling reasons to maintain these special areas, in such cases, the commission recommended extending the jurisdiction of the High Court and Supreme Court to cover these areas. The government did not implement the recommendation of the commission and two divisions continue to be governed by the special laws of FCR (Wazir M. K., 2007).

3.5 Law Reform Commission headed by Mr. Justice S.A. Rahman

FCR was reexamined in 1958 by the Law Reform Commission established by the government, led by Mr. Justice S.A. Rahman from the Supreme Court of Pakistan. Though Justice S.A. Rahman proposed the abolition of the special laws, but he acknowledged that due to unique conditions in certain areas of the province, these special laws might need to remain in effect temporarily. However, the long-term objective should be to replace these laws with ordinary legal provisions. The commission also suggested amendments to the existing Jirga system. Unfortunately, the recommendations of this commission also failed to be considered and implemented by the government (Shinwari, 2011).

3.6 Justice Hamood Ur Rehman Commission

A commission led by Justice Hamood ur Rehman, former Chief Justice of Pakistan (1967-70), evaluated FCR law and documented the following significant findings:

“They have neither accelerated the resolution of criminal cases nor have they served as an effective deterrent for serious crimes. These measures have failed to instill public trust, and it is difficult to argue that they have contributed significantly to the pursuit of true justice. On the contrary, they face substantial criticism, fundamentally for infringing upon the principle of equality before the law as well as usurpation of judicial authority by the executive branch across all levels. Furthermore, there is a deep-seated and intrinsic aversion to the FCR of 1901, which was applied to these regions with ambivalent intentions of controlling the tribal populace. These regulations resulted in sidelining the standard procedures of regular courts, thereby violating fundamental human rights”.

In essence, the commission led by Mr. Justice Hamood ur Rehman identified significant deficiencies and criticisms against the continued enforcement of these laws in the region (Wazir M. K., 2007).

3.7 Naseerullah Babar Reforms Committee 1976

It took Pakistan almost three decades to introduce changes in the Frontier crimes Regulations it had inherited from the colonial rulers. The first step toward mainstreaming FATA was taken after the unpleasant experience of the separation of East Pakistan in December 1971. In 1976, Pakistan's then Prime Minister, Zulfikar Ali Bhutto, established a committee under the leadership of Major General (retired) Naseerullah Babar, who was serving as the Governor of the NWFP (NWFP) from 1975 to 1977. The committee included members such as Rafi Raza, Hafeez Pirzada, and Dr. Mubashir Hasan. The committee was mandated to develop a

framework for merger of FATA with the NWFP(present KP) for the general elections scheduled for 1977. Unfortunately, this first initiative did not succeed due to a military coup that resulted in the overthrow of the democratically elected government led by Zulfikar Bhutto in 1977 (Begum, 2018)

The absence of substantial administrative changes in the FATA has primarily benefited a select group while leaving the majority of the FATA population marginalized. Though, the Bhutto's government made some limited reforms in the 1970s, these changes were insufficient to fully integrate tribal areas into mainstream Pakistan. The absence of substantial political and legal reforms from the 1970s to the 1990s isolated FATA as well as exacerbated terrorism and militancy in the tribal belt. This situation in FATA worsened significantly during the Zia martial law regime during 1980s, which saw very few development projects initiated for the region's progress (Wazir A. K., 2012).

3.8 1996 Adult Franchise Act

Twenty years after the Naseerullah Babr Reforms Committee of 1976, another attempt for reforming FATA materialized. In December 1996, a significant milestone was achieved with the extension of the Adult Franchise Act, marking the first genuine effort to empower FATA residents politically. This historical development granted the people of FATA the right to vote to directly elect their representatives to the National Assembly, without requiring the approval of tribal Maliks, who were the privileged few with voting rights in earlier general elections. Prior to this reform, only select tribal elders enjoyed the privilege of voting in general elections (Ali, 2018). The enactment of this act in 1996 allowed individuals aged eighteen or older in FATA to become eligible voters in the 1997 general elections. Independent candidates could now be directly elected by the people of FATA to represent them in the National Assembly. This change was a significant departure from the past when

FATA's members in the National Assembly were chosen by maliks and elders, who constituted only around 1% of the population (Begum, 2018).

However, it is important to note that despite this crucial measure, self-governance did not strengthened in FATA. The weak governance in FATA is attributed partly to Article 247 of the Constitution and partly because FATA was neither a province nor part of another province to elect its representatives to a provincial assembly, which is responsible for electing ministers to govern a province (Ali G. , 2020).

The 1997 elections marked a unique chapter in the history of the tribal region. Regrettably, tribal elders and religious leaders attempted to dissuade female participation by issuing threats of punishment against tribesmen whose female family members registered to vote. This intimidation tactics resulted in a low registration rate among the female population (Talbot, 1998). Furthermore, political parties were not allowed to operate in FATA. Despite the government's efforts to advance the reform agenda, it failed to generate a substantial impact. As a result, FATA remained excluded from the national mainstream (Wazir, 2013).

3.9 Local Government Ordinance 2001 Expansion to FATA in 2002

Another endeavor to mainstream adminisistartion in FATA was the expansion of the Local Government Regulation 2002 and Subsequently, in 2004, councilors for different agencies were appointed by their respective Political Agents (Ali G. , 2020).

The government introduced Agency Councils as local governance bodies in the tribal region, to encourage public participation in governance and development Programmes. However, the local government framework in the tribal areas differed from that in the settled areas in a significant way—it lacked the three-tiered structure comprising Union council, Tehsil Government, and District Government. Instead, FATA had a single-tiered local government structure. In this local government system, 70% of the Agency councilors were elected by the

people, while the remaining 30% of seats were reserved for various groups, including Maliks, Ulama, scholars, technocrats, women, and minorities. The FATA Secretariat upon the Political Agent's recommendation filled these reserved seats through nominations, with only 19 seats specifically reserved for women. Unfortunately, the elected councilors did not possess powers equivalent to their counterparts in settled areas. The lack of power with the elected councilors in FATA decreased their effectiveness in addressing issues related to law and order, poverty, human rights, and socio-economic development.

Furthermore, chairmen of the Agency Council was Political Agent of the concerned agency, and the Assistant Director of Local Government & Rural Development served as the Council's Secretary. The inclusion of these officials in prominent positions significantly curtailed the authority and power of the local government institution to improve governance and effectively deliver services (Hussain, 2023).

Unfortunately, this effort didn't yield positive results due to a lack of trust on the nominated councilors by the general public. Furthermore, the ineffectiveness of these councilors was compounded by their limited powers (Ali G. , 2020).

3.10 FCR REFORMS COMMITTEE 2005

In April 2005, the Governor of Khyber Pakhtunkhwa, Mr. Khalilur Rahman constituted FCR Reforms Committee under the chairmanship of Justice (Rtd) Mian Mohammad Ajmal. The main objective of this committee was "to recommend modifications in FCR after public consultation across FATA (Ali G. , 2020). The Committee's composition was designed to facilitate broad participation by including individuals from diverse backgrounds, such as tribal elders, current and former government officials, lawyers, representative from the FATA in the parliament as well as journalists. Commending its work on given term of reference, to recommend sound proposal for modification in FCR after gathering public input from across

FATA, the Committee conducted visits to several areas of FATA and organized town-hall meetings that were attended by individuals from many backgrounds and professions. The Committee gathered public opinion and explored their perspectives on the FCR. The committee also incorporated the views of experts, intellectuals, legal professionals, political activists, civil society organizations, and members of parliament from FATA.

After extensive deliberations and discussions, the FCR Reforms Committee concluded that a significant number of stakeholders expressed a desire for major changes to the FCR, with the aim of transforming it into a more humane law. However, it is worth noting that several beneficiaries of this law expressed a preference for maintaining the existing state of affairs (maintaining the status quo). The committee submitted its recommendations to the government, but the government could not act on its proposals primarily due to an abrupt change in the provincial government. The incumbent Governor of Khyber Pakhtunkhwa, Mr. Kalil ur Rehman, was succeeded by Ali Mohammad Jan Aurakzai. The Committee's proposals were seemingly ignored by the newly appointed Governor of Khyber Pakhtunkhwa, Lt. Gen. (Retired) Ali Mohammad Jan Aurakzai, perhaps due to the existing precarious security conditions in FATA. Consequently, the process of implementing changes in the outdated law of the FCR was delayed once again (Hayat, 2018).

3.11 FATA Sustainable Development Plan 2006-2015

In 2006, the Government of Pakistan developed a 10-year FATA Sustainable Development Plan (FSDP) following an extensive consultative process including local communities. The report's suggestions primarily center on enhancing financial and institutional management capabilities within the development sector in the Federally Administered Tribal Areas (FATA), with a specific emphasis on health, education, infrastructure, and the creation of employment opportunities. The execution of this strategy remained insufficient, mostly as a

result of the challenging security circumstances prevalent throughout this timeframe, as well as significant institutional shortcomings (Pakistan, 2016).

3.12 Sahibzada Imtiaz Report 2006

In April 2006, the government appointed a Task Force led by Sahibzada Imtiaz Ahmad, who served as the Advisor to the Prime Minister on Tribal Affairs. This Task Force was assigned two significant responsibilities: firstly, to propose positive changes in the administrative structure of FATA, and secondly, to formulate a comprehensive development plan for the entire tribal region (Hayat,2018).

Subsequently, the Task Force presented its report titled “FATA Strengthening and Rationalization of Administration Report, 2006”. This report was the first in-depth effort to address FATA Reforms and offered an extensive analysis of the existing situation in FATA. The primary focus of the report centered on administrative reforms, which led to an increased level of autonomy for the FATA Secretariat and a substantial boost in development funds allocation for FATA. Moreover, Additional Chief Secretary (ACS) position for FATA Secretariat was created, and numerous projects funded by foreign donors were initiated. This report was among the first official documents that highlight the security challenges in FATA and connected them to the tenuous governance system of FATA (Pakistan, 2016).

Furthermore, a complete sketch of the prevailing situation in FATA with a focus on the administrative reforms was outlined and then recommended the following:

Empowering the FATA Secretariat to facilitate rapid development,

Formation of a development authority for FATA.

Preserve tribal customs and traditions

Establishment of coordinated network to avoid confusion between federal, provincial and FATA Secretariat for integrated efforts.

Addressing law and order concerns by reviving tribal traditions, customs, and usages in a manner that aligns with the preferences of the local population.

Formation of a high-level commission tasked with carefully deliberating on the future of FATA, rather than relying on piecemeal reforms that may exacerbate the situation rather than resolve them.

The centuries-old traditional system of tribal governance should be strengthened until a final decision regarding the fate of FATA is made.(Hayat, 2018)

The report's findings led to greater autonomy for the FATA Secretariat headed by Additional Chief Secretary, and a substantial increase in funding for FATA's development. However, these expanded administrative powers and increased financial resources, yielded no tangible outcomes, primarily due to the absence of political authority in the elected representatives rather being vested in political agents (Ali G., 2020).

3.13 Cabinet Reforms Committee 2008

After the 2008 General elections the coalition government of Pakistan People's Party established a Cabinet Reforms Committee and appointed Federal Minister for Law, Mr. Farooq H. Naek as its chairman to re-examine all those proposed reforms which were recommended by the previous committees. Besides Farooq H. Naek, the chairmen of the cabinet reforms committee, the Committee comprised two Federal Ministers, namely Hamidullah Jan Afridi, an Independent MNA from Khyber Agency and Najmuddin Khan of the Pakistan People's Party (PPP). Furthermore, the Committee included several parliamentarian including, Akhund Zada Chitan, Zafar Beg Bhattani and Rahmat Ullah Kakar, among others. (Raza, 2012). The Cabinet Reforms Committee put out several recommendations for changes in the FCR. The committee has put out a recommendation to modify the title of FCR as the FATA Regulation of 2008. The committee further suggested that a judicial officer shall hear the appeal against the decision of the Political Agent. it

further suggested the establishment of a FATA Tribunal consisting of three members. The Tribunal's chairperson should be a retired judge from the High Court, while the remaining two members should include a senior bureaucrat and a senior lawyer. The aforementioned tribunal would possess the authority to review the decision of the judicial officer. One notable recommendation put forth by the committee was the elimination of the Political Agent authority in a tribal agency to choose Jirga for dispute resolution. Moreover, it was proposed that the involved parties themselves would be responsible for nominating the Jirga to adjudicate their disputes. It was also proposed to limit the extraordinary authority of the Political Agent, which allowed for the arbitrary detention of individuals without cause, as well as his authority, to imprison an individual for two years in jail. It is recommended that the party who aggrieved shall be expeditiously presented before court of law. The committee also expressed strong disapproval of the concept of 'collective responsibility' and advocated for the exemption of women, elderly tribesmen, and children from its applicability under FCR (Ullah, 2016).

3.14 Frontier Crimes (Amendment) Regulation 2011 Reforms

The Cabinet Reforms Committee in 2008 granted approval for modifications in the FCR. Subsequently, the President of Pakistan announced substantial modifications to the FCR through the Frontier Crimes (Amendment) Regulation 2011. These changes were implemented on August 12, 2011, and also included the extension of the Political Parties Order to the Federally Administered Tribal Areas (FATA). The Political Parties Order of 2002 was expanded to include the Federally Administered Tribal Areas (FATA) in 2011, hence granting political parties the freedom to engage in campaigning activities within FATA. However, because to the absence of provincial elections, the extent of its influence was constrained (Pakistan, 2016). The aforementioned amendments implemented significant alterations to the century-old text of FCR. The implementation of the Frontier Crimes

(Amendment) Regulation 2011 resulted in a restriction on the use of the principle of 'collective responsibility' and introduced changes to save women, children under the age of 16, and individuals above the age of 65 from being subjected to arrest and imprisonment under the aforementioned 'collective responsibility' provision of FCR. Thus, the act of detaining or arresting an entire family or tribe under the collective responsibility provision had significantly diminished. The powers of the political administration in relation to arrest and imprisonment under security proceedings for the purpose of maintaining peace were limited, and it was required to adhere to the restrictions outlined in the Criminal Procedure Code (Cr. P.C.) of 1898. These amendment additionally provided for provision of human rights to residents of the tribal belt, which included the entitlement to get bail and receive compensation for possessions that were seized by the government. These laws ensured the protection of property rights for tribal communities, so preventing any unjust deprivation of possessions. In cases where expropriation of property was deemed necessary, individuals affected would get fair compensation. In addition, the practice of detaining an individuals for an unspecified duration was prohibited, and they were granted the opportunity to seek redress through the FATA Tribunal. In case an individual was implicated in any criminal activity and afterwards apprehended by the administrative agency, he will be expeditiously brought before the court of the APA within a period of 24 hours following his arrest. The implementation of the Federally Administered Tribal Areas (FATA) reforms in 2011 facilitated the creation of a FATA Tribunal, consisting of a chairman and two other members. The chairman must be a civil servant of grade 21 and possess a comprehensive understanding of the administrative system of FATA. One member was required to possess a legal background and sufficient knowledge of tribal customs (Rewaj), as well as possess the qualifications necessary for the job of a high court judge. While the second member had to be a civil servant of grade 20 familiar with tribal administration. The responsibility for the nomination of the FATA

Tribunal was vested in the Governor of Khyber Pakhtunkhwa, who possessed the power to appoint the aforementioned body for a specified duration. This tribunal acted as the highest court of appeal, hearing cases of tribesmen against verdicts issued by lower judicial bodies. It had the power to revise decisions made by all lower judicial bodies beneath it. If an individual submitted an application within a specified time of the FATA Tribunal's decision, the tribunal could even revise its own decision. (Ullah, 2013).

However, the FCR reforms of 2011 also introduced the concept of a Qaumī Jirga, comprising respected elders and representatives from all tribes, for recommendations on exceptionally important issues. The reforms further allowed for jail inspections by Political Agents, Commissioners, and FCR Tribunals at least twice a year. The purpose of these provisions was to address the grievances of prisoners in accordance with the law and tribal customs. Nevertheless, in response to the rising militancy in the region and to safeguard national security, the federal government passed the Action in Aid of Civil Power Regulation (AACPR) in 2011, which counteracted several of the provisions introduced by the 2011 FCR Amendment Regulation (Turk, 2021).

3.15 ATA Reforms Commission 2014

The successful military operation in the region led to a growing recognition of the need for political, constitutional, and legal reforms in the Federally Administered Tribal Areas (FATA) among government officials, tribal residents as well as civil society organizations. Nevertheless, a lack of consensus had been persisted regarding the appropriate approach to introduce comprehensive reforms in the Federally Administered Tribal Areas (FATA), mainstream the region, and repeal the Frontier Crimes Regulation (FCR) (Khan, 2018).

In response to the perceived need for changes, the Governor of Khyber Pakhtunkhwa, Sardar Mehtab Ahmad Khan Abbasi, established the FATA Reforms Commission (FRC) on May 16, 2014. The commission was led by Ejaz Ahmad Qureshi, former chief secretary of Khyber Pakhtunkhwa. The primary objective of the FRC was to put out recommendations for implementing reforms in the Federally Administered Tribal Areas (FATA) (Pakistan, 2016).

The commission's vision statement aimed, "To transform FATA into a region characterized by socio-economic development, political empowerment, and effective governance, fully integrated into mainstream Pakistan". The vision statement outline a peaceful environment in FATA where the tribal residents have access to fundamental human rights and necessities, and able to make positive contributions towards the stability and prosperity of Pakistan. The term of reference of the commission led by Qureshi were:

- a) To establish well-defined strategic goals that align with the desires of the FATA's people;
- b) To reassess and revisit the relationship between the state and its citizens;
- c) To specify the main areas of institutional reform that FATA needs for good governance
- d) To evaluate how well FCR is effective in FATA's changing governance paradigm.
- Notably, there were no clear cut assessment of FATA political and constitutional status(Khan, 2018).
- Following one year of diligent effort, finally, in April 2015, the commission presented the interim report to the Governor of Khyber Pakhtunkhwa. Among the notable proposals put out by the FRC were:

- The establishment of a Governor's Advisory Council consisting of representatives from Agency and FRs Councils, as well as technocrats/experts, including women.
- The proposal entails the establishment of an Agency and FRs, with 90% locally elected members and 10% members nominated by the Governor of Khyber Pakhtunkhwa, with a focus on including women, minorities, and technocrats among others.
- To enhance the security measures within Agencies and FRs, it was proposed to recruit an additional 500 Levies in each Agency and 200 Levies for every FR.
- To enhance border security and management, an increase in the Frontier Corps wing was also recommended.
- To enhance the efficacy of the Apex Committees responsible for coordinating civil-military activities in the Federally Administered Tribal Areas (FATA), it was recommended to increase its membership by including new members and designate the Chief Secretary as the committee's secretary (Pakistan, 2016).

3.16 FATA Reforms Committee 2016 and Merger of FATA with KP

The FATA has consistently served as the hub for Jihadist activities, both during the Soviet-Afghan War from 1979 to 1989 and in the post-9/11 era following the United States attack on Afghanistan in 2001 (Yousaf, 2019). The presence of terrorists deteriorated the peace and stability of the FATA region (Muhammad, 2022). The National Action Plan formulated in 2014 to curb terrorism, prioritize reforms in FATA for enduring peace and stability of the country. Moreover the momentum for reforms in FATA was sparked by the parliament members of the FATA when they presented 22nd amendment bill to the constitution for integration of FATA with KP. As a response to the 22nd constitutional amendment bill, A special committee-,"Fata Reforms Committee", was formed on November 8, 2015, by the Prime Minister of Pakistan to propose political and administrative reforms for mainstreaming

of FATA. The committee was headed by Mr. Sartaj Aziz- advisor of the prime minister on foreign affairs- including the Governor of Khyber Pakhtunkhwa, the Minister for Law and Justice, the Minister for SAFRON, and the National Security Advisor as members (Pakistan, 2016). The committee spent almost eight months by visiting all the tribal agencies (khan, 2023). The committee consulted different stakeholders including tribal jirgas, Maliks, local leaders of political parties, civil society and journalist (Aziz, 2017). The committee thoroughly examined the following four options for mainstreaming FATA: (1) Integration of FATA with the neighboring KP province, (2) the establishment of FATA as an independent province,(3) An autonomous council for FATA on the pattern of Gilgit Baltistan, and (4) the maintenance of the current status of FATA, with modifications in the FCR law. On the other hand, certain sections of the tribal society oppose the establishment of the FATA Reforms Committee since no member of the committee belonged to Fata. They further argued that the committee lacked an understanding of the challenges and hardships faced by ordinary people of tribal areas and was unfamiliar with the traditional lifestyles and customs of the tribal Pashtuns (Ali, 2018). After thorough consultation and deliberation the committee submitted its report on august 8, 2016 to the government and recommended the integration of FATA with the neighboring province of Khyber Pukhtunkhwa as a pragmatic measure to mainstream it (Muhammad,2022). Besides recommending the merger of FATA, the committee also recommended the allocation of 3 per cent share in NFC award to fata (RS 110 billion approved at the time of merger) annually for next 10 years to initiate socio-economic development in FATA. Furthermore, the committee report also recommended that FATA should be connected to CPEC at feasible sites; the quota for FATA's students should be increased twofold in health and other educational institutes for the next 10 years, and a twenty-thousand-strong levies force for FATA should be approved (Pakistan, 2016). Keeping in view all these matters, A five year transition period was proposed by the committee's

report to prepare FATA for integration with KP (Aziz, 2017). Nevertheless, FATA was merged into KP without considering these matters (Muhammad, 2022).

Eventually, the historic 25th amendment in the constitution, for integration of FATA into KP, was passed by the national assembly with 2/3rd majority on May,24,2018. The senate approved it on May 25,2018. As a constitutional requirement, the KP provincial assembly passed the amendment on May 28,2018 as it had to affect the territories of KP. Finally, the president of Pakistan assented the 25th amendment on May 31, 2018 which formally merged tribal areas into Khyber Pakhtunkhwa (Ali G. , 2020).

Following integration into KP, the merged tribal areas have been allocated 24 seats in the KP provincial assembly. However, FATA eight seats in the senate of Pakistan will be abolished after completion of the tenure of the present senators. Likewise, The issue of FATA seats, which has reduced from 12 to 6 in the National Assembly of Pakistan remained unsolved till now which will further reduce the representation of tribal people in the popular house of the parliament. Following the merger, the tribal people hoped that government would take steps for: restoration of peace, administrative changes, socio-economic development schemes and basic infrastructure development as promised at the time of merger. However, over four years later, these hopes remain unfulfilled, and a growing chorus of dissatisfaction is rising among the tribal residents (Muhammad, 2022). This study has discussed and analyzed in detail the opinion of tribal residents of tehsil Jamrud tribal district Khyber regarding FATA's integration into Khyber Pakhtunkhwa in chapter 4.

CHAPTER 4

ANALYSIS OF PUBLIC OPINIONS

4.1 Introduction

After Pakistan's independence, FATA was maintained as an excluded territory, similar to the British colonial era. FATA remained a peaceful territory under the traditional system of governance based on Pashtunwali (Pashtun code of conduct) and cultural values of the region (Shoaib, 2018). However, tribal areas faced a significant disruption in its tranquility following the Soviet invasion of Afghanistan, and the subsequent post 9/11 American-led war in Afghanistan (Shah, 2018). The state indifference to underdevelopment and mis-governance lead to extremism and terrorism in the tribal society, which created serious law and order issues in the area. The militants and other outlaws started their alleged activities and gradually turned the situation in tribal regions into chaos. In view of the degrading law and order situation and widespread human rights violations in the tribal region, there have been consistent calls from within the country and from the international community and human rights organizations, to introduce meaningful reforms and integrate these regions into the national mainstream life (Khan, 2021). Consequently, a FATA Reforms Committee was constituted in 2015 by the government of Pakistan under the chairmanship of Sartaj Aziz to propose substantial reforms to mainstream tribal areas. The committee, after consultations with different stakeholders and exploring different available options, recommended the merger of FATA with the adjoining Pashtun-dominated Khyber Pakhtunkhwa province with a transition period of five years (Shad, 2018). As a result of this resolve, in May 2018, a bill was introduced in the National Assembly of Pakistan that got passed with majority votes and the fate of FATA was decided by merging it into the Khyber Pakhtunkhwa province. The federal structure of Pakistan underwent significant changes as ex-FATA officially merged

into Khyber Pakhtunkhwa through the 25th amendment of the constitution. Prior to the merger, the tribal regions were under the control of the federal government, but afterwards, they are placed under the direct supervision of Khyber Pakhtunkhwa Province (Sulman Shah, 2021).

Though, the merger of the tribal belt into the Khyber Pakhtunkhwa province has occurred, creating numerous hopes and expectations in the hearts of the tribal people for improvements in their lives. But, tribal people are disappointed as their hopes for improved lives have not been realized. Besides, there are certain cultural and administrative issues and hindrances that need immediate redressal with the consensus of the local people.

Moreover, the perspectives of the people residing in the tribal areas vary regarding FATA merger and the subsequent changes brought about by the integration of FATA into Khyber Pakhtunkhwa. To explore the views and opinions of the residents of tribal areas, the researcher has employed qualitative analytic method to analyze the data. The interview schedule used in the study contains different questions regarding FATA integration, separate province or FATA council, new (Police and judicial) changes introduced, and improvement in security and life standard of the people after integration of FATA with Khyber Pakhtunkhwa. These variables are important for understanding the perspectives and experiences of the residents regarding the FATA merger and the new changes happened after merger. In order to analyze primary data for this study, the researcher has also considered secondary data as a backup. This approach can help to justify the findings of the primary data and provide additional insights into the topic. By incorporating both primary and secondary data, the researcher can ensure a comprehensive and well-rounded thematic analysis of the topic.

The public opinion of FATA residents is not undivided. While some view the merger positively, highlighting the acquisition of full constitutional and legal rights and integration

with the rest of Pakistan, others express concerns about potential marginalization and the erosion of their cultural identity. Therefore, it is essential to take into account the perspectives of FATA residents regarding integration of FATA into Khyber Pakhtunkhwa. By considering the views of the affected population, policymakers and researchers can gain a better understanding of the issue at hand and the concerns or challenges expressed by the residents.

4.2 Public response towards FATA merger with KP

The merger of FATA with Khyber Pakhtunkhwa province in Pakistan has elicited a range of opinions from various stakeholders, including the local residents, political parties, civil society organizations, and the government officials. Public opinion on this issue is not straightforward and is influenced by different factors such as history, culture, traditions, society and politics. Therefore, a more in-depth analysis of public opinion may require a detailed exploration of the views and experiences of different segments of the population, as well as an examination of the role played by the media, civil society, and other actors in shaping public discourse on this issue. In the following lines, the public response towards FATA's integrations with Khyber Pakhtunkhwa is discussed and analyzes in detail on the basis of primary data collected from the local residents.

According to Fayaz Ahmed, the merger of FATA was a beneficial decision as it facilitated the rapid mainstreaming of FATA. The merger of the Federally Administered Tribal Areas (FATA) into Khyber Pakhtunkhwa has resulted in the abolition of the oppressive FCR (Frontier Crimes Regulation) and the extension of the country's judicial system, including regular courts, to the tribal areas. The already existing system in the Khyber Pakhtunkhwa Province can be easily extended to the Tribal areas. Most of the FATA residents reside in adjacent districts of Khyber Pakhtunkhwa province, indicating a close proximity between the two areas without any geographical gap. Both regions, Khyber Pakhtunkhwa and FATA,

share cultural links, which further strengthening the rationale behind their integration. It is important to note that while FATA areas lack direct geographical connectivity among themselves, they are intricately linked with Khyber Pakhtunkhwa Province (Ahmad, Personal Communication, April 09, 2023). Similarly, Sajid Ali is of the view, that the merger of FATA into Khyber Pakhtunkhwa is widely seen as a positive decision, as it has granted constitutional rights to the tribal people. With the merger, the people of FATA have been given the right of appeal, representation, and legal assistance, ensuring their inclusion within the framework of Khyber Pakhtunkhwa. This integration has allowed them to enjoy the same political and legal privileges as the rest of the country, fostering a greater sense of inclusivity and belonging (Ali, Personal Communication, March 20, 2023). Another respondent Barakat opined that FATA was geographically a part of Pakistan, but the people residing in the tribal areas were deprived of fundamental rights. The integration of FATA with Khyber Pakhtunkhwa is a step in the right direction as it has ensured that the tribal people now have access to all the constitutional and human rights enjoyed by civilized nations (Barakat, Personal Communication, March 26, 2023). Moreover, there are greater prospects of Pashtuns unity after FATA merger with Khyber Pakhtunkhwa. The Pashtuns of FATA, Khyber Pakhtunkhwa and Baluchistan shall be united under one province after which they will have strong voice for their due share and rights in the federation of Pakistan (Ali, Personal Communication, March 20, 2023).

Fayaz Ahmad- a supporter of FATA integration into Khyber Pakhtunkhwa further elaborated that both FATA and Khyber Pakhtunkhwa are inhabited by Pakhtuns and living under one system will bring them closer to each other strengthening their unity (Ahmad, Personal Communication, April 09, 2023). However, Dr. Atta Ullah Jan is of the view that it will reduce the representation of Pakhtuns in the upper house of the parliament (Jan, Personal Communication, April 08, 2023).

According to Hussain Ahmad, the life standard of the tribal people have improved after merger with Khyber Pakhtunkhwa as they have gotten representation in Provincial assembly as well as fair share in finance. Different institutions i.e. Local Government, Rescue 1122, fisheries, forestry, wildlife, and agriculture departments have extended to the tribal areas. The tribal people got government services after integration with Khyber Pakhtunkhwa which will further improve in the near future (Ahmad, Personal Communication, April 28, 2023).

Amjad also expressed similar views that different institution of public services have been extended to the tribal areas, which provide public service to the people. However, mega projects for the development of basic infrastructure pledged by the Government at the time of merger have not initiated yet which has created concern in the residents of the tribal areas. (Amjad, Personal Communication, May 10, 2023)

Another respondent Saeed Uz Zaman, also supported unification of tribal areas into Khyber Pakhtunkhwa that it is a commendable decision, and it should have taken place 50 years ago. He further highlighted that the Tribal Areas were divided into two categories: protected areas and non-protected areas, under the Frontier Crimes Regulations (FCR). The protected areas were directly governed by the Federal Government through political appointees known as Political Agents, while the non-protected areas were administered indirectly by local tribes under the Riwaj(customs). The administration only addressed offenses committed in the protected areas, and it generally refrained from interfering in disputes between tribes within the tribal territory (unprotected areas). The integration of FATA has strengthened Pakistan writ in the whole tribal areas. The laws prevalent in other cities and provinces have now been extended to FATA, ensuring consistency and equal rights for all (Zaman, Personal Communication, March 14, 2023).

The merger of FATA into KP was initially appreciated and considered a positive decision, in line with the government's commitment to granting equal political and constitutional rights to the tribal people. Additionally, promises were made regarding an economic package and a 3% share in the NFC (National Finance Commission) for the development of FATA. However, these promises have not been fulfilled, leading to a loss of public trust and faith among the tribal people towards the government. As a result, the people feel disappointed with the merger of FATA into Khyber Pakhtunkhwa (Wahid, Personal Communication, April 7, 2023).

Those respondents who supported FATA merger viewed it as a beneficial move that would provide the tribal people with all the constitutional rights and greater political inclusivity. They believed that merging FATA with Khyber Pakhtunkhwa has paved the way for development, improved governance, and increased access to resources and services. They see this integration as an opportunity to address the historical marginalization of FATA and bring its residents in line with the rest of the country.

But, on the other hand, the majority of respondents held opposing views, expressing reservations and concerns regarding the potential drawbacks and adverse effects of the decision. They were apprehensive that the merger could lead to the erosion of their cultural identity, disrupt their traditional governance structure, and have a negative impact on the socio-economic system of FATA. They also expressed fears of a reduced level of autonomy and diminished influence in decision-making processes.

In this respect, Abdul Manan stated that the decision to merge FATA into Khyber Pakhtunkhwa was initially considered a positive step. However, it ultimately turned out to be worse due to the breach of promises and commitments made during the merger process. The merger was hastily implemented without proper consultation with the local people, leading to

dissatisfaction and resentment. It appeared that the merger was imposed on the tribal areas for the interests of external actors. There was a perception that international involvement aimed to undermine our tribal way of living and traditions (Manan, Personal Communication, May 7, 2023).

Another respondent Bismillah Khan deemed the merger of FATA with Khyber Pakhtunkhwa an unfavourable decision, as it did not align with the demands of the tribal people. Apart from certain political parties with their own interests, the majority of tribal people sought reforms in the Frontier Crimes Regulations (FCR) rather than a merger with Khyber Pakhtunkhwa. The integration was viewed as unnatural, illegal, unconstitutional, and undemocratic as it has been done without the consultation and consensus of the tribal residents (Khan, Personal Communication, April 2, 2023).

Similarly, Dr Attaullah Jan elaborated that the tribal people were not consulted or their opinions sought regarding the merger. In cases where states or provinces disintegrate or integrate, the concerned people are usually consulted through a referendum. However, the people of FATA were neither consulted nor their opinions considered regarding the integration with Khyber Pakhtunkhwa. FATA held a separate status under Article 1 of the Constitution of Pakistan, and Article 247(6) clearly stipulates that the status of FATA cannot be unilaterally changed without consulting the Tribal people's Jirga (Jan, Personal Communication, April 08, 2023). In this Respect, Haji Mudeer khan also explained that the formation of the FATA reforms committee, intended to propose reforms in FATA, was not within the mandate of the Prime Minister but rather the President of Pakistan. The committee's purpose was to suggest reforms, not to recommend merger with Khyber Pakhtunkhwa. Despite lacking the authority to legislate for FATA, the parliament unlawfully abolished its separate status, identity, and traditions. The process of merging FATA into

Khyber Pakhtunkhwa was hurried and bypassed debate in the National Assembly (Khan, Personal Communication, April 27, 2023).

Barkat a proponent of FATA merger into Khyber Pakhtunkhwa said that FATA is one of the most economically deprived regions of Pakistan. It was greatly expected that integration of tribal areas with Khyber Pakhtunkhwa will bring significant changes in the life standard of the people. However, the lives of the people have not improved due to the poor economic condition of the country. The federal and provincial government have not reconstructed the war ravaged infrastructure of the tribal areas (Barakat, Personal Communication, March 26, 2023).

Similarly, another respondent highlighted that the merger of FATA did not prove a fruitful decision as it failed to meet the expectations and promises made to the local people at the time of the integration with Khyber Pakhtunkhwa. Prior to the merger the federal government exploited FATA, and now the Khyber Pakhtunkhwa province is exploiting the former FATA region. (Israr, Personal Communication, April 12, 2023).

Since the merger of tribal areas into Khyber Pakhtunkhwa, there has been concerns regarding the Process through which FATA is merged into Khyber Pakhtunkhwa province. The merger is seen as a violation of democratic principles, contradicting the spirit of Jinnah's fourteen points, which emphasizes that no bill or resolution shall be passed if three-fourths of the members of a particular community oppose it due to the harm it may cause to their interests. Concerns have been raised as only two out of twelve FATA MNAs voted in favor of the merger bill, with the remaining ten choosing to abstain (Zada, Personal Communication, May 2, 2023).

After comprehensive analysis of the respondents' views, divergent opinions emerged regarding the merger of FATA with Khyber Pakhtunkhwa. Supporters believes it offers

constitutional rights and development opportunities, while majority of the respondents oppose this decision and express concerns about cultural preservation, loss of autonomy and exploitation at the hands of Khyber Pakhtunkhwa province. Besides that, Majority of the respondents also raised concerns about the equitable distribution of resources, prospective diminished role of local leaders, and the potential repercussions on tribal customs and traditions. It is worth mentioning here, that most of the people who previously favoured FATA's integration with Khyber Pakhtunkhwa have changed their views as the mergers did not produced the desired expectation.

4.3 Public response towards new administrative setup (Police and Judicial system)

The Frontier Crimes Regulation (FCR), a British colonial law, was regarded as the root cause of numerous problems in the FATA. The law, which employed both rewards and punishments, infringed on the fundamental rights of tribal residents (Dawn.com, 2012). Under the Frontier Crimes Regulations (FCR), a local force known as Khassadar force (tribal police) primarily maintained the law and order in the tribal areas. It was a paramilitary force comprised of tribal members. They were recruited from the local tribes and were familiar with the dynamics, customs, and traditions of the tribal areas. This familiarity allowed them to navigate the complex tribal landscape and resolve disputes effectively. The political agent was the commandant of khassadar and levies forces and head of the judicial system in the erstwhile Fata. He acted as a magistrate and was responsible for resolving disputes and administering justice. The political agent had the authority to preside over local courts, hear cases, and pass judgments under FCR.

After the merger of FATA with Khyber Pakhtunkhwa in May 2018, a new police and judicial system replaced the old tribal police system of Khassadar and Jirga system under FCR in the

erstwhile FATA. The people of the tribal areas expressed divergent views over the implementation of the new police and judicial system. In the following lines, the tribal people's response to these reforms and new changes has been discussed in light of the data collected from the respondents.

4.3.1 Public views regarding new Police system

The maintenance of law and order in the tribal areas were previously carried out by the local Khassadars under the Frontier Crimes Regulation (FCR). Alongside the Khassadars, various entities such as Levies, Scouts, militias, the Frontier Corps, and Frontier Constabulary were responsible for both law enforcement and border management duties in those regions for several decades (Dawn, 2018).

The merger of the Federally Administered Tribal Areas (FATA) into Khyber Pakhtunkhwa (KP) brought about the implementation of a new police system, which replaced the century old khassadar system under FCR law. It raised the hopes of the many tribal people for a new era of peace and prosperity in the tribal areas at the time of unification of tribal areas into Khyber Pakhtunkhwa. The people anticipated that this merger would lead to positive changes, as it aimed to bring the tribal regions under the administrative and governance framework of Khyber Pakhtunkhwa.

In the support of new police setup in tribal areas a local respondent, Fayaz Ahmad expressed his satisfaction over the extension of new police system to the tribal areas as it has abolished the colonial era FCR law. In Ex-FATA under FCR all crimes were considered as private crimes while under the new police setup these crimes are considered as crimes against the state. There were no codified laws except FCR in the tribal areas before merger. Under the new police system, the residents of the tribal areas got the right of appeal, daleel (argument) and wakeel (defence) (Ahmad, Personal Communication, April 09, 2023).

The people expected that the new system would prove a harbinger of revolutionary changes especially in respect of peace and security in the lives of the people of the tribal areas.

A local tribal Malik, Barakat expressed his opinion by stating that the extension of police system to Ex-FATA was an important reform initiative aimed at improving law and order in the region. However, extension of police system in tribal areas should have been introduced gradually as recommended by the FATA reforms committee. The abrupt replacement of old khassadar and levies system under FCR shall not have taken place rather it shall have introduced gradually by preparing the ground for it by training and equipping Khassadars and levies. While the old system of policing under the Frontier Crimes Regulations (FCR) in FATA might have been suitable to the tribal culture and traditions, but it was a colonial legacy and had several drawbacks. The FCR provided for a system of collective punishment and allowed for the detention of individuals without trial. Under this system, the responsibility for maintaining law and order in the tribal areas rested with tribal elders, or Malik's, who were appointed by the colonial authorities. This system of khassadar was based on tribal customs and traditions, but it was also undemocratic and lacked transparency and accountability (Barakat, Personal Communication, March 26, 2023).

Moreover, the FCR provided for a system of collective punishment, which often resulted in innocent people being punished for the crimes of others. The system also allowed for the detention of individuals without trial, which was a clear violation of basic human rights. Although, the old system of policing under the FCR was compatible with tribal culture and traditions, however, it had kept the tribal people underdeveloped and backward on the pretext of preserving tribal traditions and culture (Ullah, Personal Communication, April 30, 2023).

Strengthening state institutions such as the police and other law enforcement agencies will lead to enhanced security in tribal areas. Umar Hayat is of the opinion that the security situation has much improved with the extension of the provincial jurisdiction and authority of

the Khyber Pakhtunkhwa Police to the tribal areas. The khassadar and levies forces have converted to the police, which is going to be well trained and are provided with the all-possible equipment's and resource, which have improved and will further improve the security and peace of the tribal areas (Hayat, Personal Communication, May 3, 2023).

Saeed Uz Zaman, a journalist and member of Jamrud press club, is of the view that FCR was a mix law based on tribal traditions, Pashtunwali (Pashtun code of conduct) and Islamic laws. The old system of khassadar and levies under FCR was colonial legacy. It was against the Pukhtoons norms to arrest every individual, i.e. elders and children for the crime committed by any member of the tribe. There were no law or procedure for the investigation and trials of the criminals. With the extension of police system to the tribal areas, the law and order situation has improved with the registration of FIR's and investigation of crimes. (Zaman, Personal Communication, March 14, 2023).

Reforming the colonial-era khassadar and levies system of police by regularizing it and transitioning it into a regular police force is considered as a positive development for both economic and social reasons by the supporter of the merger of FATA with Khyber Pakhtunkhwa. However, it is important to ensure that these personnel's receive extensive training in modern policing and investigation methods. Comprehensive and efficient training is necessary to improve the criminal justice system's responsiveness and bring it into line with public expectations. However, there are significant challenges regarding the capacity of the police to effectively investigate crimes and the lack of awareness among the general public regarding standard criminal procedures. The government has merged the levies and Khassadars into the regular police force who excel in operations, community policing, raids, and arrests but, their lack of advanced education and training in investigation and record maintenance renders them inept for conducting thorough investigations, especially when it comes to contemporary investigation techniques and scientific and forensic evidence. This

incompetence and failure within the investigation agency can ultimately lead to injustices, which would in turn reflect negatively on the performance of the judiciary (Turk, 2021).

On the other hand, Majority of the tribal people dislike and are averse to the new police setup extended to the tribal areas after merger. The traditional system of governance and justice in the tribal areas enshrined in FCR was based on customary laws and norms, which were markedly different from the formal legal framework followed by the police. The sudden imposition of a new police system disrupted the familiar tribal practices and created confusion among the local population.

In this regard, Hazrat Wali, the Pakistan People's Party District President of Khyber, expressed his opinion that tribal people consider the police setup extended to tribal areas an alien system. This is because it is based on colonial-era laws such as the Panel Code, Cr.PC, and CPC, which were devised by the British government during the colonial rule in the subcontinent to suppress the autonomy of the native people. It is inconsistent with the tribal values and violate tribal tradition and customs. Furthermore, it violate the chadar and chardewari of the local people. He further added that it is a mean to exploit and suppress the tribal people to snatch their rights (Wali, Personal Communication, May 2, 2023).

Another respondent Sajid Ali Kokikhel is of the opinion that the police system by Khassadar and levies under FCR law was based on the tribal traditions and Pashtunwali, which was acceptable to the tribal people. The honour and dignity of family was safe under FCR law in the tribal region. The people of the merged tribal areas are not familiar with the new police system implemented in the Ex-FATA. He further stated that Under the Frontier Crimes Regulation (FCR) in FATA, Women were protected from arrest and detention. However, with the implementation of the new police system, women are no longer exempted from arrest and detention. They can be arrested and detained if they are suspected of committing a

crime, regardless of whether they are named in an FIR or not. He maintained that Women is the guardians of family honor and their arrest and detention is considered as an attack on the honor of the entire family and tribe which will create further hatred towards police in the tribal areas (Ali, Personal Communication, March 20, 2023).

Bismillah khan also fear that the new police system will erode tribal norms and honor of women. The arrest and detention of women under the new police set up could lead to increased harassment and abuse of women by law enforcement officials. Moreover, he stated that the Khassadars and levies under FCR was a sort of community policing which was successful in maintaining peace and order in FATA. The community police system is successful throughout the world therefore the implementation of formal police system in FATA is unnecessary and troublesome for the local people (Khan, Personal Communication, April 2, 2023).

Ahmad shah, a tribal elder, consider the new police system inefficient to maintain peace and order in the tribal areas as it is not familiar with the tribal temperament and nature. Both khassadar and levies under FCR deal the law and order situation according to the local traditions and hence they were successful in maintaining order in the tribal areas. Moreover He added that under FCR law One Assistant Political Agent and Tehsildar would maintained peace in vast areas i.e. Tehsil with the help of Khassadars and levies with the assistance of tribal Maliks. Now the government under the new police system is establishing police stations in different areas which will incur huge cost for maintaining peace and order but no improvement has seem regarding peace and security (Shah, Personal Communication, March 20, 2023).

Another respondent, Israr, is also not satisfied from the police system. He consider it corrupt, inefficient, based on bribery and elitist in nature. He further elaborated that a failed system

of police cannot bring peace and stability in the tribal areas, rather excessive registration of FIR's against each other by the tribal people has created many complexities, hatred and disturbance in the rather peaceful tribal society (Israr, Personal Communication, April 12, 2023).

Dr. Manzoor Afridi argued that FCR was not the basic cause of security issue in the tribal areas. FATA is an egalitarian society guided by local norms, values and traditions called Pukhtunwali (Pukhtun code of conduct), which the tribal people really follow very strictly. It had been quite peaceful territory before the American attack on Afghanistan. Before 9/11, there was no problem of law and order in the tribal areas of Pakistan. Whatever happened in the tribal areas were due to the gradual spillover effect of Afghanistan war and ensuing events. Militancy and violence have gradually found roots in the tribal areas and spread towards settled areas. Historically, FCR had no direct relationship with the insurgency and the security deadlock in the erstwhile FATA. The Security Situation have not improved with the merger of FATA into Khyber Pakhtunkhwa rather it had improved after the military operations in 2011-2015 (Afridi, Personal Communication, April 02, 2023).

Haider Ali is of the opinion that although khassadar and levies under FCR had some flaws, it was rooted in the traditions of the tribal society and was effective in protecting the order and peace in the tribal society. He further argue that the integration of FATA with Khyber Pakhtunkhwa has resulted in a worsening security situation, which has been exacerbated by the defective police and judicial systems. As a result, disputes among people and tribes have increased, making the situation more volatile as compare to the previous era of FCR (Ali, Personal Communication, April 13, 2023). Another respondent Jan Akbar is of the opinion that the levies and khassadar were well aware of the local norms and values hence they maintained peace and harmony within the tribal areas. In case a crime was committed, the khassadar would communicate the offence through Jirga to the family and tribe of the

concerned offender and resultantly he would be handed over to the administration. In the new police system the offender escape. The crimes rate are increasing as conviction is difficult (Akbar, Personal Communication, March 18,2023).

The primary objective of integrating the tribal areas with Khyber Pakhtunkhwa was to address the security challenges in the region by improving governance and promoting development. However, the security situation in the tribal districts has remained volatile, and there have been reports of militant attacks and terrorism in the area. The worsening security situation in Khyber Pakhtunkhwa can be comprehended from the fact that 34 percent of the total terror incidents in 2022 were reported from mainland Khyber Pakhtunkhwa while 30 percent of the total terror attacks were reported from tribal districts of the province (former FATA), thus 64 percent of the total terror incidents were reported from the province of Khyber Pakhtunkhwa (Picss.net, 2023). Tribal districts saw a 100 per cent rise in militant attacks in April 2023. In March, PICSS had recorded seven attacks, while in April, the number increased to 14 (Dawn, 2023). Jan Akbar added that the worsening security situation indicate that merger of FATA with Khyber Pakhtunkhwa was not the only solution to bring peace and stability in the tribal areas and the whole country(Akbar, Personal Communication, March 18,2023).

In this, regards Noor Zada opined that the incidents of terrorism occur time and again even after merger of FATA. Bomb blast incidents still happen, Threat calls are still being made to people for payment, and individuals are being killed through target killings. Even suicide attacks are happening in the tribal areas. The recent suicide blast on Takhta Baig Police check Post Jamrud in January 2023 is indicative of the worsening security situation. Furthermore, Crime rate has increased manifold after merger of FATA into Khyber Pakhtunkhwa (Zada, Personal Communication, May 2, 2023)

Thorough analysis of the respondent views of respondents reveals diverse responses regarding the implementation of the new police setup in the tribal areas after the merger of tribal region into Khyber Pakhtunkhwa. Some of the respondents who support FATA unification into Khyber Pakhtunkhwa consider it a positive change, which has abolished the outdated FCR and provided the residents with legal rights. They believe that it has addressed the security concerns as the government is in a better position to control militant activities and prevent the spread of terrorism. But, majority of the respondents oppose the new police system as they view it an alien system that undermines tribal traditions and culture. Moreover, they believe that it has not improved the deteriorated security of the tribal region. Many respondents who initially favoured FATA merger also seem dissatisfied with the new police set up in Ex-FATA owing to violation of tribal norms and values, inefficiency and corruption and complex and intricate nature of police system. They have raised Concerns about the capacity and training of police personnel and the volatile security situation in the region with increased terror incidents. Overall, the analysis highlights divergent viewpoints regarding the new police system and the challenges associated with it, with majority of the respondents dissatisfied and concerned about the violation of tribal norms and customs.

4.3.2 Public opinion towards judicial system

FATA's judicial system was based on FCR (1901), a hybrid colonial-era legal framework that combined tribal traditions and norms with executive discretion (Wazir M. K., 2007). The criminal justice system of tribal areas enshrined in FCR 1901 revolved around the Political Agent who was meant to control and subdue the tribal region instead of public interest (Babakhel, 2018). Under the FCR, he exercised broad executive, administrative and judicial authority, including the magisterial powers to organize a Sarkari Jirga (Council of Elders) of appointed tribal elders. He relied on Jirga to settle tribal disputes (Naseer, 2015). In FATA, Jirga served as a judicial court which consisted of tribal elders who decided disputes through

consensus. It was the only authority in making legal decisions and resolving disputes because neither the legislature nor the courts had jurisdiction over FATA (khan S. , 2011). Jirga remain an integral part of the justice system in the tribal areas, providing speedy justice that resonated with local values. After independence, the repressive FCR was maintained by the state of Pakistan, which kept the people of tribal areas beyond the purview of constitutional and human rights. The 1973 Constitution's Article 247(7) prohibited the courts from having jurisdiction in the FATA. Residents of Tribal areas accused under the FCR were denied the right to appeal against the decisions of political agent in higher courts. Political agents under FCR could award punishment without the due process of law and the right to appeal. In criminal cases, the only right available to a defendant was to object on the members designated to a Jirga (Nasser, 2015). The Political Agent could not be held accountable or audited by anyone. In the FCR law, under the collective responsibility clause, the house of a family or whole village could be demolished for the guilt of a single wrongdoer of the tribe (FP, 2018). FCR dealt with all civil and criminal cases in FATA. Ever since 1901 till its abolition in 2018, the draconian FCR has been criticized for violations of fundamental human rights in FATA (Ahmad, 2016).

The integration of FATA into Khyber Pakhtunkhwa has ended the FCR and extended the Judicial System and the jurisdiction of Supreme Court and Peshawar High Court to the tribal areas. After the merger, the traditional system of solving disputes under Frontier Crimes Regulations (FCR) was brought to an end. The replacement of Jirga system with the new formal judicial setup in tribal areas has elicited a mixed response from the respondents, with varying opinions and perspectives in favour and against of the new Judicial setup. In the below paras the opinion of residents of tribal areas based on the primary data collected is analyzed in detail. In this regards, Mr. Umar Hayat, a local respondent from Jamrud who favour the extension and establishment of judicial system in FATA, believes that integrating

the tribal areas into the mainstream legal framework has ensured the provision of fundamental rights, due process, and access to justice for the tribal residents. He consider it a right step towards addressing the long-standing grievances of the marginalized communities living in these areas. Moreover, he stated that FCR was an inhuman law, which had deprived the people of their fundamental rights. The FCR Jirga consisted of the government appointed members who used to be influenced and biased by the powerful individual or party. At time, the Decisions of Jirga were arbitrary and lacked transparency. The new judicial system has brought to an end all those unfair practices (Hayat, Personal Communication, May 3, 2023).

Likewise, Hussain Ahmad also expressed his support for the abolition of the repressive FCR and implementation of the judicial setup in the tribal areas as it has provided the fundamental rights and judicial right of fair trail to the tribal people . Prior to merger, innocent tribal people were arrested and detained for years under the collective responsibility for the crimes not committed by them. Similarly, most of the time Jirga constituted under FCR sided with the political administration by neglecting the principles of justice and fairness. Moreover, the Jirga depended on eye witnesses only to determine the innocence or guilt which can be subjective and influenced by personal bias rather than on solid facts and scientific evidence(Ahmad, Personal Communication, April 28, 2023).

Seed uz zaman is of the opinion that although the Judicial system is time consuming and slow, Nevertheless, it has prevented the disputes among tribal people. The influential and weak both parties have the right and access to the judicial system and courts. Regarding Jirga he stated that impartial and fair Jirga is not a bad institution per se. But the Jirga system shall not decide the murder and other critical cases rather it shall be investigated by the police and decided by the courts. The Jirga often decided murder cases on payment of ransom money without punishing the offenders, which did not discourage crimes like murder and killing. Certain crimes require thorough investigation and proper trial, which can be conducted by the

police and courts, rather than by the Jirga under FCR (Zaman, Personal Communication, March 14, 2023). Likewise, Prof. Fayaz Ahmad Mullagori argued that the new judicial set up extended to tribal areas has provided the people of the tribal areas with the opportunity to plead and defend themselves in the courts against any injustice. It is accessible to all irrespective of any discrimination. The old Jirga system under FCR was colonial legacy the primary purpose of which was to control the crimes rate in the tribal areas. It favoured the mighty, rich and influential people. Moreover, FCR Jirga was not based on any codified procedure or justice system. The decisions of the Jirga wholly and solely depend upon the sweet will of the Jirga members (Ahmad, Personal communication).

Hikmat shah Afridi also supported the new judicial system and argued that The Jirga system under FCR had no mechanism for recording of the evidences, no right to defend oneself and no right of appeal was granted to the aggrieved one, even to those who were punished for the crimes committed by his tribesman (Afridi, Personal Communication, May 14, 2023).

Jirga comprised of only male members, were biased against women because they do not have any representation, not even as witnesses. At time it can be partial as the Jirga members frequently favor one party due to family ties, payments made by the party as a bribe, or some Political influence. As a consequence the weaker party has to bear the brunt of the decision (Barakatullah, 2013).

Another respondent Abdul Wahid contended that in the former FCR system there was the influence of the Political Agent, Malik, and influential Khans. The extension of judicial system to tribal areas after merger has brought such influence and role of these Khans to an end. There was no right of appeal in the jirga system, but in the new judicial setup extended to FATA, the right of appeal and defense is available. An injustice against a poor man can be

addressed by lodging an FIR against the opposite party or person for his rights (Wahid, Personal Communication, April 7, 2023).

Sajid Ali stated that the replacement of FCR- that was a black law- with the judicial system in the Ex-FATA is a positive step. Though, the new judicial system provided the people with the right of Appeal, defence (Wakeel) and argumentation (Daleel), but it has implemented abruptly without proper homework and preparation by replacing the centuries old Jirga system. Moreover, it is expensive as compare to Jirga system. The lawyers charge heavy fees for writ petitions, which is a new practice for the tribal people. It take too long to settle the disputes among the tribal people and clans. The judicial system shall be strengthen and modified enough to the tribal people temperament and consistent with their customs and traditions. He further argued that The Jirga system under FCR was cheap which speedily settled the disputes according to the customs and norms of the local people. However, it was corrupted later on, which significantly reduced its credibility and fairness (Ali, Personal Communication, March 20, 2023).

On the other hand, majority of the respondents oppose the new judicial setup in tribal areas and express concerns about the potential loss of indigenous customs, traditions, and the authority of the Jirga system. Majority of the tribal respondents are critical of the complicate and costly court process, lengthy hearing and decisions contrary to the tribal traditions and norms. According to shahzad Ahmad, the new judicial setup is very complex, costly and lengthy. It take long time, even years and decades to decide cases. The change of judges in the panel further prolong the cases. In contrast the Jirga under FCR was based on tribal values and culture which decided disputes or cases of conflict speedily and cheaply. Both the disputant parties had to accept the decision of Jirga (Ahmad, Personal Communication, May 21, 2023).

Another respondent Hazrat wali is of the opinion that the new judicial system implemented in tribal areas violate tribal traditions and values. The judiciary of Pakistan rank 129 out of 140 countries in the 'world rule of law index' 2022 as per the world Justice Project's report, How can tribal people expect justice from such corrupt and low ranking judiciary. Besides, there are no land and Revenue record in FATA. how can one prove his legality of land or property in courts. In tribal traditions the lands are assigned to tribe and in case of dispute it is decided as per tribal traditions and customs. In contrast to the judicial setup, Jirga is based on Egalitarian tribal norms and values which immediately settled disputes. It dispenses cheap and speedy justice. Its decision is accepted by all the factions involved in a dispute or conflict as a recognized mean of dispute settlement (Wali, Personal Communication, May 2, 2023).

According to Manzoor Afridi, the judicial system extended to the tribal areas is based on the colonial era laws which is complicate and beyond the understanding of common man. People consider it an alien system which is against the tribal culture and traditions. For thousands of years, the Jirga, an assembly of elders and influential figures, has served as an institution for dispute resolution in tribal societies. This traditional system, deeply rooted in tribal values and customs, has played a vital role in resolving conflicts among the tribal people. The Jirga system operated Under the Frontier Crimes Regulation (FCR) was based on these tribal principles, effectively settling disputes and fostering peace and harmony within the community. It is important to note that the FCR only applied to protected areas, while the unprotected areas operated outside its jurisdiction. Prior to the US war in Afghanistan, when formal state law was absent, the Jirga system facilitated peaceful coexistence among the people. In comparison to the judicial system, the Jirga system under the FCR was known for its efficiency and cost-effectiveness. Disputes among tribal people were promptly addressed in accordance with local traditions and norms (Afridi, Personal Communication, April 02, 2023). Another respondent, Barkat, is of the opinion that the government did not fulfill the

prerequisites for the extension of judicial system to the tribal areas. The government shall have introduced it gradually as per the FATA reforms committee report, first, by uplifting the people of the region through education and infrastructure development and then introducing the changes in the tribal system (Barakat, Personal Communication, March 26, 2023).

The Jirga system incorporated into the FCR by the British Raj in the 19th century delivered swift justice in the Tribal Areas of Pakistan. Jirga Consisting of male elders, serve as an executive, judicial, and legislative body that settled disputes. Decisions of Jirga were typically straightforward and unanimously agreed upon (vargas,2022).

Another Respondent, Sadiq khan also believe that the judicial system is cumbersome and expensive because only rich people can afford to hire expert legal counsel and pay court and case-related expenditures. He elaborated that Jirga has been successful in resolving conflicts and preserving peace in society for centuries, since they are strongly entrenched in local customs and tribal traditions. The inhuman clauses of the FCR and flaws in the Jirga system should be reformed rather than completely replacing it by the judicial system (Khan, Personal Communication, March 29, 2023).

Bismillah khan is of the opinion that the judicial system is not efficient as no major dispute of land, or lease have been settled by the courts or judiciary since its establishment in FATA. There is major difference between the nature of disputes in FATA and settled areas. The settle areas have land and revenue record. There applied the Cr.PC, CPC and PPC in settle areas however, there is no land or revenue record in FATA. The judicial system is inefficient and incompatible with the tribal traditions and dispute settlement method of tribal people. Moreover, The Jirga system was cheap and efficient based on egalitarian tribal norms which resolved disputes swiftly in accordance with the tribal traditions whereas the judges and

lawyers are unaware of the tribal custom and culture (Khan, Personal Communication, April 2, 2023).

Thorough analysis of the respondent opinions reflect that people of the tribal areas have diverse responses to the abolition of the FCR and Jirga system and extension of the judicial system to FATA. The respondents who favoured the judicial system and the abolition of FCR view it a positive development towards granting fundamental rights and legal safeguards for achieving justice and equality for the People of FATA. They considered draconian FCR as the root cause of injustices, human and constitutional rights violations and a lack of fair legal procedures. They were of the opinion that FCR Jirga was based on informal and non-codified procedure which denied the basic right of Appeal, Wakeel and Daleel to the tribal people. It could be biased due to socio-economic and political influences. They consider that the new judicial system has brought to an end a black era by providing the right of justice, fair trial and all the constitutional rights to the people of the tribal areas.

On the other hand, majority of the respondents were unsatisfied and opposed the judicial system by replacing Jirga system. They consider it an alien system that violate the tribal customs and traditions. Moreover, it is complex, expensive, time consuming and inefficient to settle their issues and disputes. They preferred Jirga as it is a recognized and time-honored institution that resolved disputes and maintained peace and tranquility in the society. It provided a swift and localized justice system, which was better suited to the cultural and social norms of the tribal areas. Majority of the respondents argued that reforms in FCR and Jirga system would be more suitable option to preserve social customs and values of the tribal region. They are concerned that the new judicial and police setup may erode the distinct cultural identity of the tribal people. They believe that life of tribesman have not improved rather it has become difficult due to the extension of the judicial and police setup compared to the earlier FCR setup. Besides, a significant number of respondents considered tribal

autonomy, preservation of tribal culture and Riway, and minimal interference by the government as good features of FCR, however demanded abolition of repressive clauses and necessary reform in FCR for mainstreaming FATA.

4.4 Public Opinion Regarding Separate Province or merger with Khyber

Pakhtunkhwa

Until 2018, the governance system of federally Administered tribal areas did not seem any significant change since independence of Pakistan but were treated on colonial patterns under the outdated FCR law. (Raid khan, Sajid Hussain,2020). FATA reforms became a priority under National Action Plan formulated after the army public school Peshawar attack in December 2014. Thus the Government formed a FATA reforms committee in November 2015 headed by Sartaj Aziz- advisor to the Prime Minister on foreign affairs. The committee submitted its report in August 2016 which proposed the complete merger of FATA with the province of Khyber Pakhtunkhwa. Consequently the government merged FATA into Khyber Pakhtunkhwa through 25th Constitutional Amendment on 31st May,2018 (Group, 2018).

The merger of FATA with KP received wide support across Pakistan, including major regional and mainstream political parties such as, Pakistan Muslim League- Nawaz (PML-N), Pakistan People's Party (PPP), Jamaat-e-Islami (JI), and Pakistan Tehreek-e-Insaf (PTI), Awami National Party (ANP), Quwmi Watan Party (QWT) (Ali, 2018). However, two political parties, the Jamiat Ulema-e-Islam (JUI-F) and the Pakhtunkhwa Milli Awami Party (PkMAP) have opposed the integration of FATA into Khyber Pakhtunkhwa. A referendum has been demanded by these political parties with the aim of granting the tribal people the chance to determine their own future (Akhter, 2017).

Besides, it is important to note that after merging FATA into Khyber Pakhtunkhwa, many segments of the FATA population expressed their opposition through protests against the

decision of merger of tribal areas. The anger and frustration of the tribal people are evidenced by several incidents. These incidents comprise: challenging the merger decision in the Supreme Court by the FATA Qumi Jirga, demolition of the toll plaza in District Khyber, land disputes among tribes in Khyber, road blockade in Bajaur over border closure, and the damaging of a civil judge's vehicle in Darra Adam Khel, which reveal the anger of the tribal residents against the unification of FATA with Khyber Pakhtunkhwa (Turk, 2021). Therefore, there was a dire need to highlight the opinions of the FATA residents. In the following paragraphs, the opinion of FATA residents and experts are discussed in details on the basis of the primary data collected.

Fayaz Ahmad supported the unification of FATA with the Khyber Pakhtunkhwa by arguing that FATA has historically been a part of the Khyber Pakhtunkhwa province and shares many geographical, cultural, linguistic, and administrative links with it. Over the years, many people from FATA have migrated to Khyber Pakhtunkhwa, leading to the development of strong social, economic, and cultural ties between the two regions (Ahmad, Personal Communication, April 09, 2023). Similarly, Hussain Ahmad is of the view that separate province of FATA is impossible as it will require complete governance and administrative setup. Khyber Pakhtunkhwa has already a well-developed administrative system which has easily been extended to the Ex-FATA region and the residents are benefitting from provincial services. He further elaborated that the unification of Ex-FATA with Khyber Pakhtunkhwa will create a sense of unity and hence will strengthen unity among Pakhtuns (Ahmad, Personal Communication, April 28, 2023). Moreover, geographically, the seven Agencies of FATA are not connected with each other; instead, they border several districts of Khyber Pakhtunkhwa. Furthermore, FATA lacks revenue generation resources to sustain itself as a separate province. Considering these facts, it is a suitable decision to

integrate FATA with Khyber Pakhtunkhwa, which has a more developed infrastructure and institutions (Ahmad, Personal Communication, April 09, 2023).

Another respondent, Amjad also favoured the integration of FATA with KP. He is of the view that the merger of the tribal areas with Khyber Pakhtunkhwa is not a source of exploitation of FATA resources; rather, it has reduced the exploitation of the tribal people. They have now received their due constitutional rights. The merger with Khyber Pakhtunkhwa has brought FATA under the same constitutional framework as the rest of Pakistan, ensuring that the people of FATA enjoy the same constitutional rights and protections as other citizens of the country. The residents of FATA have gotten more employment and other opportunities. (Amjad, Personal Communication, May 10, 2023). Besides that FATA have no sources to generate the required revenue necessary for a separate province. In this connection Saeed Uz Zaman is of the view that FATA lacks the capability to generate its own revenues to sustain itself as a separate province. He further elaborated that currently, it is a good decision. However, in the future, if FATA develops enough to sustain itself economically, the residents can start a struggle for a separate province. Currently, the residents should be happy with this decision they have gotten rid of the oppressive Frontier Crimes Regulation (FCR) and got equal status as Pakistani citizens (Zaman, Personal Communication, March 14, 2023).

Beside the abovementioned respondents who supported integration of FATA into Khyber Pakhtunkhwa, majority of the respondents express their view against the merger of FATA with Khyber Pakhtunkhwa and rather demanded for a separate province. One of the respondents who strongly opposed the procedure of integrating FATA into Khyber Pakhtunkhwa stated that the integration of FATA with Khyber Pakhtunkhwa was imposed on the tribal people without consultation or ascertaining their opinions. The decision of establishing a separate FATA province or a FATA council should be determined by the

tribal people through a referendum. Therefore, before making any decisions regarding the tribal areas, it is crucial to restore the special status of FATA as enshrined in Article 247 of the 1973 Constitution, the 25th constitutional amendment be reversed and necessary reforms in the oppressive and inhumane clauses of the Frontier Crimes Regulation (FCR) shall be introduced. Furthermore, the power of the Political Agent should be reduced. Once the forced merger of FATA with Khyber Pakhtunkhwa is reversed, the people of FATA should be given the right to decide their future, whether it be regarding a separate province, a council for FATA, or merger with Khyber Pakhtunkhwa. Furthermore, merger with a poor and financially weak province cannot solve our problems but it will cause a rift between the tribal areas and Khyber Pakhtunkhwa residents. (Khan, Personal Communication, April 2, 2023).

According to Professor Manzoor Afridi, creating a separate province for FATA would provide more development opportunities for the residents of the tribal belt. This decision would grant the region greater autonomy, enabling it to address its unique issues and challenges effectively. Moreover, it would allow the people of FATA to have a stronger voice in their own governance and development. Furthermore, he elaborated that the establishment of a separate province or FATA council would provide the tribal people with a dedicated provincial administration and legislature. This would result in increased and effective representation for the tribal population in the national parliament. Additionally, it would grant the tribal people control over their own resources, ensuring that they are utilized for the benefit of the local residents. Moreover, he further highlighted that a separate province would lead to a greater share in national resources and increased job opportunities for the local residents. This would contribute to the overall development and prosperity of the tribal region (Afridi, Personal Communication, April 02, 2023).

Another respondent expressed his opinion in favor of FATA to be a separate province. He believes that a separate province would help avoid the exploitation of tribal people in many

ways. Creating a separate province for FATA could potentially provide the region with greater autonomy and a stronger voice in its own governance, reducing the likelihood of exploitation (Zada, Personal Communication, May 2, 2023). Sadiq Khan stated that Provinces enjoy autonomy under the 18th amendment of the constitution. In the case of a separate province or council, FATA would be an autonomous entity which will establish its own policies and provincial laws to protect its resources and ensure that its people benefit from the region's economic development. Additionally, a separate province could attract greater investment and development resources, leading to more job opportunities and an improved standard of living in the region (Khan, Personal Communication, March 29, 2023).

Tribal areas had a separate constitutional and cultural identity in the federation of Pakistan. As a separate province FATA can safeguard its unique culture and egalitarian values. In the post-merger scenario FATA is facing exploitation regarding government services and employment opportunities. The recruitment of non-local individuals in tribal areas results in a dual loss for the region. Firstly, these outsiders often lack efficiency in performing their duties, leading to ineffective service delivery. Secondly, hiring non-locals goes against the local job quota system, causing resentment and a sense of injustice among tribal residents which increase hatred and disappointment in the local residents. By becoming a separate province, FATA can ensure that its recruitment policies prioritize local residents, thereby preserving their rights and creating a sense of ownership and belonging. This would not only lead to better service delivery but will also help in preserving the cultural fabric and egalitarian values of the region (Ali, Personal Communication, April 13, 2023).

Tribal areas can sustain itself as a separate province because it has huge deposits of minerals and important trade routes. Beside many other trade route and passes, the famous among them-Khyber pass- connect Pakistan with Central Asian states through Afghanistan which can generate a huge revenue properly utilized and regulated (Ullah, Personal Communication,

April 06, 2023). As per the Geological Survey, 19 different kind of reserves have been identified in tribal region. These include valuable minerals like copper, lime stone, coal, lead, chromite, marble, soapstone, dolomite, gypsum, emerald, and manganese. If these mineral resources are properly explored, it can generate the required revenue for a separate FATA province. (Sahibzada Muhammad Usman 2022).

Another respondent Sajid Ali highlighted one of the important aspect of FATA as separate province, he is of the opinion that in the case of a separate province, FATA would have its own provincial assembly responsible for enacting laws that are consistent with the tribal culture and traditions. This arrangement would help preserve the region's unique identity and protect it from potential exploitation by provincial and central governments. Additionally, FATA would have strong representation in the national parliament, ensuring that the voices and interests of the tribal areas are well represented at the federal level (Ali, Personal Communication, March 20, 2023).

Dr. Attaullah Jan also highlighted that as a separate province, there would be an increased effective representation of Pakhtuns in the national parliament of Pakistan. This would be Achieved through the allocation of parity seats in the upper house of the parliament. Furthermore, in the case of a separate province, FATA would have its own administrative system, provincial assembly, Chief Minister, and cabinet. This would enable FATA to address its issues through its own people, according to their norms and values (Jan, Personal Communication, April 08, 2023).

The analysis of the respondents views indicate that some respondents supported integration of FATA into Khyber Pakhtunkhwa province by arguing that it restore the natural unity of Pakhtuns and will improve the life standard of the tribal residents. They consider separate province for FATA impossible due to geo-graphical and financial constraints. However,

majority of the respondents favoured separate province for tribal region to preserve their distinct identity and cultural traditions. Moreover, the majority of the respondents who initially supported the integration of FATA with Khyber Pakhtunkhwa now argue that a separate province is necessary to prevent the exploitation of FATA's resources and residents. They express disappointment with the merger, as their expectations of development and progress, which were promised during the merger, have not materialized.

CHAPTER 5

CONCLUSION

The erstwhile FATA was marginalized throughout history, first by the colonial master and after independence, the state of Pakistan governed it through the colonial legacy of the FCR. This Law was considered as inhuman by the courts at different times and human rights organizations, as it violated the fundamental human rights of the tribal people. No significant changes were brought in the outdated governance system of tribal areas until 2018. After the 9/11 event and subsequent war in Afghanistan, militancy spread over to the FATA and deteriorated the peace and security of the region, that further led to counter-terrorism polices and operations by the state of Pakistan. On the basis of the data collected from the respondents, there developed two major arguments. First, during the era of militancy, the FCR, as it was considered a black law, further reinforced and increased the power of political agents to curb militancy. It is also believed that during this period, human rights violations were at their peak. On the other hand, the bad governance model, i.e., FCR, further strengthened and spread militancy in the tribal region.

Due to numerous military operations, and displacement of tribal people from their homes, urgency for reforms in the outdated governance system of FATA was felt by the general public and in the government circles. Resultantly, reforms in FATA was prioritized by the government in the National Action Plan (NAP) in 2014 to bring durable peace in the region. The fata reforms committee, constituted for this purpose in 2015, recommended the merger of tribal region into the nearby province of Khyber Pakhtunkhwa as a reasonable option beside making it a separate province or maintaining it as a status-quo. This proposal was considered as a reasonable option, with the objective to mainstream and develop this region for durable peace and stability in the country. Eventually, the erstwhile FATA was integrated into Khyber

Pakhtunkhwa Province on 31 May, 2018 through 25th constitutional amendment in the constitutions of Pakistan. This decision has elicited max feeling of jubilation and anger in the form of protest from the supporter and anti- merger factions of the tribal society.

The main question of this research study was to acquire first-hand information from the residents of the Tribal District Khyber, Tehsil Jamrud regarding this decision of merger. Furthermore, the study aimed to determine the public opinion of the residents of Tehsil Jamrud of Tribal District Khyber about the new changes (police and judicial system) after merger. After the thorough analysis of the empirical data, the major findings are presented in the following lines.

Major Findings

The majority of the respondents, consider the merger of FATA into Khyber Pakhtunkhwa an unfavorable decision and oppose it on the ground that it has been merged unconstitutionally without the consensus and consultation of the tribal people. Besides, the majority of the respondents consider it an imposed decision that has abolished the separate identity of FATA in the federation of Pakistan under Article 1 of the constitution. Moreover, those respondents who initially supported the merger feel disappointed now as the merger did not bring any positive changes in the lives of the tribal people. They believe that the Khyber Pakhtunkhwa Province is currently exploiting the erstwhile FATA region.

Moreover, the data collected revealed that the majority of respondents opposed the new police system extended to tribal regions after integration with Khyber Pakhtunkhwa. They consider it an alien system that is complex corrupt and inefficient and has not improved the security and peace of the region. Furthermore, the majority of the respondents consider the police system inconsistent with tribal traditions and values. They believe it violates the Chadar and Chardewari (dignity of home and family) of the tribal residents. The majority

respondents also believed that children and women were protected from arrest and detention under FCR but under the new police system, they are no more protected which is against the honour of the family. Majority of the respondents are of the opinion that Khassadar and Levies system was efficient in maintaining peace and order and controlling crimes for decades because it was based on local customs and traditions. The majority of the respondents believe that tribal feuds and crime rates have increased in the rather peaceful tribal society after the replacement of Khassadar and Levies forces with police. The data collected also revealed that many respondents supported the extension of the judicial system and the abolition of the FCR, which they considered an oppressive and cruel law. They are of the opinion that tribal people now have the right to justice and a fair trial. However, majority of the respondents opposed the replacement of the established Jirga system with the judicial system. Majority of the respondents view the judicial system as an alien system based on colonial-era laws of the Pakistan penal code (PPC 1860), the code of criminal procedure (Cr.PC 1898), and the code of civil procedure (CPC 1908).

Moreover, majority of the respondents also consider the Jirga system cheaper, more efficient, and swifter in dispute resolution compared to the new judicial system, as Jirga is based on egalitarian tribal values and customs. They consider the new judicial system to be complicated, costly, lengthy, and ignorant of tribal traditions and procedures for dispute settlement. Furthermore, majority of the respondents favoured the necessary reforms in the FCR rather than its complete replacement with a new judicial system.

Besides that, majority of the respondents opposed the integration of tribal areas into Khyber Pakhtunkhwa Province and rather demanded a separate FATA province or FATA council. They consider that the integration of FATA has caused the exploitation of FATA's financial and mineral resources and employment opportunities. FATA, as a separate province, will prevent the exploitation of its residents. They believe that a separate FATA province will

increase its representation in the National Parliament and other constitutional bodies. Furthermore, it will have its own provincial assembly administrative system, which will address its issues in a better manner according to its cultural needs and people aspirations. As a separate province, FATA would frame its own policies and governance model, which would preserve its unique cultural identity and egalitarian values.

The data collected also revealed that some respondents supported the decision to unify FATA with KP due to its geographical, cultural, and linguistic ties. They are of the opinion that a separate FATA province is impossible to maintain itself due to a lack of revenue generation and administrative machinery. However, a significant number of respondents were of the view that FATA has huge resources of minerals and important trade routes pass through tribal areas which can generate sufficient revenue to run its provincial administration if made a separate province.

To conclude the study, the public opinion in tehsil Jamrud of the tribal district Khyber regarding the FATA merger into Khyber Pakhtunkhwa revealed a negative response, which is against their wishes. They are not satisfied with the new changes (Police and judicial setup) implemented after FATA's integration into Khyber Pakhtunkhwa. Although some respondents showed a positive response to the abolition of FCR, but majority of them wanted reforms in the FCR law and supported the demand for a separate province to keep their tribal identity intact.

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Annexure –A

INTERVIEW SCHEDULE

1. Do you think that FATA's merger with KP is a good decision?
2. Do you believe FATA's integration with KP will strength the unity of Pakhtuns?
3. Do you think that the FATA merger with KP improved the living standards of local people?
4. How satisfied are you with the new police and Thana system introduced in erstwhile FATA?
5. Do you consider the old system of khassadars and levies under FCR were more efficient and suitable to tribal culture and traditions than the new police system?
6. What is your opinion regarding improvement in the security situation in FATA after merger as compared to the past ?
7. How much are you satisfied with the judicial system (court/kachheri) introduced in erstwhile FATA after merger?
8. Do you consider the Jirga system (enshrined in FCR) to be cheaper, more efficient and more suitable for justice than the new judicial system?
9. Do you think that the basic infrastructure, i.e., health, education and employment, has improved for the local people after the FATA's merger?
10. Do you believe that after merger Tribal Areas are exploited by non-locals in jobs opportunities and government services?
11. Do you support a separate province for FATA instead of integration with KP? If yes, what are the reasons?
12. Do you support the separate province of FATA to preserve Rewaj and Tribal culture?
13. Do you think a separate province of FATA will avoid exploitation of FATA resources?
14. Any other comments or opinion about FATA merger with KP

Annexture-B

LIST OF INTERVIEWEE

| Sr.# | NAME | DETAIL |
|------|-----------------------------|--|
| 1. | Abdul Wahid | Student researcher, Govt. degree college Jamrud Khyber |
| 2. | Ahmad Shah | Local Tribal Malik |
| 3. | Dr. Attaullah Jan | Assistant Professor Pak study, Qurtaba university of science & Information Technology Peshawar |
| 4. | Haider Ali | Head Master(In charge) Govt. High school Jamrud |
| 5. | Israr Khan | Certified Teacher, Govt. High school Jamrud |
| 6. | Abdul Manan | Local tribal Malik |
| 7. | Haji Mudeer Khan | Local tribal Malik |
| 8. | Sajid Ali Kukikhel | Local Journalist Jamrud press club |
| 9. | Shahzad Ahmad | Local Journalist Jamrud press club |
| 10. | Sadiq Khan | Local political leader JUI (F) Jamrud |
| 11. | Prof. Fayaz Ahmad Mullagori | Assistant Professor(History) GC Peshawar |
| 12. | Prof. Dr. Manzoor Afridi | HOD Deptt. of politics & IR, International Islamic University, Islamabad |
| 13. | Jan Akbar | Local Journalist Jamrud press club |
| 14. | Hazrat Wali Afridi | PPP District president Khyber |
| 15. | Umar Hayat | Retired teacher/ Political activist |
| 16. | Barakat Khan | Local tribal Malik |
| 17. | Hussain Ahmad | Local Politician PTM |
| 18. | Saeed Uz Zaman | Local Journalist Jamrud press club |
| 19. | Hikmat Shah Afridi | Local Journalist & political worker ANP |
| 20. | Amjad Khan Afridi | M. Phil scholar Economics |
| 21. | Noorzada Afridi | M.Phil Scholar History at University of Peshawar |
| 22. | Malik Bismillah Khan | Head of FATA Qomi Jirga |
| 23. | Shakirullah | Village councilor Shagai Jamrud (Local Politician) |
| 24. | Assad Ullah | M.Phil scholar Deptt. of Disaster management university of Peshawar |
| 25. | Irfan Khan | Youth Councilor Ghundi Jamrud/political worker PML(N) |

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