

The Governance of Federally Administered Tribal Areas (FATA) under Frontier Crimes Regulation (1901): An Analysis

Altaf Ullah*

Abstract

Federally Administered Tribal Areas (FATA) is an integral part of the state of Pakistan having seven political agencies and six frontier regions. This mountainous land is home to a majority *pakhtun* population, made up of more than a dozen major tribes and hundreds of clans and sub-tribes. The Frontier Crimes Regulation 1901 popularly known as FCR is the only formal document which deals with the governance of Tribal Areas since long. This Regulation forms the bulwark of the government machinery in FATA which dates back its origin to the British colonial period in pre-partition India. By the great divide of August 1947, Pakistan inherited these areas as an integral part of its territory. The legal and administrative framework for tribal areas remained the same as designed by British Imperial power during the 19th century for its special interests. The state of Pakistan while keeping intact the colonial legacy also continued the special status of these areas in the post-partition period. Accordingly, the law of the land authorized the central government to administer it directly. The central government thus implemented the same Regulation (FCR) in tribal areas in the coming decades. FCR is not just a document detailing punishments for various crimes rather it constitutes a comprehensive system of governance for FATA. The present research paper highlights the demographic and geographic conditions of FATA in general and critically evaluates the Frontier Crimes Regulation as the only theoretical model of governance for FATA in particular. It observes the prose and cones of FCR to know that why this Regulation is often called as black, draconian and inhuman law.

Human and Physical Geography

The physical geography of Federally Administered Tribal Areas demonstrates that it is a narrow strap extending over 27220 sq. km along Pak-Afghan border¹ making 3.4

* Research Fellow, National Institute of Historical and Cultural Research, Centre of Excellence, Quaid-i-Azam University, Islamabad, Email: altaf_qasmi@yahoo.com, Cell # 0345-5046584

¹ Durand Line has been named after Sri Mortimor Durand who after conducting a comprehensive survey of the border areas between British India and Afghanistan during 1890-1894 and draw a boundary line between the two. It is also called as Pak-Afghan border. Sarfraz Khan, "Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia" in *Eurasia Border Review*, Vol. 1, Spring 2010.

per cent of Pakistan's land area. FATA is surrounded by the province of Khyber Pakhtunkhwa in the north and east, the province of Balochistan in the south, the province of Punjab in the south-east and in the west by the state of Afghanistan.² It is thus connected in the north with the district of Lower Dir of Khyber Pakhtunkhwa, whereas in the east with the districts of Bannu, Dera Ismail Khan, Karak, Kohat, Lakki Marwat, Malakand, Nowshera, Charsadda and Peshawar. In the southeast, FATA is physically linked with the district of Dera Ghazi Khan in the Punjab province, while in the south it joins the districts of Zhob and Musa Khel of Balochistan province.³ Pak-Afghan border also known as Durand Line lies to the west of FATA.

FATA is consisted of seven political agencies and six tribal pockets called 'Frontier Regions'. The political agencies are, Bajaur, Khyber, Kurram, Mohmand, North Waziristan, Orakzai and South Waziristan agency. Whereas Frontier Regions are in the district of Bannu, Dera Ismail Khan, Kohat, Lakki Marwat, Peshawar and Tank. With a minor exception of Orakzai agency, the rest the political agencies have common border with the state of Afghanistan.⁴ To the north and west, FATA and the province of Khyber Pakhtunkhwa collectively join a chain of nine provinces in Afghanistan from north to south i.e. Nuristan, Kunar, Nangarhar, Khost, Paktika, Zabol, Kandahar, Helmand and Nimruz, which are predominantly inhabited by pakhtun ethnic group.⁵ The Census Report of Pakistan 1998 demonstrates 3.138 million population of these areas which makes 2.4 per cent of the total population of the country. But the current estimate shows its population almost 3.5 million. FATA is inhabited by majority of pakhtun tribes with a limited number of other religious groups such as Sikhs and Hindus.⁶

http://src-h.slav.hokudai.ac.jp/publicn/eurasia_border_review/no1/06_Khan.pdf accessed on 13 November, 2012, p. 63.

²IPRI *Factfile*, "FATA: A Profile of Socio-Economic Development" (Islamabad: Islamabad Policy Research Institute, 2008), p. 15, <http://ipripak.org/factfiles/ff94.pdf> accessed on 23 January, 2012.

³ *Ibid*, p. 21.

⁴ Government of Pakistan, *FATA Sustainable Development Plan (2006-2015)* (Peshawar: Planning and Development Department, Civil Secretariat FATA, 2006), p. 3.

⁵ Out of these nine provinces of Afghanistan, the province of Kunar, Nuristan and Nimruz have other ethnic groups as well. Shuja Nawaz, *FATA – A More Dangerous Place: Meeting the Challenge of Militancy and Terror in the Federally Administered Tribal Areas of Pakistan* (Washington: Centre for Strategic and International Studies, January-2009), p. 2.

⁶ Sarfraz Khan, "Special Status of FATA: Illegal Becoming Licit" in *Central Asia*, No. 63, Winter 2008, Area Study Centre (Russia, China & Central Asia) University of Peshawar, pp. 8-9.

FATA MAP



Bajaur agency is the smallest agency having an area of 1290 sq km. It was given the status of agency on 1st December 1973 with headquarter at Khar.⁷ It is surrounded in the northeast by Dir district, in the northwest by the state of Afghanistan, whereas it joins Malakand agency on the southeast and Mohmand agency on the southwest. Nawagai and Barang are the two main valleys enclosed by high mountain ranges of which 3000 meters is the tallest point. 74121 hectares is its total cultivated area and 54914 hectares is uncultivated area while its irrigated area is 19524 hectares and unirrigated area is 54597 hectares. Forests cover an estimated area of 30175 acres. Administratively, this political agency has been divided into seven tehsils i.e. Barang, Chamarkand, Khar, Mamund, Nawagai, Salarzai and Utmankhel. The Salarzai branch of Tarkalanri tribe makes major part of the population across the agency. Salarzai is further divided in different clans such as Bram Khel, (Khan Khel) and Ibrahim Khel to which the ruling family belongs to. It is evident that a major portion of lands in the agency is still under the ownership of these khans. According to the Census Report of 1998, the population of Bajaur agency is almost 0.595 million.⁸

Khyber agency was formed in 1879.⁹ It is the next strategically important agency of FATA. The physical map of the agency demonstrates that Kabul River and Koh-e-Suffaid ranges lies to its north, in proximity with Mohmand agency to the north east, district Peshawar of Khyber Pakhtunkhwa lies to its east, Kurram agency to its west, whereas, it joins the state of Afghanistan in the north west and Orakzai agency in the south. Its total land area is 2576 sq. km. The historic Khyber Pass with a maximum length of forty kilometers is located at a height of 3870 feet. Bara River, Choor River and Khyber ‘Nullah’ are the three major water bodies which drain through the Khyber agency and ultimately flow into Peshawar valley. The rough mountainous and barren landscape is the characteristics of the agency with some plains and cultivated lands and several

⁷ Akbar S. Ahmed, *Social and Economic Change in the Tribal Areas*. (Karachi: Oxford University Press, 1977), p. 30.

⁸ Prior to 1960, the status of Bajaur was semi-independent like that of the state of Dir and Swat which were under the political jurisdiction of the Political Agent of Malakand agency. During 1960 Bajaur was declared a sub-division of the same agency with an Assistant Political Agent to manage the political affairs of the agency from the headquarters at Munda, District Dir. Sarfraz, “Special Status of FATA: Illegal Becoming Licit” in *Central Asia*, No. 63, Winter 2008, p. 11.

⁹ Syed Wiqar Ali Shah, “Political Reforms in Federally Administered Tribal Areas (FATA): Will It End the Current Militancy” in *Heidelberg Paper in South Asian and Comparative Politics*, Working Paper No. 64, January, 2012, p. 3.

much attractive valleys such as Bara, Bazar, Maidan and Rajgal.¹⁰ The tribal social structure of Khyber agency shows that it has been inhabited by four major tribes i.e. Afridi, Shinwari, Mullagori and Shilmani. The Afridi tribe is further divided into different clans and sub-clans such as Adamkhel, Akakhel, Kamarkhel, Kamberkhel, Kukkihel, Malik Dinkhel, Sipah and Zakhakhel, the Shilmani tribe is divided in Shamsherkhel, Haleemzai and Kam Shilmani, the tribe Mullagori is further divided in Adamkhel and Ismail Khel while Ali Sherkhel is the sub-clan of Shinwari tribe.¹¹ Khyber agency accommodates 0.547 million of people on its soil.¹²

Established in the year 1892 and extending over an area of 3380 sq. km, Kurram agency is in close proximity to the neighbouring state of Afghanistan in the north and west, in the east to the Khyber and Orakzai agency, in the southeast to the district Kohat of Khyber Pakhtunkhwa province whereas in south it joins North Waziristan agency. The dominant tribes residing in the agency are Turi and Bangash alongwith Ali Sherzai, Mangal, Massuzai, Muqbil, Para Chamkani, Syed and Zaimusht. The agency is home to both Shia and Sunni communities.¹³ Kurram agency seems to be divided into three categories i.e. Upper, Central and Lower Kurram. The Upper Kurram is inhabited by almost eighty per cent Shia population, in Central Kurram about ninety five per cent people belongs to the Sunni community while Lower Kurram is also inhabited by Sunni population with an estimate of eighty per cent. The total population of the agency is about 935,000.¹⁴

Mohmand agency was established in 1951. It is surrounded in the north by Bajaur Agency, in the east by districts Charsadda and Malakand, it joins Peshawar district in the southeast while Khyber agency and the state of Afghanistan lies to its south and west

¹⁰ The historic Khyber Pass is the great northern route from Afghanistan into India whereas the Gomal and Kurram Passes make intermediate communications and the Bolan Pass is the great southern passage. Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in *Central Asia*, No. 63, Winter 2008, p.10.

¹¹ Sarfraz Khan, "Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia" in *Eurasia Border Review*, Vol. 1, Spring 2010, p. 63 http://src-h.slav.hokudai.ac.jp/publictn/eurasia_border_review/no1/06_Khan.pdf accessed on 13 November, 2012.

¹² Government of NWFP, *Important Agency/FR Wise Socio-Economic Indicator of FATA (2000-2001)*, Bureau of Statistics Planning and Development Department, n.d, p. 42. also see Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in *Central Asia*, No. 63, Winter 2008, p. 10.

¹³ Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in *Central Asia*, No. 63, Winter 2008, pp. 10-11.

¹⁴ Muhammad Zaheer Khan and Sharafat Ali Chaudhry, "Conflict in Kurram Agency: Nature and Causes", FATA Research Centre, Islamabad <http://frc.com.pk/articles/conflict-in-kurram-agency-nature-and-causes/> accessed on June 12, 2013, n.p.

respectively. Its total area is 2296 sq. km while its population is about 0.4 million. Prior to 1951, the Political Agent of Khyber agency had to administer this area. It shares sixty eight kilometers border with the neighbouring state of Afghanistan. The Kabul River presents a natural boundary between the Khyber and Mohmand agency. The three basins i.e. Ghandav Khawarh, Kabul and Swat make a comprehensive drainage system across the agency and all these basins ultimately flow into the plains of district Charsadda of Khyber Pakhtunkhwa province.¹⁵ The population residing in Mohmand agency belongs to Haleemzai, Musa Khel, Safi, Tarakzai and Uthmankhel tribes.¹⁶

Constituted in 1910 with headquarter at Miranshah, North Waziristan agency occupies an area of 4707 sq. km. It is bordered by district Hangu of Khyber Pakhtunkhwa province and Kurram agency on the north, districts Bannu and Karak of the same province lie in the east while in the south it joins South Waziristan agency and the state of Afghanistan makes its western border. The major tribes of the agency are Dawar, Wazir, Saidgi and Gurbaz. The Wazir tribe is further divided into many clans and sub-clans such as Tori Khel, Mamit Khel, Kabul Khel, Madda Khel, Manzar Khel, Bakka Khel and Jani Khel. Wana and Kaniguram are the two popular towns of the agency. Its total population is round about 0.46 million.¹⁷

The only political agency of FATA which don't share border with the neighbouring state of Afghanistan is the Orakzai agency. It touches Khyber agency in the north, Darra Adam Khel in the east, Hangu and Kohat districts of Khyber Pakhtunkhwa province in the south and Kurram agency in the west.¹⁸ It was formed in December, 1973 with an area of 1538 sq. km. Earlier, it was a part of Frontier Region Kohat and therefore, administered directly by the Deputy Commissioner of District Kohat. Mastura and Khanki Toi are the main streams originating from the hills in the west and smoothly flow

¹⁵ Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in *Central Asia*, No. 63, Winter 2008, p. 12.

¹⁶ Government of NWFP, *Important Agency/FR Wise Socio-Economic Indicator of FATA (2000-2001)*, p. 42.

¹⁷ Sarfraz, "Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia" in *Eurasia Border Review*, p. 63. Also see Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in *Central Asia*, No. 63, Winter 2008, p. 13. and Akbar, *Social and Economic Change in the Tribal Areas*, p. 35.

¹⁸ Farhat Taj, "Life in Orakzai" in *The News*, 11 February, 2009.

into the east. Its estimated population is 0.225 million and belongs to mainly two tribes i.e. Aurakzai and Daulatzai.¹⁹

The last and the largest political agency of FATA is South Waziristan agency with an area of 6620 sq. km. It is connected in the north by North Waziristan agency, district D.I.Khan of Khyber Pakhtunkhwa province lies to the east while the state of Afghanistan and the province of Balochistan lies to the west and south respectively. Tank Zam, Shahur and Gomal are the major rivers whereas Wana, Zarmilan, Spin and Barwan are the major plains of the agency. Different tribes residing in the agency are the Wazir and Mahsud, Dottani and Suleman Khels. All these tribes make a population of round about 0.430 million of the agency.²⁰

Beside these seven political agencies of FATA, there are six small tribal zones called Frontier Regions (FRs) attached to different districts. The administrative affairs of each Frontier Region are in the hands of Deputy Commissioner concerned.²¹ Frontier Region Bannu is connected with both North and South Waziristan agency and with Karak and Bannu districts. Its total area is 877 sq. km and population is approximately 0.020 million. The major tribes residing in this Region are Ahmadzai and Utmanzai. An Assistant Political Agent has been appointed who administer the affairs of the Region under the supervision of Deputy Commissioner Bannu District.²² The total area of the Frontier Region D.I.Khan is 3229 sq. km. Its estimated population is 0.039 million of which Shiranis and Ustrana makes major portion.²³ This Region is connected with Dera Ghazi Khan, South Waziristan agency, D.I. Khan and district Zhob of Balochistan province. The popular hill Takht-i-Suleman is located in this Region. The Deputy Commissioner of D.I. Khan District is the administrative head of the Region.²⁴ Frontier

¹⁹ Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in *Central Asia*, No. 63, Winter 2008, p. 12.

²⁰ Out of these plains Wana is the richest in ground and surface water potentials. The Mahsud tribe makes 57 per cent of the total population, Wazir tribe 35 per cent while Dottani/Suleman Khel is 8 per cent of the total population of South Waziristan agency. Government of NWFP, "Development Briefs of North Waziristan Agency" in *Agencies/F.Rs Development Briefs of FATA (2002-03)*, Bureau of Statistics Planning and Development Department, n.d, p. 3. also see Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in *Central Asia*, No. 63, Winter 2008, p. 12-13.

²¹ Akbar, *Social and Economic Change in the Tribal Areas*, p. 37.

²² Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in *Central Asia*, No. 63, Winter 2008, p. 13.

²³ Government of NWFP, *Important Agency/FR Wise Socio-Economic Indicator of FATA (2000-2001)*, p. 42.

²⁴ Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in *Central Asia*, No. 63, Winter 2008, pp. 13-14. also see Akbar, *Social and Economic Change in the Tribal Areas*, p. 37.

Region Kohat occupies 46 sq. km as its total area, having an estimated population of 0.088 million and inhabited by Akhorwal, Shirakai, Tor Chappar, Jawakai and Zarghunkhel.²⁵ Frontier Region Lakki covers an area of 132 sq. km and is mainly inhabited by Bhattani tribe. Its total population is approximately 0.007 million. The administrative control directly goes to Deputy Commissioner of Lakki Marwat. Frontier Region Peshawar is connected to Khyber agency, districts Kohat, Nowshera and Peshawar. Its total area is 261 sq. km while population is round about 0.054 million. It is mainly inhabited by Ashukhel, Hasan Khel, Janakor and Pasani. The Political Agent of Khyber agency and Deputy Commissioner Kohat deals with administrative affairs of the Region. The last one is the Frontier Region Tank which covers an area of 1221 sq. km and an estimated population of 0.027 million. It is connected with South Waziristan agency, FR Bannu and D.I. Khan district. It is inhabited by Dhana, Tatta and Waraspun tribes.²⁶

Origin of the Frontier Crimes Regulation 1901

The British government strengthened their basis of power by establishing a strategic and effective judicial system and an archive of legal record of the necessary documents which ultimately assisted them in tax collection and maintaining public order during the mid-nineteen century in British India. The government was mostly cautious against collective criminal activities and considered it as a direct menace to the empire rather than individual crimes.²⁷ The colonial authorities after thorough visualization drafted and executed a comprehensive system of legal and formal codes in the form of Indian Penal Code²⁸ and Code of Criminal Procedure²⁹ in order to rule British India

²⁵ Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in *Central Asia*, No. 63, Winter 2008, p. 14.

²⁶ *Ibid.*

²⁷ Robert Nichols, ed. *The Frontier Crimes Regulations: A History in Documents*, (Karachi: Oxford University Press, 2013), p. x.

²⁸ The Indian Penal Code was first drafted by the 1st Law Commission under the chairmanship of Thomas Babington Macaulay. It was mainly based on the law of England and guidelines were taken from Napoleonic Code and also from Edwards Livingston's Louisiana Civil Code of 1825. This code was finally written in 1860, therefore, it is referred as Indian Penal Code 1860. It was, however, implemented on 1st January, 1862 in India by the British colonial government. Being a comprehensive code of India, it covers all aspects of criminal law. It has been inherited by the state of Pakistan in the post-partition period and now it is called Pakistan Penal Code. It has since been modified several times and is now supplemented by other criminal provisions as well. Government of Pakistan, *The Pakistan Penal Code, 1860 (XLV of 1860): As Modified Upto [sic] the 3rd February 1980*, (Islamabad: Government Printing Press, 1980).

²⁹ The Code of Criminal Procedure of 1861 was the most important legislation on procedure for the administration of substantive criminal law in British India. When the British government took direct control

effectively. In the like manner, Criminal Tribes Act was also designed from 1871 through which the government watched, registered and controlled certain tribes. However, the British official authorities realized within a short span of time that these formal codes, laws, rules of evidence and fact-finding potentials were insufficient to control lofty velocity of crimes in Peshawar valley in general and particularly in the Afghan border regions set a part as tribal agencies. The colonial authorities quickly differentiated between the peaceful agriculturists residing in the valleys and wild tribesmen of the border areas. The only distinction of the settled district was that surveys of formal tax revenue and settlement had been completed while the rest of the situation and general environ of settled district and tribal belt was almost alike. When the government observed high rate of killings, robberies and violence across the Peshawar valley the government eventually developed the Punjab Frontier Crimes Regulation and implemented it in early 1872.³⁰ After the establishment of North West Frontier Province, the government executed the same Regulation with some minor modifications which was called Frontier Crimes Regulation 1901.³¹ Hence, the colonial authorities implemented it on 24 April, 1901 as judicial, legal, and administrative system for the North West frontiers of their Indian Empire, bordering Afghanistan.³²

Frontier Crimes Regulation has been promulgated by the British colonial authorities via regulation III of 1901. It is a brief law consisted of seven chapters spread over sixty three sections.³³ It is not just a formal document comprising only punishments for different crimes but a comprehensive system of governance and also a major component of administrative system of justice in tribal areas.³⁴ This Regulation has been implemented to protect the interests of British government in North West Frontier

of India after the war of 1857, they passed the Criminal Procedure Code from the British Parliament in 1861.

³⁰ Nichols, ed. *The Frontier Crimes Regulations: A History in Documents*, pp. x-xi.

³¹ *Ibid*, p. xi.

³² The North-West frontiers of British India were predominantly inhabited by majority of Pakhtun population. "Summary of 2011 Amendments to the Frontier Crimes Regulation (FCR)" <http://www.fatareforms.org/summary-of-2011-amendments-to-the-frontier-crimes-regulation/> accessed on 30 July 2013, n.p.

³³ Maqbool, "FATA Under FCR (Frontier Crimes Regulation): An Imperial Black Law" in *Central Asia*, No. 61, Winter 2007, p. 177.

³⁴ Mahmood Shah, "FCR and FATA Reforms" <http://dawn.com/2011/04/05/fcr-and-fata-reforms/> accessed on 11 June, 2012, Also see Maqbool, "FATA Under FCR (Frontier Crimes Regulation): An Imperial Black Law" in *Central Asia*, No. 61, Winter 2007, p. 175.

Province, Balochistan and in the entire tribal belt. The province of NWFP was fortunate enough which got rid of this harsh and hard Regulation with the promulgation of 1956 constitution while Balochistan was liberated from its rule with the arrival of 1973 constitution. In the like manner, Dir and Malakand were released from its clutches in the same year. But FATA is the only region subservient to FCR even today.³⁵ No other laws, applicable in the rest of the state, are extended to these areas, thus, only this Regulation serves as the supreme law in FATA.³⁶

Administrative Structure of FATA under FCR

The effective control of north western frontiers of the British Indian Empire was an imperative colonial policy which protected imperial holdings in the region and served as bulwark against the Russian expansionism in Central Asia. Although it was difficult for the British government to fully establish its writ in these areas yet they monitored and administer it through their appointed agents and tribal elders. So far as the internal affairs of these areas were concerned, the masses were independent in their local matters due to strong prevailing tribal codes, customs and traditions. However, the government oversaw the overall security and external affairs of these areas for the sake of their vested interests.³⁷

Since the occupation of Sind and Punjab respectively in 1843 and 1849, the British colonial masters had to oversee the plains of the subcontinent towards the north west. For this purpose they established five settled districts i.e. Bannu, Dera Ghazi Khan, Dera Ismail Khan, Kohat and Peshawar as distinct from the tribal areas. A dual function of administering the affairs of these districts as well as controlling the tribes adjacent to

³⁵ Latif Afridi, "Human Rights and Discriminatory Laws in FATA" in *The Frontier Post*, Peshawar, 12 December, 1993.

³⁶ Frontier Crimes Regulations 1901 serves all purposes both of procedural and substantive law in FATA. The Civil Procedure Code (C.P.C), Criminal Procedure Code (Cr.P.C) and other laws of evidence functioning in the country are not applicable in FATA. Thus, no lawyer can defend an accused at a trial. Maqbool, "FATA Under FCR (Frontier Crimes Regulation): An Imperial Black Law" in *Central Asia*, No. 61, Winter 2007, p. 183.

³⁷ The Forward Policy of the colonial masters aimed at pacifying the tribes as far west as possible. This policy consequently led to the tribal uprising of 1897-98. The government, therefore, apprehended that it would never be possible to fully subdue the frontier tribes and thus decided to design and implement the Close Door Policy. This policy brought the concept of establishing different political agencies, enclosed by a chain of posts and cantonments where the tribal population was allowed to manage their internal matters according to the laws and customs of their own society. Claude Rakisits, "Pakistan's Tribal Areas: A Critical No Man's Land" paper delivered at Webster University Forum, Geneva, 25 April, 2008, p. 1. http://www.geopoliticalassessments.com/Pakistan_s_Tribal_Areas.pdf accessed on 19 March, 2013. also see *IPRI Factfile*, "FATA: A Profile of Socio-Economic Development", p. 16.

these five districts was thus the responsibility of British government in Punjab.³⁸ During the course of administering the tribal areas, the British administrative authorities reached to the conclusion that the available armed forces could not effectively defend the vast and rough tribal belt, so eventually, they had to depend on the political administration of the tribes. It was thus decided that the central government would itself directly keep an eye on the frontier policy and administration instead of depending on the Punjab provincial government. In this context, the system of political agencies was launched in the tribal belt.³⁹

The British administration enforced a series of special laws i.e. Frontier Crimes Regulations, for the tribal areas distinct from the rest of civil and criminal procedures prevailing in British India during 1871-1876. With the passage of time, these Regulations based on the concept of ‘collective territorial responsibility’ and which established a *Jirga* for the dispute resolution across the tribal belt, were ultimately considered as inadequate. The year 1901 thus witnessed to two major changes in the colonial administration i.e. the issuance of Frontier Crimes Regulation (1901) and the creation of North West Frontier Province as well. The FCR of 1901 expanded the scope of the previous Regulations by providing extensive powers incorporating judicial authority to the government officials.⁴⁰ The territories that constitute nowadays Khyber Pakhtunkhwa province was first administered by a chief commissioner as an integral part of Punjab province. It was, however, declared a full-fledged province in 1901 with settled as well as tribal areas. The governor of the province had to administer both the settled and tribal areas and was directly responsible to the Governor General of India. In the post-partition era the same status of the administration was retained with the governor Khyber Pakhtunkhwa reporting directly to the Governor General and later on to the President of

³⁸Noor ul Haq, et.al, “Federally Administered Tribal Areas of Pakistan” in *IPRI Paper 10*, <http://ipripak.org/papers/federally.shtml> accessed on 12 February, 2012, n.p.

³⁹ It was the year 1877, when the British Viceroy, Lord Lytton was at the helm of affairs who took the decision of creating political agencies in the tribal belt in the north west of the British Indian Empire. *Ibid.*

⁴⁰ The creation of another administrative unit in the shape of North West Frontier Province was a new political development in British India. It was created by detaching some parts of the then Punjab province and including certain principalities of the tribal belt. It comprised then by five settled districts i.e. Bannu, Dera Ismail Khan, Hazara, Kohat, and Peshawar, and five political agencies i.e. Dir Swat Chitral, Khyber, Kurram, North Waziristan and South Waziristan. All these settled districts and agencies were placed under the administrative control of a chief commissioner directly responsible to the Governor General of India. *IPRI Factfile*, “FATA: A Profile of Socio-Economic Development”, pp. 16-17.

the state.⁴¹ The administrative structure of British India demonstrated that districts were the administrative units in settled areas on the one hand whereas political agencies in the tribal areas on the other hand. Deputy Commissioner in the settled districts and Political Agent in the political agencies were at the helm of affairs in their respective areas in this parallel system of administration across the Empire.⁴²

Administratively, Federally Administered Tribal Areas has been divided into two categories i.e. 'protected areas' and 'non-protected areas'. The former are directly governed by the central government via its political appointees called political agents while the latter are administered indirectly by the local tribes.⁴³ Being a federal and at times provincially appointed official, the Political Agent closely watches the administration of the concerned political agency with maximum power and executive authority in hand. He exercises a blend of executive, judicial and revenue powers and also maintains law and order situation and suppresses crimes and criminal activities in the tribal agency. Keeping all these responsibilities intact, he is supported by *khassadars*,⁴⁴ levies (tribal militias) and paramilitary forces that work under military command.⁴⁵ The administrative structure in each political agency further reveals that a Political Agent is further assisted by an assistant political agent and officer in-charge of specific subdivision. At local level political *tehsildar*, *naib tehsildar* and political *moharir* perform their administrative functions. The administrative affairs of Frontier Regions of FATA have been overseen by the Deputy Commissioners of the concerned districts. All these officials perform their respective duties under the overall administrative control of

⁴¹ Maqbool, "FATA Under FCR (Frontier Crimes Regulation): An Imperial Black Law" in *Central Asia*, No. 61, Winter 2007, p. 174.

⁴² In order to maintain peace and security, Political Agent was assisted by tribal militia and levies recruited from local populace to look after as a police force in the political agencies. For this purpose, forts, pickets and posts were constructed at different locations in the tribal areas where these forces were to be stationed. Noor ul Haq, et.al, "Federally Administered Tribal Areas of Pakistan", n.p.

⁴³ Muhammad Tayyab Ghafoor, "Impediments Involved in the Integration of Federally Administered Tribal Areas (FATA) in the National Mainstream of Pakistan" Master Thesis, War Studies, Baluchistan University, 2005, p. 13.

⁴⁴ It is an irregular force which works under the overall command of the Political Agent to protect roads and other government installations and perform the duties of guards.

⁴⁵ Claude Rakisits, "Pakistan's Tribal Areas: A Critical No Man's Land" p. 2. Also see Naveed Ahmad Shinwari, *Understanding FATA: Attitudes Towards Governance, Religion & Society in Pakistan's Federally Administered Tribal Areas*, Vol. IV (Islamabad: Community Appraisal & Motivation Programme, 2010), p. 7.

Governor's Secretariat FATA.⁴⁶ The tribes are internally free to regulate their own affairs keeping in mind their tribal codes (unwritten), customs and traditions. They also essentially take care of the principle of 'collective responsibility' for the deeds and actions of their individual family or tribe members and 'territorial responsibility' of those areas which are given under their control.⁴⁷

The Ministry of States and Frontier Regions (SAFRON)⁴⁸ at federal level has been assigned the task to keep a closed watch on certain issues of management, development and other related matters across FATA.⁴⁹ However, SAFRON, being a federal ministry, is accountable to the elected Prime Minister and national assembly of Pakistan which is almost immaterial in policy execution in FATA and works mostly as a channel of steering federal funds. The real authority is thus rests with the head of the state.⁵⁰ Being a representative of the President, the Governor Khyber Pakhtunkhwa province performs his functions on behalf of the central government and oversees the affairs of these areas through FATA Secretariat located at provincial capital Peshawar.⁵¹

Political Administration, *Jirga* and FCR

Frontier Crimes Regulation, *jirga* system and political administration are the three essential components of administrative system of justice around which the whole fabric of FATA's political, administrative and judicial structure revolve.⁵² Being an indigenous institution, *jirga* plays an important role in resolving different disputes such as personal, public, inter-tribal conflicts and quarrels among the contending parties in tribal areas in

⁴⁶ Sarfraz, "Special Status of FATA: Illegal Becoming Licit" in *Central Asia*, No. 63, Winter 2008, p.21.

⁴⁷ Government of Pakistan, *FATA Sustainable Development Plan (2006-2015)*, p. 5.

⁴⁸ On April 17, 1948 Quaid-i-Azam Mohammad Ali Jinnah graced an all tribal *jirga* in Peshawar which was attended by two hundred tribal Maliks who pledged their allegiance to the state of Pakistan. On that occasion, the tribal Maliks put their strong request to the founder of the nation and the first Governor General of Pakistan that they should be placed under the direct administration of the federal government. Hence, the Quaid paid proper surveillance to their request and their demand was met on July 6, 1948 by establishing the Ministry of States and Frontier Regions (SAFRON) and took personally its charge. Sarfraz, "Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia" in *Eurasia Border Review*, p. 69.

⁴⁹ Ghafoor, "Impediments Involved in the Integration of Federally Administered Tribal Areas (FATA) in the National Mainstream of Pakistan" p. 13.

⁵⁰ Maqbool, "FATA Under FCR (Frontier Crimes Regulation): An Imperial Black Law" in *Central Asia*, No. 61, Winter 2007, p. 174.

⁵¹ Ghafoor, "Impediments Involved in the Integration of Federally Administered Tribal Areas (FATA) in the National Mainstream of Pakistan" p. 13.

⁵² Abdul Malik Khan, "The Dispensation of Justice in the Federally Administered Tribal Areas (FATA) of Pakistan: Its Application and Analysis" in *Central Asia*, No. 62, Summer 2008, Area Study Centre (Russia, China & Central Asia) University of Peshawar, p. 111.

order to provide speedy justice to the people. By incorporating the institution of *jirga* in FCR, the colonial masters apparently demonstrated that they had proper regard for tribal feelings and sentiments but in fact it was an attractive diplomacy as they retained the real authority in their own hands through political administration which was not bound to the decision of *jirga*.

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

- (a) “Remand the case to the Council for a further finding; or
- (b) Refer the case to a second Council; or
- (c) Refer the parties to the "Civil Court; or
- (d) Pass a decree in accordance with the finding of the Council, or of not less than three-fourth of the members thereof, on any matter stated in the reference; or
- (e) Declare that further proceedings under this section are not required.”⁵³

The above instance of civil case demonstrates that real powers always remain with the political executive whose verdict is irrevocable and can not be challenged in any court of justice except an appeal to the Commissioner and thereafter plead to the tribunal against the decision of Commissioner to review the decision. In this way the criminal cases also go through such process.⁵⁴ About the status of *jirga*, a well-known writer Spain states, “The *jirga* was beyond doubt a pathan institution, the form it took under the Frontier Crimes Regulation was far cry from its natural state. In any event, the decision

⁵³ Government of North-West Frontier Province Law Department. *The Frontier Crimes Regulation, 1901 (Regulation III of 1901) [As modified upto 31 October, 1971]*, Chapter III, Section 8, Clause 3, p. 5.

⁵⁴ Maqbool, “FATA Under FCR (Frontier Crimes Regulation): An Imperial Black Law” in *Central Asia*, No. 61, Winter 2007, p. 184.

of *jirga* was primarily recommendatory, and the actual acquittal or conviction and sentence were formalized in a decree by the Deputy Commissioner.”⁵⁵

Illogical and Irrational Provisions in FCR

The most critical feature of Frontier Crimes Regulation is the system of ‘collective territorial responsibility’. According to this system, if a crime initiates anywhere in tribal areas, the whole family or tribe on whose territory the crime is committed, is held accountable to the political administration. Hence, due to this part of the Regulation an innocent individual may be held liable for the crime of another person. In the same way, under the umbrella of ‘collective territorial responsibility’, the whole family, clan, sub-clan or village may suffer a verity of punishments.⁵⁶ Even innocent men, women and children become victim of this imperial black law. There are so many instances in which children of about two years of age have been convicted.⁵⁷ The responsibility to implement the verdict of *jirga* has been given to the tribe in “non-protected” areas of FATA. *Jirga* can impose heavy fine on the accused, expel an individual or a family from the locality, confiscate, destroy or set on fire their homes and property which are the serious measures of punishments.

The idea of ‘collective responsibility’ has been articulated by John Coke⁵⁸ who was the officer in-charge of Kohat Pass Afridis. He laid down the procedure in certain

⁵⁵ J.W. Spain, *The Pathan Borderland*. (The Hague: Mouton and Co., 1963), pp. 145-146.

⁵⁶ Government of North-West Frontier Province Law Department. *The Frontier Crimes Regulation, 1901 (Regulation III of 1901) [As modified upto 31 October, 1971]*, Chapter IV, pp. 10-11.

⁵⁷ Society for the Protection of the Rights of the Child (SPARC) in its annual report of 2004 described that almost seventy children had been detained under this law. Abdullah Khoso, “Pakistan: Human Rights – Infringing Human and Child Rights” n.p, <http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-047-2010> accessed on 12 January, 2013. Also see Muhammad Hamid Hussain, “Frontier Crimes Regulation: A Case Study of Reforms Process” in *TIGAH* Vol. 1, July 2012, FATA Research Centre, Islamabad, p. 99.

⁵⁸ Major General John Coke (1806-1897) was appointed as Deputy Commissioner of Kohat district in 1850 with both civil and military powers of the district on the frontier of Afghanistan at a time when security situation of Kohat district was the worst in Punjab. The hill tribes were making constant raids on the villages. G.B. Malleson writes about Coke as follows: “Colonel Coke was one of the best known and most distinguished officers of the Punjab Frontier Force. To a thorough knowledge of his profession he added an acquaintance with the natives of India not to be surpassed, and a rare power of bending them to his will. He had been with Sir Charles Napier in Upper Sind, with Gough at Chilianwala and Gujrat, with Gilbert in pursuit of the Sikhs. After the conclusion of the second Sikh War, he served continuously, up to the outbreak of the Mutiny, on the frontier. There his name became a household word. Scarcely an expedition was undertaken against the wild border tribes but Coke bore a part in it. Twice was he wounded ; but his unflinching demeanour, his power of leadership, whilst it gained the supreme confidence of his men, extorted respect and admiration from his enemies. Wherever he might, be his presence was a power.”

critical situation and in case of trouble thus: “to close the Pass at once, seize all the Afridis to be found in the Peshawar and Kohat districts, put the men in jail, sell their cattle, stop all Pass allowances held by the Afridis, and, when the matter is settled, cause all losses to be made good, not from their confiscated allowances, but from the allowances made from the time they may commence.”⁵⁹ John Coke’s notion of ‘collective responsibility’ was followed by Herbert Edwardes who applied this idea with more accuracy and perfection when he was posted as Commissioner of Peshawar division during October, 1853. He banned the felonious tribes from the environs of Peshawar and thus made them responsible for the involvement in crimes and criminal activities or their reluctance to exert itself for its punishment and prevention.⁶⁰ Herbert Edwardes first exercised this imperial strategy against Kukikhil Afridis when a British messenger had been seized and deprived by them of quinine jars. In this way, colonial masters during British *Raj* and various successive ruling juntas even in the post-partition era constantly utilized this imperial instrument of ‘collective responsibility’ in order to control the tribes.⁶¹

It is interesting to note that the Regulation authorizes political administration to take actions against any tribe or member of any tribe to detain all or any member of the tribe acting in hostile or unfriendly manner without the prior permission of Commissioner. Beside it, he can order to remove villages, restrict the erection of hamlets and can impose heavy fines on tribesmen in certain circumstances.⁶² It is mentioned in the Regulation that political administration may impose fine on communities’ accessory to crime. In this respect section 22 of the Regulation thus states:

George Bruce Malleon, *History of the Indian Mutiny, (1857-1859) Commencing from the Close of the Second Volume of Sir J. Kaye's History of the Sepoy War*, (USA: Cambridge University Press, n.d).

⁵⁹ Sarfraz, “Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia” in *Eurasia Border Review*, p. 68.

⁶⁰ Herbert Benjamin Edwardes, *Memorials of the Life and Letters of Major General Sir Herbert B. Edwardes*, Vol. I, arranged by Emma Sidney Edwardes (London: Kegan Paul, Trench, 1886) p. 230.

⁶¹ This clause of the Frontier Crimes Regulation (1901) i.e. ‘collective territorial responsibility’ proved to be the corner stone of political administration across tribal areas and this principle is presumed to be enshrined in the customs and usage prevailing in the tribal belt. Sarfraz, “Special Status of FATA: Illegal Becoming Licit” in *Central Asia*, No. 63, Winter 2008, p. 21.

⁶² Government of North-West Frontier Province Law Department. *The Frontier Crimes Regulation, 1901 (Regulation III of 1901) [As modified upto 31 October, 1971]*, Chapter IV, Section 21, p. 10.

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

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

The Deputy Commissioner may, with the previous sanction of the Commissioner, impose a fine on the inhabitants of such village or part of a village, or any of them as a whole.”⁶³

The political executive in tribal areas can detain any person for up to three year as a preventive measure against murder, or culpable homicide or the dissemination of sedition.⁶⁴ The tenure of this imprisonment can be increased for another three years by the Deputy Commissioner or Political Agent.⁶⁵ He can oblige an individual to execute a bond for keeping peace and good behaviour for a period not more than three years.⁶⁶ On the pretext of preventive measures against crimes, he can stop any construction near to border or do away with them on security reason, and halt the construction of or demolish buildings which are used as a meeting point for robbers, house-breakers, thieves etc.⁶⁷

Restricted by this law, the people of FATA can not enjoy the right to appeal, *wakeel* (the right to legal representation) and *daleel* (the right to present reasoned evidence) in any court of law.⁶⁸ It was, however, the Commissioner who acted as a revisional court but in 1997 FCR was modified (Section 55-A was added) allowing

⁶³ *Ibid*, Chapter IV, Section 22, p. 10. Also see Maqbool, “FATA Under FCR (Frontier Crimes Regulation): An Imperial Black Law” in *Central Asia*, No. 61, Winter 2007, p. 186.

⁶⁴ Government of North-West Frontier Province Law Department. *The Frontier Crimes Regulation, 1901 (Regulation III of 1901) [As modified upto 31 October, 1971]*, Chapter V, Section 40, pp. 16-17.

⁶⁵ *Ibid*, Chapter V, Section 46, pp. 19-20.

⁶⁶ *Ibid*, Chapter V, Section 40, pp. 16-17.

⁶⁷ *Ibid*, Chapter V, Section 31-34, pp. 13-14.

⁶⁸ Abid Mehsud, “Frontier Crimes Regulations: A Black Law” in *The Frontier Post*, Peshawar, 23 June, 2012.

second appeal in the form of revision before the tribunal comprising secretaries of home and law department and chief secretary of NWFP. All these arrangements seem cosmetic having no positive results for the tribesmen.⁶⁹ In fact, trial under this law do not provide any proper and due opportunity to the accused to put forward his case in a legal way. Deprived of legal representation, the accused don't present evidence or cross-examine witnesses. He is denied of the right of appeal and thus can not plead his case in the High Court of the contiguous province or Supreme Court of the country. The authority to revise the Deputy Commissioner or Political Agent's verdicts rests with the Commissioner who can take action either on his own or in response to a petition by an aggrieved party but he is not allowed "to set aside the finding on any question of fact of a Council of Elders, where such finding has been accepted by the Deputy Commissioner, unless he is of the opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice."⁷⁰ In case of split decision, the FCR tribunal is the ultimate appellate body consisted of three senior civil bureaucrats.⁷¹ This judicial body cast its decisive vote in case of split verdict. However, it is quiet clear that both the convicted parties have no option to precede to an impartial court of justice and must rely on bureaucratic judgment.⁷²

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

⁶⁹ Since the inception of Pakistan, the Frontier Crimes Regulation (1901) has not been amended except for few minor changes. It was President Farooq Ahmad Khan Laghari who amended this Law in 1997 on the forceful demand of tribal people and incorporated 55-A by virtue of which an FCR Tribunal has been established. Maqbool, "FATA Under FCR (Frontier Crimes Regulation): An Imperial Black Law" in *Central Asia*, No. 61, Winter 2007, p. 191. Also see Afridi, "Human Rights and Discriminatory Laws in FATA" in *The Frontier Post*, Peshawar, 12 December, 1993.

⁷⁰ Government of North-West Frontier Province Law Department. *The Frontier Crimes Regulation, 1901 (Regulation III of 1901) [As modified upto 31 October, 1971]*, Chapter VI, Section 50, (Peshawar: Government Stationary and Printing Department N.W.F.P, 1973), p. 21.

⁷¹ The FCR Tribunal comprises the following three persons, (i) Provincial Law Secretary, (ii) Home Secretary, and (iii) Chief Secretary of Khyber Pakhtunkhwa Province. Maqbool, "FATA Under FCR (Frontier Crimes Regulation): An Imperial Black Law" in *Central Asia*, No. 61, Winter 2007, p. 176.

⁷² *Ibid.*

IV, Chapter V or Chapter VI, shall be called in question, or set aside by, any Civil or Criminal Court.”⁷³

Post Partition Scenario of FATA

The dawn of 14 August, 1947 witnessed the origin of a new state i.e. Pakistan, in South Asia when the British colonial government ultimately winded up its long term rule over the Sub-continent. From the day first, the tribal areas became an integral part of Pakistan and the Governor General of the state directly assumed the responsibility of these areas. Keeping in view the prevailing situational phenomenon at that time, it was decided by the state authorities not to alter the status of these areas for the time being. The tribal population was, therefore, left undisturbed and thus the politico-administrative structure of these areas, designed by the colonial masters, remained intact. The tribal people declared their allegiance and support to Pakistan through open *jirgas* organized by the Governor of the North-West Frontier Province, Sir George Cunningham during November, 1947.⁷⁴

The first Governor General of Pakistan, Quaid-i-Azam Mohammad Ali Jinnah came to the N-WFP on an official visit in April 1948. During his stay at Government House Peshawar, he met tribal representatives and Maliks and also addressed to the tribal *jirga* there. He expressed in his speech about the intention of central government regarding the future of tribal people, “Pakistan has no desire to unduly interfere with your internal freedom. On the contrary, Pakistan wants to help you and make you, as far as it lies in our power, self-reliant and self-sufficient and help in your educational, social and economic uplift, and not be left as you are dependent on annual doles, as has been the practice hitherto which meant that at the end of the year you were no better off than beggars asking for allowances, if possible a little more. We want to put you on your legs as self-respecting citizens who have the opportunities of fully developing and producing what is best in you and your land”.⁷⁵ In respect of the status of tribal areas he said, “You have also expressed your desire that the benefits, such as your allowances and

⁷³ Government of North-West Frontier Province Law Department. *The Frontier Crimes Regulation, 1901 (Regulation III of 1901) [As modified upto 31 October, 1971]*, Chapter VII, Section 60, p. 23.

⁷⁴ Shah, “Political Reforms in Federally Administered Tribal Areas (FATA): Will It End the Current Militancy”, p. 7.

⁷⁵ *Quaid-i-Azam Mohammad Ali Jinnah Speeches and Statements as Governor General of Pakistan 1947-1948* (Islamabad, Ministry of Information & Broadcasting Directorate of Films & Publications, 1989), p. 238.

khassadari, that you have had in the past and are receiving (allowances), should continue. Neither my Government nor I have any desire to modify the existing arrangements except in consultation with you so long as you remain loyal and faithful to Pakistan”.⁷⁶

Being a charismatic leader and founding father of the nation, the Quaid was kind enough towards the people of tribal belt of Pakistan. During his visit to the tribal areas he declared that the valiant and brave tribesmen gave sacrifices for the creation of Pakistan. Hence, they would have equal rights of citizenship in Pakistan.⁷⁷ After his demise, the succeeding ruling elites in the country could not bring any positive change in the state policy regarding tribal areas and the colonial structure of administration was thus remained in practice as a legacy of the British *Raj*. In the like manner, the coming decades witnessed the same situation in these areas where the *Maliks* and *Lungi* holders represented the local populace and enjoyed their previous position. Consequently, no political, electoral, administrative or judicial and constitutional or legislative reforms have been introduced in the tribal belt.⁷⁸

Constitutional Status of FATA

With the promulgation of Pakistan’s first constitution in 1956, the county came under the umbrella of parliamentary form of government but it couldn’t introduce any change in the political-administrative set up of tribal areas.⁷⁹ The second fundamental law of the land, formulated under the supervision of military government of Ayub Khan, keeping in view the peculiar situation of tribal areas kept it outside the domain of both central and provincial laws. It authorized the governor of the concerned province wherein tribal belt was located to make special legislation for these areas. The power of making, amending and repealing any regulation or amending any provincial or central law for the entire or any particular part of these areas was given to the governor by the head of the state.⁸⁰

⁷⁶ *Ibid.* p. 239.

⁷⁷ Raza Rahman Khan, “FATA Political Regime: Changing Legal-Administrative Status of Tribal Areas” in *TIGAH* Vol. 1, July 2012, FATA Research Centre, Islamabad, p. 115.

⁷⁸ Shah, “Political Reforms in Federally Administered Tribal Areas (FATA): Will It End the Current Militancy”, p. 8.

⁷⁹ Mumtaz Ali Bangash, “Political and Administrative Development of Tribal Areas: A Focus on Khyber and Kurram” Unpublished Ph.D. Dissertation, Area Study Centre (Russia, China & Central Asia), University of Peshawar, 1996, p. 339.

⁸⁰ Government of Pakistan, *The Constitution of the Republic of Pakistan 1962*, (Islamabad: Ministry of Law and Parliamentary Affairs, 1962), Article 223.

It seems that no major change has been introduced in the politico-administrative set up of FATA by the fundamental laws of the land since the inception of the county. Even the most popular political system i.e. the 1973 constitution of Pakistan, didn't merge these area into the mainstream of the country and kept it away from the rest of the Pakistani society on the pretext of its special status. Dealing with tribal areas, Article 247 of the constitution declares that FATA comes under the executive authority of the federation of Pakistan. The same Article and SRO 109⁸¹ authorizes the head of the state to exercise administrative power in FATA. On behalf of the President, the Governor of the adjacent province i.e. Khyber Pakhtunkhwa, acts as his agent exercising executive authority in these areas.

Although the constitution declares that the territories of Pakistan shall comprise among others “the Federally Administered Tribal Areas”⁸² presenting FATA as an integral part of the county but the “fundamental human rights”,⁸³ enshrined in the constitution, do not apply to FATA. All these rights have been rendered null and void by Article 247 of the same constitution so far as the administration of FATA is concerned and explained a different *modus operandi* for its governance. It debars any act of the parliament to be extended to these areas until the head of the state directs so. He acts like chief executive of these areas and his executive authority is superb. It, however, demonstrates that all the three constitutions of Pakistan could not integrate FATA into the national mainstream of the country and carried on the bureaucratic rule instead of constitutional one.⁸⁴

⁸¹ SRO stands for Statutory Regulatory Order (SRO). The above mentioned SRO has been issued by the federation of Pakistan on 25 June, 1970 which declares that administrative and financial powers with respect to FATA vest in the President of Pakistan.

⁸² Government of Pakistan, *The Constitution of the Islamic Republic of Pakistan, 1973*, (Islamabad: Ministry of Law and Parliamentary Affairs, 1973), Part-I, Article 1, Clause 2.

⁸³ The fundamental human rights include, security of person, prohibition of forced labour, slavery etc, protection against retrospective punishments, safeguard against double punishments and self incrimination, inviolability of dignity of man, freedom of movement, freedom of assembly, freedom of association, freedom of trade, business or profession, freedom of speech, freedom to profess religion and to manage religious institutions, protection of property, equality of citizens before law, and preservation of language, script and culture. *Ibid*, Part-II, Chapter- 1, Article 2-A and Article 8 to Article 28.

⁸⁴ Maqbool, “FATA Under FCR (Frontier Crimes Regulation): An Imperial Black Law” in *Central Asia*, No. 61, Winter 2007, p.179.

Conclusion

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

It is peculiar in nature that after a long political journey extending over a period of sixty five years, the state of Pakistan could neither fully integrate these areas in its fold nor could properly bring positive changes in the legal and administrative framework of FATA which could lead to socio-economic, political, legal and administrative development in these area. There might be so many factors responsible for the socio-cultural, political, economic, judicial and administrative decay of FATA but the utmost and historically important factor is the Frontier Crimes Regulation 1901. The government could not introduce considerable reforms in FCR in the post-partition period. Only few minor and modest changes have been incorporated in the text of this Regulation but its substance fundamentally remained the same. However, to an extent meaningful reforms in the legal-administrative structure of Federally Administered Tribal Areas have been carried out by the PPP government when President Asif Ali Zardari signed Frontier Crimes (Amendment) Regulation 2011 along with the Extension of Political Parties Order to FATA on August 12, 2011. This is the first ever substantive reforms package introduced by the government in the history of FCR. But now the question of its

implementation is of immense vitality. It is a big challenge for the government to execute these reforms in the present day fragile security situation across FATA.