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## **Vol. II**

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## The Introduction of Legal-Administrative Reforms in FATA: Problems and Prospects

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### ABSTRACT

*The legal-administrative structure of Federally Administered Tribal Areas of Pakistan is thoroughly different in its nature and essence from other parts of the country. The theoretical framework for the governance of these areas has been enshrined in the historical regulation called Frontier Crimes Regulation (FCR) designed and implemented by the colonial government in British India during 19<sup>th</sup> century in order to achieve its specific ends. FATA became an integral part of Pakistan immediately after the great divide of August, 1947. The newly established state of Pakistan co-opted the same Regulation to administer these areas directly. Despite so many shortfalls and drawbacks, it was executed to maintain status quo in tribal areas of the country. Since then, the state could neither fully integrate these areas in its fold nor could properly introduce such reforms which could bring tribal areas at par with other parts of the country. However, legal-administrative reforms recently introduced in FATA through the Frontier Crimes (Amendment) Regulation 2011 are generally considered to be a prelude for further reforms in the near future. It is necessary to analyze all those*

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*modifications incorporated in the text of this historic document. These amendments curtail the powers of political administration, particularly that of the Political Agent, who is generally believed as king of a tribal agency. The composition of FATA Tribunal and its legal jurisdiction as a highest appellate authority, the right of bail to the convict and fix time frame for the disposal of cases, role of the Council of Elders and incorporation of Qaumi Jirga, property rights, restriction on false allegations, debarring the women, children and elderly persons and the arrest of the entire tribe from the 'collective responsibility' clause, the introduction of new concepts of jail inspection and audit of the Political Agent fund, and different other fines and penalties under various cases would be the major points of discussion of the research under focus. The study is historical, analytical and qualitative in nature and will be based on primary and secondary sources.*

### **Conceptual Framework**

At the advent of British Empire in India the North West Frontier was geographically going through a process of transition, as it had lost direct contacts with the central authority of Mughul administration and gradually tended to become under the control of rising Afghan over lordship. Politically, there was total absence of central authority which had given space to the movement of lawless gangs of plunderers and extortionists who used to descend from the highlands through the passes towards the Indian plains. Socially, the society was in a state of nomadic stage which was constantly in nomadic movement from Central Asia to India and vice versa. The nomadic clans had not yet evolved into organized tribal structures. Therefore, it could not be said that the British colonial authorities found the society of the area in a state of tribalism. The nomadic clans did have tribal consciousness but the society was not yet organized on tribal lines and nomadism was the order of the day. Nomadic movements of population were always peaceful and had no undue influence on Indian social environment. It was always punctuated by climatic and economic factors as

most of the nomadic clans had to seek grazing fields for their animals which were naturally regulated by climatic changes in Central Asia and India.

It is evident that nomadic communities always grow into tribal structure with a natural process of evolution which usually takes place in centuries. But the case of the tribal areas in particular and the whole North Western region of India in general was different. Here the natural nomadic communities were subjected to imperial domination through which the nomadic nature of the society was transformed into a stationary tribal society artificially and prematurely. The nomadic movements were first turned into organized violence, and then politicized and later on contained and impeded through the dynamics of so-called Closed Door policy. The nomadic society was compelled to take to unnatural sedentary through a process of sedimentation and unnatural settlement under the compulsions of imperial exigencies. The natural nomadic communities were artificially promoted into a status of tribal structure with artificial norms, values and traditions.

In fact, the new form and shape of tribal society was an artificial, unnatural and manipulated social organization that was designed as an 'artificial construct'. The society and economy with its cultural values underwent drastic transformation from the state of nomadism to the imperial designs with a tribal set up. New values were promoted, new traditions were created and new culture was fostered. The *pukhtunwali* of a nomadic society was transformed into a *pukhtunwali* of tribal society. The new code was defined in view of the colonial and imperial exigencies with tones and tenors of medieval Asiatic nomadism. But the meanings and concepts of values and traditions experienced drastic changes within the context of new 'Imperial Construct'. Here strong sense of tribal pride was cultivated amongst people who were indoctrinated in strong values of *ghairat*, bravery, revenge, *nanawati*, hospitality and the institution of *jirgaas* embodied in the code of *pakhtunwali*. Though in a nomadic society these values were either weak or non-existent but in

the new tribal 'artificial construct' these values were not only fostered by the imperial design, but were super imposed and institutionalized by political administration within the framework of Frontier Crimes Regulation (FCR). For instance as 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 of *jirga* was primarily recommendatory, and the actual acquittal or conviction and sentence were formalized in a decree from the Deputy Commissioner". The difference between the meanings of values of nomadic society on the one hand and those of the artificial tribal society on the other hand is a cardinal point of analysis for the students, researchers and analysts of the affairs of the present tribal society in FATA.

Presently the war and the drive for reforms are going hand in hand. Most of the analysts and political observers view these dynamics in the region as incompatible and contradictory. There is common apprehension that the measures of administrative and political reforms may not succeed in the presence of warlike situation in FATA. The possibility of success of reforms in the situation of war is viewed to be minimal as the security situation is believed to have retarding effects on the measures of reforms. This view point, however, seems to be misleading as the war and reforms need not be put in antithetical relationship. The war and the drive for reforms should be viewed in a different perspective as they are complementary in relationship. The war is a tool of surgical operation which is going to be used to destroy the unwanted primordial structures of nomadic and tribal existence. The diehard tribal structure and its elements can only be destroyed through the horror and terror of war. The destruction of the old edifice is essential for the reconstruction and revival of the society on civilized pattern which seems to be the demand of the changing times and circumstances in the region. So, the war is not going to impede the process of reforms, it is rather expected to pave way to facilitate the process of change in the society. The

destruction of war is perfectly in harmony with the process of reconstruction. If the war is destroying the invincible fortresses of the old order, it is also creating an environment in which roads with new communication system are constructed by the military establishment operating in the region. The ill-founded sense of invincibility and indomitability as inculcated by the authors of colonial characterization is going to be replaced with a sense of realization of the hard realities of the changing time, through which a new mind and soul has to be regenerated with a new view of and on life. The new mind is expected to get itself adjusted into the emerging future scenario which is going to herald on the horizon of the region after the flames of war are receded.



**Composition of FATA**

The seven tribal agencies and six tribal pockets called 'Frontier Regions' situated in the North West of the country along with Pak-Afghan border is formally known as Federally Administered Tribal Areas (FATA) of Pakistan. The tribal 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 of the political agencies have common border with the state of Afghanistan.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

Successive governments in Pakistan could not succeed to bring positive change by introducing reforms in the century old Regulation (FCR). Although few minor amendments were included in FCR yet these amendments could not alter the basic structure of this Regulation.<sup>4</sup> The government of

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

2 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), 2.

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

4 Frontier Crimes Regulation (1901) was modified in 1928, 1937, 1938, 1947, 1962, 1963, 1995, 1997, 1998 and 2000 but all these modifications were very minor in nature and substance. For instance, punishment by forfeiture

Musharraf remained active so far as the problems of FATA were concerned. He was willing enough to modify this old Regulation to an extent. The governor of KP, Khalilur Rahman established a committee i.e. FCR Reforms Committee, during April 2005. Mian Muhammad Ajmal was appointed its chairman. The committee was composed in a way to represent the whole society by extending its membership to the tribal leaders, lawyers, civil servants, journalists and a parliamentarian from tribal areas of Pakistan.<sup>5</sup> It was a comprehensive task for the committee to get the opinions of general public and other segments of the society regarding the introduction of reforms in FCR. The committee conducted a comprehensive tour-plan of different tribal agencies of FATA. It held prolonged sessions with tribal people, their social and political leaders, intellectuals, legal experts, teachers, social and political workers etc.

The Committee after an overall analysis declared that a predominant portion of tribal population liked FCR to be thoroughly amended while some of the stakeholders particularly the beneficiaries of this Regulation desired to

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of property in the case of conviction under Section 302 or 306 of the Pakistan Penal Code (XLV of 1860) was added to this law. The word "commissioner" was substituted for "court of the commissioner", the definition of the word "Governor" was added and the power to revise decisions made by the commissioner was removed from the FCR during 1997. Its Second Schedule was modified in 1995 and 1998, adding offences related to the Customs Act of 1969, the Prohibition (Enforcement of Hadd) Order of 1979, the Employment of Children Act of 1991 and the Control of Narcotic Substances Act, 1997.

- 5 Justice (Retired) Mian Mohammad Ajmal was born on July 4, 1934 in Delhi. He remained Chief Justice of Pakistan from 23 December, 1997 to 30 June 1999 and also served as Chief Justice of Peshawar High Court from 6 January, 2000 to 27 April 2000. Mian Ajmal worked on honorary basis as chairman of FCR Reforms Committee. The prominent members of the Committee were, Dr. Javed Hussain (MNA from FATA), Khalid Aziz (former chief secretary), Arbab Mohammad Arif and Manzoor Ahmad (senior civil servants), Sange Marjan Khan (retired bureaucrat), Abdul Karim Mahsud and Wali Khan Afridi (lawyers from Fata), and Nawabzada Inayat Khan (tribal elder). Rahimullah Yusufzai, "Undeserving Awarded, Deserving Ones Like Mian Ajmal Unrewarded" in *The News*, 29 August, 2011. Also see Raza Rahman Khan, "FATA Political Regime: Changing Legal-Administrative Status of Tribal Areas", 118.

keep it intact.<sup>6</sup> The committee successfully accomplished its task and presented an elaborate report to the government within the specified timeframe. The government could not properly consider its proposals mainly due to a sudden change in the provincial government. Mr. Kalil was replaced by Ali Mohammad Jan Aurakzai<sup>7</sup> as Governor of KP. The new Governor either could not find sufficient time to think over the recommendations of the committee or he was not interested in this hectic task of modifying the century old Regulation. So, the task of introducing reforms in FCR was put to cold wind.

Nevertheless, a major change occurred in the provincial government of KP on January 07, 2008 and Mr. Owais Ahmad Ghani was given the charge of Governor KP. He seemed to be more interested than his predecessor in the task of introducing positive changes in FCR. The new Governor was briefed afresh by the chairman of the committee, Mr. Ajmal and again an initiative was taken by the government to introduce reforms in FCR. When the coalition government of PPP was established in the centre, it established a Cabinet Reforms Committee and appointed Federal Minister for Law, Mr. Farooq H. Naek as its chairman to re-examine all those amendments which were recommended by the previous committee.<sup>8</sup> After a

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6 Rahimullah Yousafzai, "Some More Real Change in FATA" in *The News*, August 16, 2011.

7 Lieutenant-General, Ali Muhammad Jan Aurakzai retired three-star rank general officer in the Pakistan Army who served as the Corps Commander of XI Corps and the principle commander of the Western Command. As Commander, he commanded all military combat assets and oversaw the peaceful deployment of XI Corps in the Northern Areas and the Federally Administered Tribal Areas (FATA). He was a leading army General and after retiring from the military services, he was elevated as the Governor of the Khyber Pakhtunkhwa Province from May 2006 until his resignation in January 2008.

8 The Cabinet Reforms Committee on Frontier Crimes Regulation (FCR) had two Federal Ministers, Najmuddin Khan of PPP and Hamidullah Jan Afridi an Independent MNA from Khyber Agency, and several members of parliament such as Zafar Beg Bhittani, Akhund Zada Chitan and Rahmatullah Kakar etc. Raza Rahman Khan, "FATA Political Regime: Changing Legal-Administrative Status of Tribal Areas", 118-19.

comprehensive study of the previous proposals this Committee suggested a variety of changes in the FCR. According to it, the title of FCR should be altered with FATA Regulation 2008. It was suggested that appeal against the verdicts of PA should be heard by a judicial officer (i.e. a district and session judge). The Cabinet Committee also proposed a FATA Tribunal which should be chaired by a judge (retired) of High Court. The two members of the Tribunal should be a senior bureaucrat and a lawyer. This body would exercise appellate jurisdiction against the verdicts of a judicial officer. It was one of the beautiful suggestions on the part of the committee that the power of the political executive in a tribal agency to appoint *jirga* should be no more applicable in FATA and rather the parties concerned would nominate the *jirga* to decide their dispute. It also suggested to put a cut on the extra-ordinary powers of Political Agent by virtue of which he could detain an individual without any reason and send him to jail for 2 years. It suggested that the aggrieved one should be immediately brought before a court of law for trial. It also condemned the provision of 'collective responsibility' and recommended that women, aged tribesmen and children should be free from the application of this provision of FCR.<sup>9</sup>

The federal government declared FATA Regulation 2009 and it provided some rights to the tribesmen. For instance, when a person is involved in a particular offence and if arrested, he would be immediately presented in the court of APA within 24 hours of his detention. If it is required, the matter would then be passed on to the council of elders within 10 days which would come up with its final decision within 90 days. According to the FATA Regulation, the provision of 'collective responsibility' would be amended and the whole family or tribe would not be sentenced for the evils and crimes of an individual. Like the FATA Regulation 2008,

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9 These recommendations were made at a meeting of the Cabinet Reforms Committee on Frontier Crimes Regulation (FCR), which was held at the Ministry of Law on 29 August, 2008. Federal Minister for Law, Farooq H Naek chaired the meeting. *Daily Times*, August 30, 2008.

the FATA Regulation 2009 also suggested that the aged tribesmen, children and women would also be free from the application of the said provision.<sup>10</sup> It suggested a tribunal with appellate jurisdiction and a comprehensive mechanism of audit in each tribal agency.<sup>11</sup>

Moreover, a considerable reforms package has been introduced in FCR by PPP coalition government in August 2011. The party leadership and President of the state promulgated Frontier Crimes (Amendment) Regulation 2011 which considerably alter some sections and provisions of this Regulation to an extent. This move for the reforms has introduced substantial modifications in the century old document of FCR. By virtue of FC(A)R 2011 some sort of amendments, insertions, omissions and substitutions have been incorporated in FCR.<sup>12</sup> The following lines would present further details of these reforms under separate headings.

### **Legal Protection**

The Frontier Crimes (Amendment) Regulation 2011 put a cut on the application of 'collective responsibility' clause and amended it to the effect that the aged tribesmen, children and female would be free from the application of the said clause. In this way the detention or arrest of a whole family or tribe under the same clause or provision would be no more practicable.<sup>13</sup> It extended some basic rights to the inhabitants of FATA. For instance, the tribal people would not be arrested for unlimited span of time which was

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10 Raza Rahman Khan, "FATA Political Regime: Changing Legal-Administrative Status of Tribal Areas", 120-21.

11 International Crisis Group Working to Prevent Conflict Worldwide, Pakistan: Countering Militancy in FATA, Asia Report No. 178, 21 October, 2009, ii.

12 Muhammad Hamid Hussain, "Frontier Crimes Regulation: A Case Study of Reforms Process" in TIGAH Vol. 1, (July 2012), FATA Research Centre, Islamabad, 101. Also see "Summary of 2011 Amendments to the Frontier Crimes Regulation (FCR)" [www.fatareforms.org/summary-of-2011-amendments-to-the-frontier-crimes-regulation/](http://www.fatareforms.org/summary-of-2011-amendments-to-the-frontier-crimes-regulation/) accessed on 30 July 2013.

13 The Frontier Crimes Regulation, 1901 (Regulation No. III of 1901 As Amended August 2011), Section 21 (c) (iii) and Section 22 (d). (hereafter referred as Frontier Crimes (Amendment) Regulation 2011).

previously a common practice across FATA. The right of appeal to the tribesmen has also been provided under these reforms and now they can knock the door of FATA Tribunal for appeal.<sup>14</sup> Now any person who is involved in any offence if arrested by the agency administration would be immediately presented in the court of APA within 24 hours of his detention. He has the right to bail and can also be released on bail. The property of the tribal people has been safeguarded under these reforms and now no individual would be deprived of his possession and if the confiscation of his property is otherwise necessary then the individual concerned would be compensated in a good manner.

### **The Establishment of FATA Tribunal**

The newly introduced administrative reforms in FCR paved the way for the establishment of a FATA Tribunal.<sup>15</sup> It would be comprised a chairman and two other members. Its chairman must be a civil servant of grade 21 and must have sufficient knowledge of FATA's administration. One member would be from legal fraternity who must have enough know-how of tribal custom (*Rewaj*) and would be qualified for the position of judge of the high court. While the second member should be civil servant of grade 20 and must be aware of tribal administration.<sup>16</sup> The authority to nominate FATA Tribunal would rest with the Governor of KP who can appoint the said body for a specific time.<sup>17</sup> This body would work like a highest court of appeal and would hear the cases of the tribesmen against any verdict made by the lower judicial bodies.<sup>18</sup> It has the authority to revise the decisions of all

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14 Farhat Taj, "New FATA Reforms – Good But Insufficient" in *Daily Times*, August 20, 2011.

15" 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 July 30, 2013), n.p.

16 Section 55A has been substituted by Section 22 of the Frontier Crimes (Amendment) Regulation 2011.

17 Section 55A has been substituted by Section 22 of the Frontier Crimes (Amendment) Regulation 2011.

18 Section 55A has been substituted by Section 22 of the Frontier Crimes (Amendment) Regulation 2011.

lower judicial bodies that works below it.<sup>19</sup> When a particular person come up with an application within a specified time of the decision passed by the FATA Tribunal, it may revise its own decision as well.<sup>20</sup>

The tribunal has the authority to tender pardon to the accused and can also enhance the sentence in any criminal case. It would provide proper regard to any decision taken by the council of elders but if there is any space for correction or revision then the Tribunal can go for its revision as well. In matters of civil proceedings, FATA Tribunal has also the ultimate authority to revise the decisions or verdicts taken by the lower judicial organs working below it.<sup>21</sup> The recent legal and administrative reforms are important in a sense that it has comprehensively designed a highest court of appeal for the tribesmen of FATA in the form of a Tribunal which might be helpful in the days to come and the tribal people may take benefit of it.

### **Qaumi Jirga**

Literary the word *Qaum* means a specific group of human beings who shares similar language, culture, ethnicity and other common habits and characteristics of daily life. If we observe it in a broader perspective then this word means a nation as well. The existence of *jirga* in tribal areas is considered compulsory because it provides local and indigenous solution to different disputes in tribal areas and ensures speedy justice. That is why, the recent reforms do not ignore the significance and utility of *Qaumi Jirga* and introduce it in the Frontier Crimes (Amendment) Regulation 2011. The concerned provision states thus, “the Political Agent of District Coordination Officer, as the case may be, may take cognizance of any offence or civil dispute in

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19“ Summary of 2011 Amendments to the Frontier Crimes Regulation (FCR)” n.p.

20 Section 55AA has been inserted by Section 23 of the Frontier Crimes (Amendment) Regulation 2011.

21 Section 52 has been substituted by Section 21 of the Frontier Crimes (Amendment) Regulation 2011.

exceptional circumstances, if so recommended by a *Qaumi Jirga* of the Tribe in the interest of justice and public peace”.<sup>22</sup> The incorporation of this institution, however, do not affect the powers and functions of the political executive across FATA.

It is basically a gathering of wise elders of a particular family, clan or tribe which often engage it in resolving disputes among different tribes and families. It also deals with matters of common interests such as shares of each tribe in forests, water and other natural resources and management of developmental works like building of educational institutions and health centres etc.<sup>23</sup> It decides disputes in such a way that both the contending parties ultimately accept its findings and decision unanimously.<sup>24</sup>

It is normally announced after consultations with few tribal elders. The venue for holding an open session and time is also publically declared in order to ensure maximum participation from different walks of tribal life. During its deliberation the opinions of the participants are given due place while the opinions of the elders are usually given high regard. Some problems are of simple nature that may be solved in a single session while complicated issues may be decided in few sessions.<sup>25</sup> Being an open forum, all the participant tribesmen have the opportunity to say something regarding a particular dispute with solid grounds. However, majority of the tribesmen just want to observe the matter and the decision of the *Jirga*. It is basically an informal gathering

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22 Section 11B has been inserted by Section 8 of the Frontier Crimes (Amendment) Regulation 2011.

23 Hassan M. Yousufzai and Ali Gohar, Towards Understanding Pukhtoon Jirga: An Indigenous Way of Peace-building and More, (Peshawar: Just Peace International, n.d), 47. Also see Fakhr-ul-Islam, Khan Faqir and Malik Amer Atta “Jirga: A Conflict Resolution Institution in Pukhtoon Society” in Gomal University Journal of Research, Vol. 29 (1), (June 2013).

24 Shinwari, “Understanding Jirga: Legality and Legitimacy in Pakistan’s Federally Administered Tribal Areas”, 38.

25 Yousufzai and Gohar, Towards Understanding Pukhtoon Jirga: An Indigenous Way of Peace-building and More, p. 47. Also see Fakhr-ul-Islam, “Jirga: A Conflict Resolution Institution in Pukhtoon Society”, n.p.

having no formal anchor or conductor to organize the session of the *jirga*. Its deliberation is normally started with a relevant story or narrative in order to make the background of the matter concerned. It observes the matter from different angles and dimensions. It takes extra care while ultimately deciding a dispute or case and feels pride when its verdict is unanimously agreed by both the parties concerned.<sup>26</sup>

The tribal elders usually approach both the rival individuals, parties or groups and organize a *Teega*<sup>27</sup> (ceasefire or truce) for the sake of preventing further violence in the locality. An informal security is taken from both sides by the tribal elders that may be weapon or cash. It is set up for a specific time and in the meanwhile a *Qaumi Jirga* is organized which starts investigation and inquiry by collecting and observing evidences, hearing both the rival groups and taking *Waak*<sup>28</sup> from them and then ultimately releases its final verdict.<sup>29</sup>

The newly introduced reforms recognize and accommodate *Qaumi Jirga* as an essential indigenous and local body for the resolution of different tribal disputes and quarrels. The present reforms package has modified section 2 of the FCR and incorporated section 11B which formally define *Qaumi Jirga* and its working respectively.

### **Jail Inspection**

Jail inspection is a new idea which has been accommodated by the Frontier Crimes (Amendment) Regulation. For this purpose a new provision has been added which states that “FATA Tribunal, the Appellate Authority, the Political Agent and District Coordination Officer, as the case may be, shall

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26 Gohar, “Towards Understanding Pukhtoon Jirga”, 48.

27 *Teega* is a sort of truce or ceasefire which is enforced upon the combating parties for a specified period of time in order to dissociate them from fighting and avoid a bigger combat between them.

28 *Waak* means the authority given to the *Jirga* by the disputing parties. When the contending parties give *Waak* to the *Jirga* then both the parties have to accept its verdict wholeheartedly.

29 Syed Irshad Hussain, “Conflict Management at the Grassroots in FATA” in TIGAH Vol. I, July 2012, FATA Research Centre, Islamabad, p. 139. Also see Shinwari, “Understanding Jirga”, 38.

visit the jails where the tribal convicts or detainees have been kept twice a year.”<sup>30</sup> It is a welcome move as there is very little jail facilities in tribal areas of Pakistan. It is generally observed that the government often keep the tribal prisoners in jails located in other areas of the country. For the general look after of tribal convicts imprisoned in jails outside FATA, it is recommended in the new reforms agenda that all the prisoners of FATA would be inspected twice in a year by the concerned authorities.

### **Audit by Central Government**

The concept of audit mechanism in FATA is totally new in its nature and essence. It is for the first time introduced in the legal-administrative reforms of 2011. It declares that the annual fund of PA in case of a tribal agency and DC in case of a Frontier Region would be annually audited by the state’s auditor general.<sup>31</sup> By virtue of such reforms the state funds would be carefully spent in FATA by the concerned authorities i.e. PAs and DCs as the case may be. According to an estimate, Rs. 24.13 million has recently been mismanaged in Pakistan’s FATA while dealing with various developmental works.<sup>32</sup> For the prevention of such sort of financial mismanagement and corruption, the incorporation of new provision of audit mechanism in FCR is a welcome exercise that may minimize the opportunities of corruption and wastage of national wealth.

### **Critical Analysis**

The Frontier Crimes (Amendment) Regulation of August 2011 has generated mix feelings among the Pakistani society and tribal people of FATA. It is at the same time appreciated and criticized as well in different corners of the

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30 Section 58A has been inserted by Section 25 of the Frontier Crimes (Amendment) Regulation, 2011.

31 Section 58 has been substituted by Section 24 of the Frontier Crimes (Amendment) Regulation, 2011.

32 “Irregularities Detected in FATA Development Projects”  
<http://www.fatareforms.org/irregularities-detected-fata-development-projects/> accessed on 19 September 2013.

country in general and tribal areas in particular. Although the government has introduced amendments in FCR yet it could not thoroughly alter or dismissed the most astonishing provision of 'collective responsibility'. This application of this provision shows that modern civilization in FATA has still not flourished and it needs a lot of struggle to bring these areas at par with other areas of the country.<sup>33</sup> On the one hand the government has realized that this provision is cruel in its nature and essence and therefore, amended it to the effect that the whole tribe or clan would not be arrested on the account of wrong doing of its individual member. It demonstrates that the same provision is fatal and inhuman in essence then why it is partially modified rather it should be abolished totally.<sup>34</sup>

The present scheme of legal-administrative reforms has been criticized on the grounds that it has deliberately ignored to separate the executive from the judiciary. Though these reforms has established a FATA Tribunal with highest appellate jurisdiction yet its composition is faulty as it gives weightage to civil servants over the judges of higher judiciary. The composition of FATA Tribunal has been criticized by the tribal people of FATA, their elders, political leaders, lawyers and others. According to them, it is basically a failure on the part of federal government which could not extend the jurisdiction of Supreme Court and high court to FATA and establish only a titular Tribunal just to gain the sympathies of simple tribesmen. There is a wide gap between theory and practice so far as the functioning of this judicial body is concerned. In theory this body is believed to decide cases impartially but in practice how a bureaucrat would go against the decision of another in favour of tribesmen.

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33 Despite the recent reforms FATA has been declared as "human rights free-zone" by Amnesty International in its recent report. Farhat Taj, "New FATA Reforms – Good But Insufficient" in *Daily Times*, August 20, 2011.

34 Hussain, "Frontier Crimes Regulation: A Case Study of Reforms Process" in TIGAH Vol. 1, 104.

The announcement of two identical presidential orders i.e. Actions (in Aid of Civil Power) Regulation for Federally Administered Tribal Areas and Provincially Administered Tribal Areas on June 27, 2011 by the central government further affects the reforms package. The armed forces of the state have been given unprecedented powers to encounter terrorism in FATA. The Regulation declares that “whereas there exists grave and unprecedented threat to the territorial integrity of Pakistan by miscreants and foreign funded elements, who asserted to unlawful control over the territories of Pakistan and to curb this threat and menace, Armed Forces have been requisitioned to carry out actions in aid of civil power”.<sup>35</sup> It empowers the military to act vigorously in FATA that may even lead to basic human rights abuse in these areas and create hurdles in the reforms implementation as well. It is a retrospective law as it states that “it shall be applicable to the Federally Administered Tribal Areas of Pakistan”<sup>36</sup> and “it shall come into force at once and shall be deemed to have taken effect from the January 1, 2008”.<sup>37</sup> The Armed Forces may arrest terror suspects arbitrarily and keep them in detention for 120 days which would lead to misuse of power in tribal areas. It also authorizes the military to capture any individual’s land without any sort of compensation across FATA.

### **Conclusion**

To sum up, it is noteworthy here that the state of Pakistan after a long political journey extending over a period of sixty five years, 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

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35 Action (in Aid of Civil Power) Regulation, 2011, The Preamble.

36 Action (in Aid of Civil Power) Regulation, 2011, Article 1, Clause 2.

37 Action (in Aid of Civil Power) Regulation, 2011, Article 1, Clause 3.

important factor is the Frontier Crimes Regulation 1901. This Regulation really bestows more discretionary powers upon the political administration in FATA so, the proverbial notion that “power corrupts and absolute power corrupts absolutely” is thus proved. 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 structure of governance in FATA by incorporating significant modifications in FCR have been made by the PPP government in August, 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. Beside all its shortcomings and deficiencies, the Frontier Crimes (Amendment) Regulation 2011 has been welcomed by the people of FATA in the midst of turmoil across the region.