

Governance Challenges in Mainstreaming of Federally Administered Tribal Areas into Khyber Pakhtunkhwa

Syed Akhtar Ali Shah

Former Home Secretary, KP

Saima Parveen

Women University Swabi

Jehanzeb Khalil

Abdul Wali Khan University Mardan

The passage of 25th amendment to the Constitution of Pakistan guaranteed doing away of articles 246 and 247 in the Constitution which had restricted the application of parliamentary and provincial laws of the land to the tribal areas. The rule of law principle thus extends fully to the areas that stand merged with the KP province. The colonial past has been left behind by replacing the system of FCR with the fundamental rights enshrined in the Constitution. Amidst all hopes new challenges of governance are also likely to develop. In the context, this paper highlights the governance challenges in mainstreaming of Federally Administered Tribal Areas into Khyber Pakhtunkhwa with a special focus on Challenges of Law enforcement, jurisdiction and land revenue. This study is conducted by using historical and analytical approaches with descriptive and explanatory mode of research. Both primary and secondary data is utilized in order to investigate the research problem. Weak states with significant problems of governance (authority), capacity and legitimacy often face persistent challenges in controlling their territories, leading to the emergence of ungoverned areas within their geographical boundaries. Authority, capacity and legitimacy are interdependent and hence their balance is essential for state-building. An imbalance in them weakens instead of strengthening a state. Accordingly, the government should extend jurisdiction, ensure law enforcement and generation of revenue in FATA in order to accomplish the goal of state-building and strengthening governance.

Keywords: mainstreaming, FATA, authority, capacity, legitimacy, Law-enforcement, revenue, jurisdiction.

Correspondence concerning this article should be addressed to Mr. Syed Akhtar Ali Shah, Former Home Secretary, Khyber Phutunkhwa, Email: aashah7@yahoo.com

Contribution of Authors

- 1.** Syed Akhtar Ali has collected, analyzed and interpreted Data, did Literature Review along with having Interviews with concerned Secretaries in order to present factual information and to get working policy options.
- 2.** Dr. Saima Parveen has mainly contributed in methodology of the study, conceptual framework and did Document Analysis.
- 3.** Dr. Jehanzeb Khalil has contributed in thematic analysis of the paper and improvement of literature.

The Indian Empire, glorified as “the jewel in the British crown,” by Scott was regarded for the British as symbol of honor and influence, a manifestation of its imperialist supremacy among other European powers with same superior status. (Scott, 1966: 21) The trends and traditions of European politics assumed to have dominancy over the world, contradictorily, taken Europe as superior and of infallible nature which can never taste decline (Moghaddam, 2011: 123). The Britain imperial hegemony was marked by racial violence as was of French, German or Belgian imperialism and the differences are not of kind but of degree (Cesaire, 2000: 36). The terms ‘savage’, ‘fanatic’ and ‘un-civilized’ were token for enemy which had significance for savage warfare, justifying all those forms and manifestations of violence which were obnoxious for civilized nations and superior races (Condos, 2015: 479-517, Kolsky, 2015: 1,218-46). Savage as was conceptualized as that very missing link between the racially developed white man and the wild beast may ultimately turn out to be irreconcilable with the standards of the civilized world represented by Europe. Moghaddam, 2011: 123).

Hence in the context the imperial power decided to rule tribes men by special legislative and administrative measures because they were contemplated as wildest and most turbulent race on earth (Wylly, 1912). The British could not peacefully and smoothly govern the tribal areas. The only mean left with them was to exercise their control and extract revenues through violence. Various conciliatory methods were adopted by the British to promote friendly relations with the tribesmen in order to ensure security against the frequent tribal raids.

The geostrategic location of Tribal Areas and its contiguity with the British India made it important for the defense of the subcontinent. The ensuing Great Game centered this region in the tussle between the Russian and the British in the colonial era. Historically and even currently in aftermath of 9/11 the pulmonary veins of a political circulatory system of Mackinder’s “Heartland region” (Derek, Gregory, Johnston, Ron, Pratt, Watts, & Whatmore, 2011) pass through these tribal areas.

Joint fines, blockades, punitive raids under garb of collective responsibility were the tools to keep the tribes under control (Afridi, 2012) just for serving the strategic interests of British India. The clash regime as it appears to us today draws considerable sustenance from the legacies of colonialism and imperialism (Moghaddam, 2011: 140).

Basically, tribal areas were divided into two main categories as 27 % designated as Illaqa-e-Sarkar and the rest as Illaqa-e-Ghair (non-Government area). British through FCR (discussed in detail below) and Political Agent ruled the first type directly while the second category was ruled indirectly through Jirga system, Riwaj or customary law. In these areas, the governance system is a kind of mix of customary law and traditional authorities. The tribal areas of Pakistan have its informal governance system based on its tribal customary law with traditional, religious and other civic authorities. Though, this informal governance system, also called alternatively governance, is fluid, overlapping, and often fragile, mostly vulnerable to exploitation by spoiler, non-state actors. However, this system does have its own informal arrangements of providing security, rules of law and social services to the residents.

Pakistan since its birth also got the hostile and turbulent North-West Frontier region along with Federally Administered Tribal Areas administered under the laws called Frontier Crimes Regulations. Colonial provisions were kept undisturbed, by the provision of legal special position in sync with the Crown style of governance in tribal areas. The tribes joined Pakistan o getting assurance conditioned that their norms as Riwaj (customs), Jirga (legal tool for resolving conflicts) would be kept

intact. The Riway Act, embodied in the FCR, contains four provisions hospitality, honor, revenge and the lastly asylum.

The address of Quaid-i-Azam to the tribal Jirga at the Government House, Peshawar on April 17, 1948 is considered as the bedrock for Pakistan's frontier policy even today. In his speech, the Quaid-e-Azam announced two prong policies for tribal areas, with emphasis on giving patronage to their self-sufficiency and non-interference. Tribes entered an agreement with government of Pakistan pledging allegiance to Pakistan through 30 instruments of Accession.

The vision of Jinnah about FATA socio-economic uplift having thrown to the background after the sad demise of Quaid, governments following him could not pay proper attention to the tribal areas considering its paramount geo-strategic importance connecting Pakistan to Central Asia and Afghanistan. Although lot of water has passed down the Attock Bridge over considerable period of time, the tribal areas were administered through same colonial black laws and no political or constitutional change has touched it, while the rest of the state tasted political changes and reforms. Unity and cohesion in the tribal social system are based on their customs and traditions. In the process of day to day transactions, it tries to resolve the conflicts and bring harmony and order with a built-in social mechanism, e.g. rule of law is mostly dependent on kinship and tribal mythology. Its social structure forms a system with its striking features of inter-clan linking and tribal affinity which unite the tribesmen in the web of their kinship relationship. Lindholm describes the Pakhtun social structure as an "acephalous patrilineal segmentary system" (Lindholm, 1982). He thinks that traditionally Pakhtun lack the features of following a centralized authority, therefore, they are without a head. Competition among the social segments signifies their social structure. However, when in competition with members of another segment, they can form a transient alliance. (Lindholm, 1996)

Peace and security are touchstone of a state because any social, political and economic alienation by people yield in disastrous outcome. It gives birth to criminal mafia which have political support and mainly 'no go areas' are formed which is also known as Elaqa-e-ghair. The Federally Administered Tribal Areas (FATA) have always been tumultuous and anathema for the national political development (Shah, Parveen & Kayani, 2017).

In this parlance the twenty fifth constitutional amendment enshrined the opportunity of mainstreaming to tribal areas with settled KP province. It guaranteed the extension of supreme and high courts writ to the tribal areas by abolishing article 247 and changes in article 246. Further, modifications to Articles 51 and 59 lead to reduction of the number of seats in both the National Assembly and the Senate and increase of seats in the Khyber Pakhtunkhwa Provincial Assembly. Lastly, the Amendment promises that local bodies' elections in FATA would be held within a year after the July 2018 General Elections. The Amendment signifies a remarkable start of FATA mainstreaming as it does away with the ill-famed FCR by safeguarding the fundamental constitutional rights and heralding a progressive judicial system.

In the context this paper highlights the challenges in mainstreaming of Federally Administered Tribal Areas into Khyber Pakhtunkhwa with special focus on Challenges of Law enforcement, jurisdiction and land revenue. Not only challenges but the way forward is also the scope of this research.

Historical Background

Since independence FATA has been tenuously governed because of deliberate policy, not because of Pakhtun tribal traditions or resistance. The state has retained a colonial-era political, administrative and judicial system that denies basic constitutional and political rights. The tribal belt comprises regions which were economically very deprived due to inaccessible nature of the area. Even after 1947 unfortunately very little attention was paid to the development activities of these areas. In 1999 and even till 2001, the total budget for FATA used to be no more than 800 to 900 million rupees. Complaints of corruption are widespread about the official organisations responsible for developmental work in FATA. The local religious leaders enjoy greater trust of people, even though the level has decreased over the years, See Figure 10 for details (Shinwari, 2008). The people of the FATA also highlighted the poor socio-economic condition to be one of the reasons for the presence of non-state elements (Shinwari, 2008)

The 1973 constitution is no more different than related articles of 1956 whereby the executive authority of federation stretches to FATA while executive authority of a province to Provincially Administered Tribal Areas (PATA). Specifically article. 247 expressly states that no Act of the Parliament shall apply to any Federally Administered Tribal Area or any part thereof unless the same is directed by the President and no act of Parliament/Provincial Assembly shall apply to Provincially Administered Tribal Areas or any part thereof. The aforementioned article empowers the president and the governor in their respective area of authority to impart regulations for peace and welfare of PATA which are actually the legislative of parliament or provincial assembly; not withstanding anything constitutional in the constitution. The same powers are entrusted in the President for the Federally Administered Tribal Area.

By contemplating these constitutional provisions it is clear that basic human rights were not provided to the people of tribal areas. Rather they were entangled by century's old power structure settled by their immediate elders as for instance FCR and Jirga system. Hence through 25th constitutional amendment the mainstreaming of FATA with KP came as greatest achievement but still the matter is daunting as dotted with various challenges.

Conceptual Framework

Weak states with significant problems of governance (authority), capacity and legitimacy often face persistent challenges in controlling their territories, leading to the emergence of ungoverned areas within their geographical boundaries (Stohl, 2012).

The state's lack of capacity to govern these tribal areas directly and indirect rule of co-optation of local leaders (Malaks) and as well as coercion and repression when deemed necessary by the Pakistani state to govern these tribal areas led to an additional way of creating distrust between tribal people and the Pakistani state.

The legitimacy of the state can be ensured through state interaction with citizens and penetration in the society through the provision of various services and public goods. In this way, the Pakistani state is less capable of providing these services and thus has failed to develop its legitimacy in the eyes of tribal people and have no trust of the tribal people. As a result, there is a general trust deficit between tribal people and the Pakistani state. In FATA, the Pakistani state's commitment to developing tribal areas did not extend far beyond the realm of its policy pronouncements.

Migdal argues that "the ability of the state to actually take goal-oriented action rests upon maintaining a political, legal, and normative order" (Migdal, 1988: 53). According to Migdal, there are

three major sources of social control. These are: the state penetration in society, extraction of resources, and the state regulation of social relations in a given society.

The ability to penetrate society refers to the states capability to make its presence felt in society and subsequently affect their livelihood. By penetrating society, "the state would be able to change the very nature of institutional life even in distant villages and towns" (Migdal, 1988: 53). In achieving this goal, the state could use various measures such as implementing certain policies, carrying out propaganda, enforcing repressive laws and applying physical force.

It is pertinent for Pakistan to provide basic security and then extend its authority by installing an effective form of public administration in FATA. This strategy would strengthen the ability of Pakistani state to procure the required revenue and provide services to the people of tribal areas. In this context Walle argues that public services are an effective tool of spreading symbols and inculcate political loyalty to state among the citizen. (Scott, 2009: 39).

Economy becomes the direct victim of weakened state's authority when the line between public and private blurs (as public institution engages in private business) and illegal informal economy dominates. When illegal trade is not curbed by the state, it is interpreted as the sign of weak authority of the state. Such economy then supports and spawns parallel security forces (that challenge the writ of state) resulting in violence and conflict (Weingast, 2009). Such a situation makes it hard to curb rent-searching economic process and promotes distribution of economic rents that is the prerequisite for the settlement of political solution in an informal way.

For legitimacy, it is necessary that the state should cater the public demands. Getting their demands fulfilled by the state, the people accept the state legitimacy, which ultimately leads to the state reach to its population.

Provision of security and basic services remain key factors of state performance legitimacy. Therefore, state's participation/ownership in these areas is considered mandatory. Moreover, taxation and revenue generation of state derive justification from these aspects of legitimacy. Availability of services alone does not suffice in a state where inequalities are present; as such inequalities generate tensions among different sections of the society. Therefore, equitable distribution becomes important in provision of services (Baird, 2010: 20-21).

Conclusively, Authority, Capacity and Legitimacy are mutually dependent and hence their balance is essential for state-building. An imbalance in them weakens instead of strengthening a state, for instance, focusing on legitimacy cannot help in state building unless the state does not prove its capacity of delivering services.

Challenges

While discussing the challenges it is also to be kept in mind that law and policies have a deep co relation with the customs and norms of the people. In this background the Pakhtunwali code governing the way of life of the tribal people is must to understand. The code has impacted the psyche of those people and there may be a perpetual clash between the code and modern concept of governance involving women rights and dispute resolution.

The institution of the Jirga, or council of elders, is summoned to resolve local disputes and to deliberate on how to respond to threats and challenges. This system does not to provide for judicial

review and combines the executive and judicial powers in one person. It is based on the customary law without due process; therefore, it is an underdeveloped legal system (Careo, 1958).

Over the centuries, some Pukhtun tribes have carved and established their strange Narkh and customary laws having roots in principles of Pakhtunwali. These codes which are mostly unwritten often cover the incapacity and inefficiency of the state institutions.

Frontier Crimes Regulation

The history of FCR dated back to the occupation and annexation of the six Frontier districts housing the Pakhtuns by the colonial government. The British in 1876 enacted a series of laws known as Frontier Crime Regulation (FCR) composed of specific procedure for tribal areas having collective territorial obligation, solving disputes through Jirga. With the passage of time the regulation was found to be inadequate hence its scope was extended by adding new acts and offences to it. This was done through promulgation of the Frontier Crimes Regulation 1901 which was further amended in 2011.

Frontier Crimes Regulation is actually considered to be codification of the tribal customs and traditions by many of its advocates. The FCR spurned tribes basic rights as the right to pursue a lawyer, to present reasoned evidence and to appeal in a court against the Jirga's decision. Hence it manifested a separate policy parameters for FATA which had no application in any other part of the state of Pakistan. Although FATA was being declared part of Pakistan as per article 1 and 2 of the 1973 constitution of Pakistan but given under the President direct executive authority according to article 247 (Constitution of Pakistan, amended, 2017).

So the constitution left the FATA to be governed under the same colonial laws like FCR which was so offensive in its forms and manifestation that obviate any guarantee of Human rights. Especially the provision of collective responsibility kept the tribes in perpetual insecure environment in form of uncertain arrest and imprisonment for no crime on their part but only because of being part of the same tribe.

Under the FCR the Political Agent or the Deputy Commissioner has been conferred with magisterial powers under Criminal Procedure Code and also of a civil court in matters of civil disputes by conferring powers under the Civil Procedure Code. However, the Political Agent decides such matters through a Council of Elders.

Section 40 of the FCR gives authority to the Political Agent to make orders for keeping peace which is more or less the same as in the preventive sections of 151, 106, 107 and 108 of Criminal Procedure Code

Recently with passage of 25th constitutional amendment FRC has been done away with and the Interim Governance Regulations 2017 are introduced but the Interim Governance Regulations also seems continuation of the FCR because it keeps the old system intact with cosmetic changes and fails to put an end to the concept of collective punishment in letter and spirit (Khan, May 31, 2018).

Jurisdiction

The FCR contemplates tribal mindset as main factor that impede the reforms to be imposed as became obvious in replacing the FCR by Riway Act as the latter retained the old Jirga system with cosmetics changes. The jurisdiction of Supreme and High courts have been extended to FATA but the Interim Governance Ordinance has still provided the resolution of disputes by involving the role of

Riwaj and Jirga as both criminal and civil cases will be referred to the Jirga by judges for checking facts as per Riway and then to decide accordingly. Hence, to coalesce the spirit of the two competing system is in itself a challenge and can yield in standstill.

The interim governance regulation entrust the governor to impart to the DC the authority and responsibility of district magistrate in per Criminal Procedure Code, 1898 and the authority of first class magistrate to the assistant commissioners (Khan, May 31, 2018).

The Regulation has renamed the agencies as Districts. Judges have defined as judges. However this arrangement is not likely to function for long as it negates the concept of separation of judiciary from the executive. Hence the Peshawar High Court has declared such provisions of the Interim Governance Regulation ultra vires of the Constitution and has ordered the government to rectify the situation within stipulated time (Shah, November 8, 2018)

According to the Additional Chief Secretary FATA, there is planning for separation of executive and judiciary in form of establishing seven judicial complexes in the districts on the pattern of Charsadda. The complex would contain courts, offices of prosecution, police and Prison. Deputy Commissioner would only exercise executive Authority. The Interim ordinance would be converted into a provincial ordinance. At the moment the Interim Governance Ordinance and FCR are more or less the same. New provision for incremental approach would be adopted. A nonfiction for declaring an area as fully settled/ administrative, if found fit would be issued within two years. Harsh provisions of Interim Governance Regulation would not be implemented. All laws are de-jure but difficult to be implemented there for ede-jure customs would prevail (Qayyum, 20 October, 2018). Government is ready to abdicate the powers of Deputy Commissioners as and when the Peshawar High Court provides judges. In such a situation the judges would exercise all judicial powers. In this respect 907 judicial staff including the judges is required

The FATA Secretariat has proposed to work on the basis of soft and hard areas. According to this plan Police will be extended to soft areas first. The Army training centers will be used to train police for its extended needs. Till construction of the judicial complexes, courts can start work in the compounds of Political agents and Assistant Political Agents and other existing official buildings. The creation of posts of judiciary, prosecution and prisons is another uphill task. They require at least 200 kanals for the establishment of judicial complex on the pattern of Charsadda in each district. Around 900 Judicial staff including judges would be required with an estimated cost of Rs 503 million per annum.

Law Enforcement

The mainstreaming of FATA into the KP will vanish the strategic buffer lies along the Durand Line which in turn bring the KP to some daunted challenges of security. In the context, security provision and local forces as Khasadar and Levies need re-organization for tackling the border management along with more assignments to the Frontier Constabulary also (Babakhel, June 24, 2018).

Fata's transition can succeed only by ensuring the existence of law and order and sufficient provision of developmental projects. Any sort of administrative and governance mismanagement will be dotted by grave consequences. Hence working transition plans are demand of the time. Because through history we came across the case of notifying Malakand as a district through the Local Government Ordinance, 2001, whereby twenty four departments were devolved devoid of a police department which triggered so many related challenges told by history. Conclusively, districts run while short of a modern police force. Accordingly the policing of FATA needs proper policy focus.

While policing FATA, the redefinition of roles of FC, Levies and Khasadars should be done. Hence the Police will consist of a centralized constabulary, counterterrorism force, border police and community police service besides incorporating law enforcement response, conflict resolution apparatus, strategies related preventive measures and prompt access to the legal assistance and fair trial mechanisms (Babakhel, April 5, 2018).

Keeping these grounds in consideration, FATA Administration had initially prepared a draft implementation plan for creation of a levies force to be operational in FATA so that it may assume the responsibilities of an effective Law Enforcement Agency by 2021 upon withdrawal of armed forces from the region. This plan outlines the time and cost of the reorganization, recruitment, and training and equipping of the Levies Force. Currently there are 17,965 khassadars placed all over FATA. In the future plan of creating of a modern law enforcement agency in the FATA, the khassadars would be declared a dying cadre.

The merged area is still a conflict Zone where the officers of Army and Frontier Corps, deployed in aid of Civil Power, are calling the shots. Converting a de-facto situation, shaped by a history of conflicts, with a de jure normalized situation based upon the rule of law is the core challenge. The mainstreaming project will be tested once the Army leaves the area. The government claims to have planned to fill the vacuum by merging the Khasadars and levy with police in a gradual manner. In this context the establishment of police stations, police lines, training and above all enforcement of law are big challenges (Qayyum, 20 October, 2018) .The new draft prepared by the Home Department provides for a Police officer heading the Frontier Regions but worryingly it does not envisage the enforcement of the Police Act, and criminal legislation such as CrPC and PPC. Currently there is no proper training facility for levies, either police training facilities in KP will be utilized or buildings may be hired on rent. Hence the required are:

1. To create a reorganized, restructured, trained and equipped levies force (21,654 in strength) in FATA so that it can assume security/law enforcement responsibilities in the wake of armed forces withdrawal from the region.
2. Reform of the Federal Levies Force Regulation (2010) and Federal Levies Force (Service) Rules (2012 and 2013).
3. Establishment of Central Levies Office (CLO) in Peshawar and hiring of key personnel.
4. Recruit 9,915 levies over five years with a set criterion for recruitment and induction
5. Rationalize, reorganize, and upgrade existing levy posts and create additional posts so that the levies (both the current and the new) acquire an organizational structure of a modern policing force
6. Train (pre-service and in-service) and build capacity of the levies force in specialized fields
7. Conduct pre-service trainings of levies force on the pattern of police
8. Conduct in-service professional trainings of personnel
9. Conduct specialized trainings in evidence gathering, forensics, traffic management, counterinsurgency, bomb disposal, IED detection etc
10. Provide the force with policing necessities including uniforms, weapons, vehicles, communication and IT equipment and salaries.
11. Workout the requisite number of equipment required to maintain the levies force
12. Procure the equipment including uniforms, weapons and ammunition, vehicles, communication and IT equipment
13. Log and disseminate the equipment to relevant personnel
14. Work out the yearly salary required for recruited levy personnel
15. Construction of infrastructure for the force, including levy posts and levy lines

16. Identification of region/area/site where levy posts and levy lines are to be constructed taking into consideration availability of land, strategic locations, population density etc.

With the latest amendments in the Constitution all federal and provincial laws have been extended to the merged areas in a *de jure* sense but not *de facto* (Qayyum, 20 October, 2018). Under the interim Governance Regulation the focus would be on the training of levy on the pattern of the police. Efforts would be made to make up the deficiency. Levy Rules would also be brought at par with the Police for purpose of standardization. As and when the situation is ripe levy would be merged with Police (Qayyum, 20 October, 2018). Those among the levy and Khasadars not meeting the standards would be declared as left over and would be assigned other duties. The FATA secretariat is trying to follow the Khyber Pakhtunkhwa Police Model. Hence it has signed Memorandum of Understanding with US AID for establishing state of the art centre at Shahkas with the assistance of Frontier Corps who would also run and impart training for the next five years. This plan has also been shared with the Police. The premise is that the merger will take five years from a policing point of view. Though *de jure* laws have been extended but there are practical problems as to how the police would move to those areas. No doubt with doing away of territorial and collective responsibility, individual responsibility has been replaced therefore some mechanism of policing would be required. Policing is important but to be done under sequencing. First carrot has to be given. Under FCR there was no police. In this context concept of ink spot has to be followed. This has to be first introduced in softer areas such as Frontier Regions and gradually to other harder areas. The levy in Frontier Region would be brought under DSP FR. Representative of Police, Prison and Prosecution would be posted to the Agencies where they would observe and assess the dynamics and psyche and then will establish systems within two years (Qayyum, 20 October, 2018).

List of police training institutes that can be used to accommodate levies training;

- Police Training College, Hangu
- Police Training School, Swat
- School of Investigation, Hayatabad, Peshawar.
- Explosive Handling School, Nowshehra.
- Public Disorder Management School, Mardan.
- Police School of Intelligence, Abbottabad.
- Institute of Forensic Science, Hayatabad, Peshawar

Revenue Generation

FATA's economy is agro-based with main produce of vegetables, fruits and crops besides fishery, livestock and small business in form of formal and informal trade with Afghanistan. ((Kamal, 2017: 8-9) Moreover, the tribal areas abound in precious minerals as chromite, limestone, marble and coal but with no adequate mining (Kamal, 2017: 8-9).

While fundamental amenities of life as health and education facilities and opportunities are mostly denied to the tribes as reflected in literacy rate which is just 33.3 per cent compared to the national average of 58 per cent, while female literacy is only 7.8 per cent (Crisis Prevention and Recovery Unit, UNDP Pakistan, 2017).

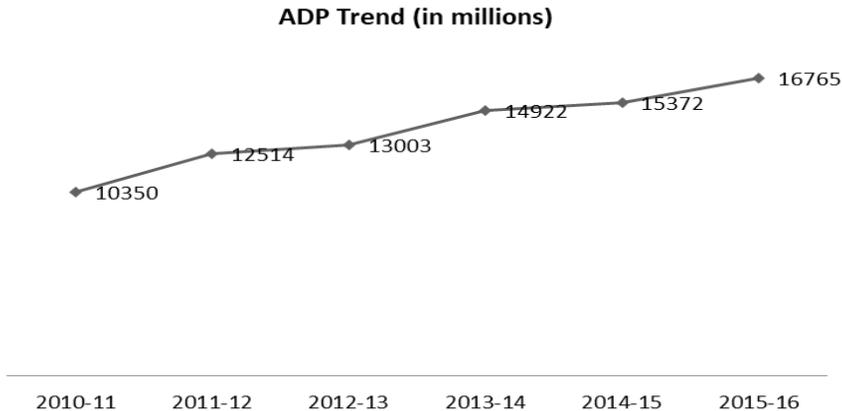
In FATA most of the people mainly related to primary-level activities such as agriculture, livestock, or small scale businesses. Land use data from 2013-14 shows that only 9% of the total geographic area of FATA is cultivated, while more than 84% of the land is not available for cultivation, a slight difference from 2007-08. On industrial side, there are a few industries and a limited unorganized mining in some areas. Majority seeks employment as short-term laborers, or joins local

security and paramilitary forces. The transit trade with Afghanistan after 9/11 became a major contributor to the local economy.

The current militancy added to miseries of the people and degraded the local economy further. Human losses, massive displacements and damages to the public and private property including schools, health units, markets and shops dealt a heavy blow to the FATA economy. No new investment from outside or even from FATA was made. However as the security situation has been improving in the wake a number of military operations, economic activities have also been improving. The government of Pakistan has also taken certain measures in the recent years to build FATA economy. Marble City in Mohmand Agency, reopening of closed industrial units in Bara, Khyber Agency, inauguration of Torkham-Kabul Highway, oil exploration in Waziristan agencies and a number of other measures will gradually improve the quality of life of FATA people and boost up its economy.

Along with industry, education, health, communication and power sector indicators are used to determine the frequency of militancy impacts over FATA economy.

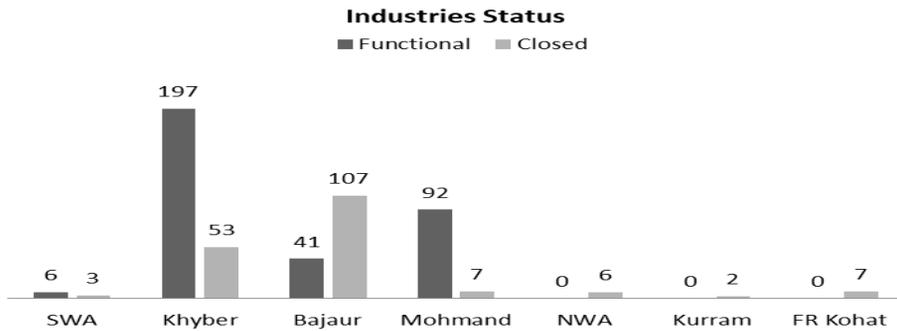
ADP Trend: Around 62% increase from Rs10,350 million to Rs16765 million has been seen in the ADP allocation for FATA between 2011 and 2015. Education received 23.67% of the total share, followed by communications (20.64%), regional development (13.53%), health (9%), PHE (7.98%), irrigation (6.05%), housing (3.88%), forest (3.41%), rural development (2.96%), livestock and dairy development (2.70%), agriculture (2.25%) and others. The current financial year ADP is Rs 1393 million higher than the last year. A total of 654 projects of various kinds are in progress whereas there are 319 new schemes.



Source: Annual Development Programme Planning & Development, FATA, Peshawar

SECTOR WISE ANNUAL DEVELOPMENT PROGRAMME OF FATA 2014-15 (Rs. in Million)						
Total FATA ADP 2013-14	Ongoing Schemes		New Schemes		Total Schemes	
	No	Allocation	No	Allocation	No	Allocation
	654	10541	319	6224	973	16765
Percentage		63%		37%		100%

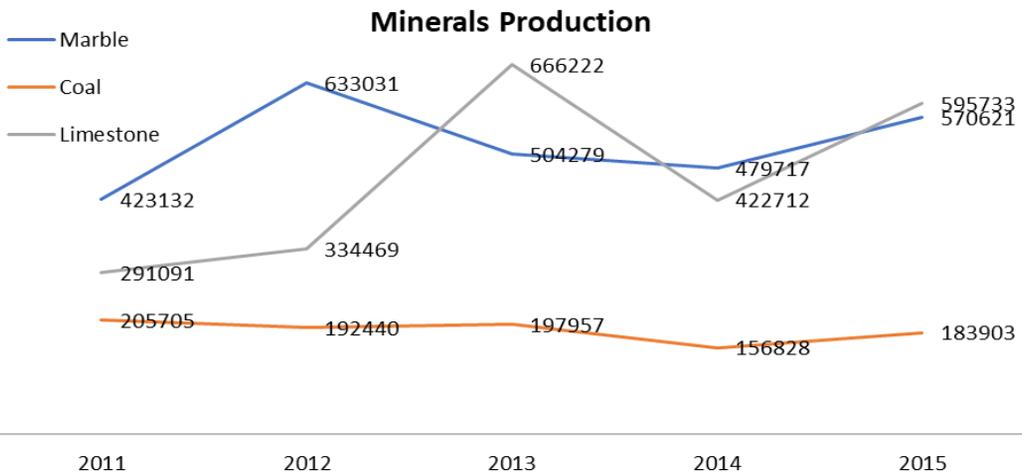
The industrial sector does not portray a positive indicator. The industry received a major setback due to the ongoing militancy. Out of total 515 industrial units in FATA, 158 units are closed and 27 are not in working condition. Due to instability, in addition, new investors could not come to make new investments in the region.



Source: Directorate of Industries, Technical Education and Mineral FATA, Peshawar

[In the above chart, units closed and those not in working condition are clubbed together.]

Amid peak of militancy, production of the major minerals (marble, coal and limestone) either remained unchanged or dropped in the prevailing insurgency. However during 2015, the production rose hinting the improved security situation.



Source: Directorate of Industries, Technical Education and Mineral FATA, Peshawar

The socioeconomic reality of the area, arguably, poses the biggest challenge to the change managers. The area has an informal economy which is not taxable. Mainstreaming becomes meaningless if the area remains a safe haven of undocumented economic activities and regular laws of the land apply differently to the residents of the districts.

Fata was treated as special entity whereby like all other laws the Custom Act was not extended to it hence for commodities carrying in and out required permission of political agent. Permits collected money is un-auditable and spent on undefined administrative tasks. In 1980 Custom Act was extended to FATA without consent of its people. The permits were supposed to

discontinue with the Custom Act but these continued with increasing pace as main source of revenue for the administration of FATA (Khan, December 4, 2017).

Mainstreaming is a resource intensive project. Peace and development go hand in hand. Mainstreaming therefore must think keenly about resource generation in the area. In this regard NFC should allocate 3% of the available resources in the federal divisible pool (Rs. 90 billion) annually for the implementation of 10-year Development Plan in addition to the existing annual PSDP allocation of Rs.21 billion. Revenues collected as Custom duties at the border may be spent on the development of FATA districts. The royalties accruing out of natural resources, minerals and forests should also be spent there. Just as the US Judge once remarked that taxes are the price paid for civilization, Income Tax and other tax laws along with Land Revenue Act may also be extended to the area so that the wealthy sections of the community share the burden equitably.

The financial package of Rs. One trillion for ten years was announced by federal government and 200 billion of that amount would be provided to the FATA in first three years to be utilized to the full in FATA.

Unfortunately, the Federal and Provincial government are not on board to ensure the provision of this required fund to the FATA which is tenderly needed for the reconstruction and rehabilitation of FATA in transition time. Hence the reforms could not be practiced without the announced funds and within stipulated timeline. Provinces are unsure without a written commitment from federal government about the financing.

Land settlement would be a big issue. The property is owned by the tribes and there is no concept of ownership. Except Mir Ali and Kurram there has not been carried any land settlement on permanent basis. Apart from that the revenue generated the rehadari/ check post has been around 3 billion Rs per annum. Under the new scheme 1.653 billion would now be given as supplementary grant to be brought to the general cash book (Qayyum, October 20, 2018).

Some of the major areas of focus would include industrial development, minerals development, vocational training, irrigation projects, and integrated health and education projects. It is also proposed that around 20 percent of the socioeconomic fund be channeled through the local bodies system, the district-level governance system. The National Finance Commission, which sets revenue-sharing formulas between the federal government and the provinces, would be requested to consider a special annual allocation of 3 percent of the gross federal division pool for the development plan.

Development reforms should focus on creating job opportunities for FATA residents. In particular, the development of industry would be an important step toward creating jobs for the tribal youth. The FATA people have demonstrated success in trade and transportation; this capacity could be augmented by providing entrepreneurship training and more business opportunities.

Policy Options

1. Like the rest of Pakistan the judiciary may also be separated from the executive by transferring judicial powers to the Judiciary. The Jurisdiction of Supreme Court and High Court has already been extended. However there may be a separate bench for those areas to lessen the burden on Peshawar High Court. The number of Judges of Peshawar High Court may be increased.

2. Land Revenue Act may also be extended. Work on permanent settlement of land may also be started as already being done in Kurram Agency.
3. In order to avoid financial burden on the already financially starved province of Khyber Pakhtunkhwa all taxation laws may be extended to FATA. A percentage of resource allocation in National Finance Commission Award may be reserved for those areas included in the province of Khyber Pakhtunkhwa. All levies/ rehardaris on check posts by the Political Agents may be deposited in the treasury. Revenues collected as Custom duties at the border may be spent on the development of FATA and are the royalties accruing out of natural resources, minerals and forests.
4. Police Act and other criminal laws may be extended in order to have uniformity. Under that there may be Superintendents of Police, Assistant or Deputy Superintendents of Police and other hierarchy of Police. The present levy may be merged into Police. Police Lines, Police Stations and Police Posts may be opened and notified. Police Training Centers may also be established. As a kick start existing training centers in Khyber Pakhtunkhwa may be used. The existing levies after merger may be given training in investigation and also anti-Terrorism.
5. FATA Secretariat may be abolished. The office of Additional Chief Secretary Planning and Development may be strengthened by creating a special wing North West Zone headed by an Additional Secretary (old FATA). Secretary to Government Home & Tribal Affairs may deal with issue of law & order with an Additional Secretary North West Zone (old FATA). This will reduce the administrative cost which can be spent on development Police Act and other criminal laws may be extended in order to have uniformity. Under that there may be Superintendents of Police, Assistant or Deputy Superintendents of Police and other hierarchy of Police. The present levy may be merged into Police. Police Lines, Police Stations and Police Posts may be opened and notified. Police Training Centers may also be established. As a kick start existing training centers in Khyber Pakhtunkhwa may be used. The existing levies after merger may be given training in investigation and also anti-Terrorism.

Conclusion

While being jubilant and upbeat is understandable, it may also not be forgotten that mere constitutional amendments do not guarantee the rule of law. We have witnessed emergence of ungoverned spaces in Karachi, Upper Sindh, South of Punjab, Swat and other parts of Khyber Pakhtunkhwa. We have seen non-state actors neutralizing the state machinery in the settled areas of Pakistan. We have also seen in these very urban areas complaints of serious violations of human rights of ordinary citizens of Pakistan.

It is pertinent for Pakistan to extend its authority by installing an effective form of public administration in FATA. This strategy would strengthen the ability of Pakistani state to procure the required revenue and provide services to the people of tribal areas.

Provision of security and basic services remain key factors of state performance legitimacy. Therefore, state's participation/ownership in these areas is considered mandatory. Moreover, taxation and revenue generation of state derive justification from these aspects of legitimacy. The legitimacy of the state can be ensured through state interaction with and penetration in the society through the provision of various services and public goods.

Particularly, FATA's successful transition will be dependent upon law and order and development; however, mismanagement may repeat its sordid history. Doable transition plans are

needed. In case of judicial structure, there may be a separate bench for those areas to lessen the burden on Peshawar High Court. Land Revenue Act may also be extended. In order to avoid financial burden on the already financially starved province of Khyber Pakhtunkhwa all taxation laws may be extended to FATA. Revenues collected as Custom duties at the border may be spent on the development of FATA and are the royalties accruing out of natural resources, minerals and forests. Police Act and other criminal laws may be extended in order to have uniformity. Police Lines, Police Stations and Police Posts may be opened and notified.

Conclusively, the government should extend jurisdiction, ensure law enforcement and generation of revenue in FATA in order to accomplish the goal of state-building and strengthening governance.

References

- Afridi, S. G. (2012) "FCR's Collective Responsibility," *Dawn*, January 1, 2012, <https://www.dawn.com/news/684791>.
- Babakhel, A. M. (June 24, 2018) The 31st Constitutional Amendment, *Dawn.com*.
- Babakhel, A. M. (April 5, 2018). Policing FATA. *Dawn Newspaper*.
- Baird, M. (2010) Service Delivery in Fragile and Conflict-Affected States. New York: World Bank. pp.20-21.
- Caroe, O. (1958) *The Pathans 550 B.C. - A.D. 1957*. London: *Kegan Paul International Publishing Limited*.
- Césaire, A. (2000) *Discourse on Colonialism*, transl. Joan Pinkham, New York. p. 36.
- Condos, M. (2015) 'Licence to Kill: the Murderous Outrages Act and the Rule of Law in Colonial India, 1867–1925', *Modern Asian Studies*, June 2015, pp. 479–517; and Kolsky, E. (2015) 'The Colonial Rule of Law and the Legal Regime of Exception: Frontier "Fanaticism" and State Violence in British India', *American Historical Review* 120: 4, 2015, pp. 1,218–46.
- Crisis Prevention and Recovery Unit, (2017) UNDP Pakistan, Federally Administered Tribal Areas Transition and Recovery Programme: *Results Report (2015-2016)* (Islamabad: United Nations Development Program, 2, <http://www.pk.undp.org/content/dam/pakistan/docs/CPRU/FATA%20Transition%20&%20Recovery%20Programme/FTRP%20Result%20Report%202016-17.pdf>
- Derek, Gregory, Johnston, R. Pratt, G., Watts, M. & Whatmore, S. (2011). *The Dictionary of Human Geography (5th Ed.)*. New Jersey: John Wiley & Sons. p.344.
- Khan, I. (May 31, 2018) "Mainstreaming FATA with Interim Governance Law," *Dawn*, <https://www.dawn.com/news/1411061>; and Iftikhar Firdous, "Interim Rules for FATA Mere Eyewash," *Express Tribune*, May 14, 2018, <https://tribune.com.pk/story/1709349/1-interim-rules-fata-mere-eyewash/>
- Khan, I. (May 31, 2018) Mainstreaming Fata with Interim Governance Law. *Dawn Newspaper*.
- Kamal, Y. (2017) Sector Study on Demand Driven Competency Based Training in Potential Sectors of Federally Administered Tribal Areas (FATA), report (Bonn: Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH [German Corporation for International Cooperation], 8-9.)
- Khan, Q. G. (December 4, 2017). Fencing the Tribal Areas, *Dawn Newspaper*.
- Lindholm, C. (1982) *Generosity and Jealousy: The Swat Pukhtuns of Northern Pakistan*. New York: Columbia University Press. p.xxiv.
- Lindholm, C. (1996) *Frontier Perspectives: Essays in Comparative Anthropology*. Oxford: Oxford University Press.
- Malinowski, B. (1961) *Crime and Customs in Savage Society*. London: *Routledge & Kegan-Pul, Ltd.* 1961. pp.24-26.

- Migdal, S. J. (1988) *Strong Societies and Weak States: State Society Relations and State Capabilities in the Third World Countries*. Princeton: *Princeton University Press*. p. 53, 5.
- Ministry of Information & Broadcasting, (1989). GoP, Quaid-i-Azam Mohammad Ali Jinnah: Speeches and Statements 1947-48 (*Government of Pakistan*). p.239.
- Moghaddam, A. A. (2011) *A Metahistory of the Clash of Civilisations Us and Them Beyond Orientalism*. *Hurst & Company*, London. p.123
- National Assembly of Pakistan, GoP, (2017) *The Constitution of the Islamic Republic of Pakistan: As modified upto the 30th March 2017 (Government of Pakistan)*,3, 148 http://www.na.gov.pk/uploads/documents/1508233533_124.pdf
- Qayum, S. (20 October, 2018) Additional Chief Secretary FATA, Interview with Author, Peshawar.
- Scott, P. (1966) *The Jewel in the Crown, The Raj Quartet, vol. 1* (Chicago: University of Chicago Press, 1966), 21.)
- Scott, et al. (2009) *The Role of Public Services in State- And Nation-Building: Exploring Lessons from European History for Fragile States*. GSDRC Research Paper, Birmingham, UK: University of Birmingham. p.39.
- Shah, A. A. S., Parveen, S. & Kayani, S. (2017) *Ungoverned spaces and the crisis in Federally Administered Tribal Areas of Pakistan*. *FWU Journal of social sciences*.
- Shinwari, N. (2018) *Understanding FATA: Attitude towards Governance, Religion and Society in Pakistan's Federally Administered Tribal Areas*. Volume II, Survey Findings CAMP.
- Stohl. (2012) *Fragile States*. *Cambridge: Polity Press*.
- Steven, Van, Walle & Scott. Z. (2009) *The Role of Public Services in State- And Nation-Building: Exploring Lessons from European History for Fragile States*. *GSDRC Research Paper*, Birmingham, UK: University of Birmingham. p.39.
- Shah, A. A. S. (November 8, 2018) *Mainstreaming FATA: Issues and Challenges*. *Express Tribune*.
- Weingast, B. (2009) *Violence and Social Orders: A Conceptual Framework for Interpreting Human History*. *Cambridge: Cambridge University Press*.
- Wylly, C. H. (1912) *From the Black Mountain to Waziristan* (London: Macmillan and Co., 1912), [https://archive.org/stream/fromblackmounta00wyllgoog#page/n294.](https://archive.org/stream/fromblackmounta00wyllgoog#page/n294))

Received: Jan 15, 2019

Revisions Received: May 5, 2019