

**Crisis and Conflict: Reforming Through Transforming  
Political-Administrative Structure of Fata**

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The long-existing multipronged crisis and conflict in the remote Pakhtun tribal areas of Pakistan, has been a topic of concentrated debate. There has been a conflict of opinion among historians, political analysts, legal-constitutional experts and officials regarding the factors underlying the crisis and conflict in the region, formerly called FATA, and its solution. This paper discovers that the underlying cause of multidimensional political, economic and social crisis and the resultant conflict there has been the indeterminate or imprecise political and legal status of the region. The political and legal confusion regarding the region although has had existed since the creation of Pakistan but exacerbated after 9/11 terrorist attacks in the U.S. as the region became the largest base of national and international terrorist organizations. Militants and terrorists interacted with the long-existing political, economic and social crisis, which resulted in colossal conflict. This study throws light on the crisis and conflict, region's existing decadent and decrepit political-legal apparatus and the best alternative political arrangement in this regard. The research approach for the paper is qualitative and methodology includes personal interviews of authors with experts and stakeholders, secondary data analysis on the subject and documentation of the main themes on the topic.

**Keywords:** FATA, Pakistan, Pakhtun, Tehreek-e-Taliban Pakistan, conflict, crisis.

Since the creation of Pakistan successive Pakistani governments maintained the status of FATA determined by the British colonial rulers of India. The British India or British Raj (1858-1947) policy regarding its north-western border including FATA, straddling along India's border with Afghanistan, was rooted in the imperial power *Forward Policy* (Allchin, undated) of keeping the tribal areas a buffer zone between mainland India and Afghanistan. There has never been any serious effort by any Pakistani regime or government to mainstream the FATA and introduce political, economic and social reforms in the region so that a system and structure of modern governance could be put in place there. The age-old ultraconservative tribal social structure has been left to strengthen so as to dominate and dictate the lives of residents of the FATA. A half-hearted attempt was made during the

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Contribution of Authors:

1. Dr. Raza Khan conceived the idea of paper on the topic, drafted it, did major part of the analysis and conducted interviews.
2. Naila Aman did literature review for the paper, interpreted the data and identified the themes.
3. Dr. Sadaf Bashir developed the paper structure, helped in analysis and drawing conclusions.

rule of Prime Minister Zulfikar Ali Bhutto (1972-77) to introduce reforms in the tribal areas (Parveen, Dasti & Khan, 2016). However, it fell through as it was primarily stimulated by Islamabad apprehension of ill-effects on Pakhtun tribal areas of capture of power in Afghanistan by vehemently anti-Pakistan, Sardar Daud Khan, who championed Pakhtunistan Movement. Daud had usurped state power by dislodging the centuries old Afghan monarchy then led by his cousin, King Zahir Shah. However, when Daud was killed through a palace intrigue in 1978 the motivation to mainstream FATA had fizzled out. The FATA, situated next to Afghanistan, became the main staging and launching ground for the anti-Soviet resistance after occupation of Afghanistan by erstwhile Soviet Red Army in December 1979. The resistance was jointly organized by the U.S., Pakistan and Saudi Arabia and given an Islamist facade. The nine-year long Soviet-Afghan war did not create any opportunity to politically, legally and culturally mainstream FATA through structural uplift schemes like elsewhere in Pakistan. The ensuing Afghan Civil War started after the pullout of Red Army troops in the year 1989. With the end of Moscow-backed Afghan regime of Najeebullah Ahmedzai (1987-1992) Pakistan's pushed to enable its Afghan protégé, Gulbadin Hikmatyar and after him the Afghan Taliban to capture power in Afghanistan. In this entire process the FATA remained instrumental in Pakistan's strategy in Afghanistan. Therefore, no political and social mainstreaming of the tribal areas could be carried out in this situation while the political and constitutional status of the region also remained indeterminate.

After the 9/11 terrorist attacks on the American mainland and the consequent occupation of Afghanistan by the U.S.-led international forces by dislodging the Afghan Taliban regime (1996-2001), the Al Qaeda and its founder, Osama bin Laden, along with its entire rank and file, then residing in Afghanistan under protection by the Taliban regime, shifted to adjacent FATA and got most of its sanctuaries in the region. Innumerable Afghan Taliban also entered the tribal areas with the militant Afghan Haqqani Network setting up its headquarters in North Waziristan's Danday Darpa Khel locality (Lawrence, 2010).

The Al Qaeda and its other foreign affiliates on the one hand and Afghan Taliban and Haqqani Network on the other hand got advantage of the indeterminate political-constitutional status of the FATA<sup>1 2</sup> (Lawrence, 2010) and the consequent lack of Pakistani state writ there to entrench themselves in the tribal areas. The rise of Pakistani Taliban in FATA after 2001 and their banding together as Tehreek-e-Taliban Pakistan (TTP) in December 2007 in Waziristan (FATA) (Abbas, 2008) was also largely the result of political-power vacuum in the tribal areas facilitating the radical Muslim groups to emerge (Qazi, 2013). Thereafter the TTP together with Al Qaeda and several home-grown and alien militant and terrorist outfits carried out the deadliest insurgency and terrorism in Pakistan which by 2014 had killed around 56,000 people (Crawford, 2015) and inflicted economic losses of more than \$107 billion (Mukhtar, 2015). By end of 2018, according to Pakistan Prime Minister Imran Khan (2018--) Pakistan lost around 75,000 people in the terrorist war and lost over USD \$123 billion (Al Jazeera, 2018).

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<sup>1</sup> According to Article 247 clause 3 of Pakistan's state constitution "No Act of [Majlis-e-Shoora (Parliament)] shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs...". Whereas clause 7 states, "Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area, unless [Majlis-e-Shoora (Parliament)] by law otherwise provides . . ."

<sup>2</sup> The Article 247 along with six other articles of Pakistan state constitution were amended and FATA were made part of the Khyber-Pakhtunkhwa province. (Riaz, 2018)

### Background of FATA Governance and Legal Structure

The erstwhile FATA before its merger into KP comprised of seven big tribal districts including Bajaur, Mohmand, Khyber, Orakzai, Kurram, North Waziristan and South Waziristan and six localities known as frontier regions<sup>3</sup> and collectively occupied 27,200 square kilometres. The population of the region according to official estimates of 2011 was around 4.5 million people but unofficial figures of various organizations put the population at between eight to 10 million. Never in history the region has had any municipal governance structures as well as any lawmaking body that could formulate policies and make laws for the region and could implement and enforce them. This situation produced deep political and legal vacuum in the tribal areas. According to the prototype 1973 Constitution of Pakistan, FATA were integral part of Pakistan but (as mentioned above) the country's parliament and the superior law-courts did not have any jurisdiction in the tribal areas. Constitutionally President of Pakistan had the authority to give laws for FATA and the office was also indirectly empowered to run the affairs of the region through Governor KP province. The governor, who had been the de-facto chief executive of FATA, would govern agencies (districts) through officials known as 'political agents'. Within an agency a political agent had been a repository of nearly all executive and judicial powers and also had extensive powers to interfere in the local affairs, which otherwise had been left to the tribal communities of FATA to decide upon. Against this backdrop the FATA to all intents and purposes had had an undefined political and legal status.

The undefined status of former FATA was evident from the fact that on the one hand they had a special status as they were constitutionally part of Pakistan but on the other hand they were referred to as 'independent.' However, government leaders and members of civilian bureaucracy most often than not employed the term 'free' tribes to hoodwink their gullible members for the self-explained 'national' interest. This 'freedom' could be deconstructed as liberty to have local *jirgas* or councils to act as juries to decide upon issues and disputes among the tribes and their members. The 'freedom' also meant to permit male members of tribes to carry arms without inhibition. However, the 'freedom' did not mean that residents of former FATA could have political or other fundamental rights and liberties. The long-existing so-called 'free' status of erstwhile FATA got its quasi-legitimacy merely from the words of Pakistan founder, Muhammad Ali Jinnah, who while addressing a gathering of representative tribesmen from all parts of the region on April 17, 1948 in Peshawar had said, "Valiant and brave tribesmen gave historic sacrifices for the creation of Pakistan. So, they would have equal citizenship rights in Pakistan and in addition to it would continue to live independently" (Spain, 1963). In the said gathering two hundred chieftains (*mailks*) had taken oath of loyalty to Pakistan and significantly demanded that instead of putting the region under the government of adjoining Pakhtun-dominated province of the KP (then NWFP) it may be placed under direct control of the central government. Pakistan founder Jinnah, who after the birth of Pakistan had assumed the office of Governor General, acceded to the demand on July 6, 1948 and formed the central Ministry of States and Frontier Regions (SAFRON). In addition to that Pakistan also made another policy decision of leaving the western border to inhabitants of FATA to guard. "The Government of Pakistan revised the British policy towards the tribesmen and decided to pull back all regular troops from the military posts in these areas" (Rizvi, 2009: 23). The above-mentioned words of Jinnah on April 17, 1948 were the utterances of a statesman but the same were afterwards misinterpreted and construed out of context by political novices and bureaucrats to exploit the inhabitants of FATA without giving them equal citizenship rights, which father of the nation had promised to them. (See below) Consequently, tribal areas remained the most backward parts of Pakistan.<sup>4</sup> Nevertheless, social structure of the

<sup>3</sup> These include Frontier Region Peshawar, FR Kohat, FR Tank, FR D.I. Khan, FR Lakki Marwat and FR Bannu

<sup>4</sup> The sixth five year plan declared FATA the least developed region of Pakistan. The literacy rate was just 17 per cent in comparison to 45 per cent for Pakistan as a whole. Surprisingly only three per cent of women received any type of education.

FATA, the general anti-change sentiments prevalent in the region and to the traditional *Modus Vivendi* of local inhabitants have also been causes of the backwardness of the FATA and the crisis and conflict there. But the indeterminate political and legal status of FATA and the absence of modern self-governing institutions like local councils impeded the transformation of the social structure there.

### **FATA 'Special' Constitutional Status, Taliban-Al Qaeda Sanctuaries & New Great Game**

According to the constitution FATA have a 'special' status with a mix of local tribal customs and traditions as well as the British colonial era legal arrangement for the region, Frontier Crimes Regulations (FCR), governing and regulating the day to day affairs of the inhabitants of the region. Thus the FATA had a kind of a 'special' status in letter but a legally inferior status (Khan, 2008) in spirit because the basic human rights and rule of law, as enshrined in the constitution of Pakistan, were not guaranteed to the residents of FATA (Mohmand, 2014). The very law-courts, through which human rights and rule of law have to be provided to all the citizens of Pakistan, have not had any authority in the FATA. In other words several provisions of the FCR were in direct contravention of the 1973 Constitution of Pakistan (Wazir, 2007). On the other hand the FATA were federal territories but without a certain status that of a province or a federating unit. The indeterminate political and constitutional status of the FATA had had given birth to multifarious governance issues and micro and macro conflicts. This included the rise of a militant culture which was the interactive effect of local Deobandi Islam and tribal structure of FATA, and this culture over the decades diffused to other parts of Pakistan (Waseem, 2004).

Regarding the special and 'independent' status of former FATA it is important to note that the region is strategically located on the Pakistan-Afghanistan border. Therefore the British Raj made the region as a no man's land between Afghanistan and India. Pakistan wanted to continue to use FATA for the same purpose. As Afghanistan has had irredentist claims on Pakistan's Pakhtun-inhabited territory for Islamabad making FATA a buffer was more significant. That was why for long Pakistan never allowed political activities in erstwhile FATA lest people there may also raise demands for merging the region with Afghanistan. Consequently, the region was kept underdeveloped and was not mainstreamed as a policy and has not been given a definite political and constitutional status. Even though the region has been merged with the KP province still it is being governed through an Interim Governance Regulations 2018 (Ismail Khan, 2018) However, this policy proved more disastrous than forthcoming if seen against the backdrop of rise of the Taliban and global and regional groups making the region their redoubt.

The shifting of the entire leadership of Afghanistan-based Al Qaeda to the next door FATA made the latter the focus of all great powers and international media. The presence of local and global terrorist organizations and the threat they started posing to the global and regional security sucked in many big and small powers into the conflict theatre of the region. With so many powers like the U.S., China, Russia, India, Iran, Uzbekistan, Tajikistan and non-state actors like the Al Qaeda and Taliban and the main stakeholders—Pakistan and Afghanistan—pursued their respective (often conflicting) interest in the Pak-Afghan border region, the situation has turned out to be a new Great Game *a la* the 19<sup>th</sup> century Great Game.<sup>5</sup> Against this backdrop addressing the issues of governance, economy and security in the erstwhile FATA have become even more important as the perpetuation of the issues would aggravate the crisis and conflict in the FATA.

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<sup>5</sup> The Great Game was a multipronged wrangling among the major powers of that period primarily Tsarist Russia, the British Empire and Persian Empire for influence and territory in Central Asia and Afghanistan.

### **Frontier Crimes Regulation**

Since 1901 till its complete invalidation in 2018, Frontier Crimes Regulations (FCR) had been the sole legal-administrative arrangement linking the tribal areas with Islamabad. The FCR framework used to be termed as 'black' and 'draconian' by proponents of human rights due to its repressively authoritarian orientation. Annulment of the FCR had been a longstanding demand of human rights groups and civil society bodies. Had the FATA been given a definite political and constitutional status like that of a province and in that case the provincial legislature could have made laws for the region without the need of the FCR. An influential section of FATA leaders has been vehemently against invalidation and replacement of the FCR lest this would produce deep legal-administrative vacuum in the region and leave the region ipso facto ungovernable. This section of tribesmen was merely in favour of invalidation of certain repressive provisions of the FCR. The argument of complete invalidation of FCR and the power vacuum thereof had had a lot of substance as historically and culturally tribes of FATA and their members have been disruptive and unmanageable. Late British Prime Minister Sir Winston Churchill, who had a first-hand experience of the region, when working as a war correspondent for a UK daily *The Telegraph* in late 19th century, on the basis of his experiences termed Pakhtun tribesmen as 'unruly' (Churchill, 1898). The very formation of the FCR by the British colonial rulers of India was the result of their largely bloody and violent interaction with the residents of the tribal areas. Nevertheless, the FCR was not without the prejudices of the colonial rulers but pragmatism also played a great role in its formulation. This has been evident from the fact that a large number of tribal leaders opposed FCR annulment.

### **The need for reform**

Successive elected or military regimes, under guidance from military generals and civilian bureaucrats, considered replacement of the FCR, introduction of a new legal framework and thus mainstreaming of FATA as critically against the security establishment conception of 'national' interest. Consequently, FATA were never given a definite political and legal status because according to the country's powerful security and civil establishment an undefined position would better serve the 'national interest.' In this regard for the establishment three reasons were extremely significant. Firstly, the inhospitable and rocky topography of FATA provided a natural physical protection from Afghanistan. Secondly, a buffer would keep Afghans and Pakhtuns in the KP cut away from one another and would not create problems for Pakistan. Thirdly, an undefined status of the region would perpetuate the uninhibited control of the civilian bureaucrats over different parts of FATA.

### **Reviewing Various Political-Legal Reforms Initiatives in FATA**

Keeping in view the colossal political and legal issues of FATA and the huge conflict they had been adding to, General Mushrraf-led Pakistani regime (1999-2008) decided and promised to address these issues. In order to ascertain the extent and nature of political, constitutional and legal issues in FATA and the required political, constitutional and legal changes, the regime appointed a committee named FATA Reforms Committee (FRC) in April 2005.<sup>6</sup> Members of the committee paid visits to the tribal areas to hold town-hall style meetings attended by people from all walks of life and sought their views on the FCR. The issue was also discussed with tribal parliamentarians and other politicians, lawyers, members of the intelligentsia and experts. The committee presented its report with recommendations to the government. The main finding and recommendation of the Justice Ajmal committee was that most of the stakeholders wanted large-scale reforms in the FCR while

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<sup>6</sup> Justice (Retired) Mian Ajmal, who served as a judge of the Supreme Court of Pakistan and Chief Justice of Peshawar High Court besides Law Minister of KP, was made chairman of the FCR Reforms Committee. The committee was constituted in April 2005 by the then KP Governor Commander (Retired) Khalilur Rahman. The committee comprised a member of the parliament from the FATA, tribal elders, serving and retired civil servants, lawyers and a journalist.

some also wanted to preserve the legal framework in its present form. Surprisingly nearly all wanted the FCR not to be abolished altogether (Yousafzai, 2011). The next Governor of KP, Lieutenant General (Retd.) Ali Mohammad Jan Aurakzai, wasn't interested in amending the FCR (Khan, 2012). Moreover, the insecurity caused by militancy in the tribal areas and the military operations against Taliban militants had changed the ground situation in which amending the FCR had by then become a lesser priority. The following KP Governor, Owais Ahmad Ghani, showed renewed interest in the recommendations of the reforms committee but could not do anything to annul the FCR.

The PPP after winning the 2008 national elections took up the issue of political and legal reforms in FATA and a cabinet committee was formed under the chairmanship of the then federal law minister Farooq Naek. The committee was mandated to weight the amendments proposed by Justice Ajmal-led reforms committee. However, the cabinet committee did not implement the recommendations of the reforms committee. Consequently, the FRC recommendations have not been instrumental in laying the foundation of an entirely new legal framework for the tribal areas. Syed Akhundzada Chittan, the only elected MNA of the ruling PPP from FATA was of the view that the implementation of the recommendations of the FRC was the best solution for the problems of tribal areas.<sup>7</sup> Still under the recommendations of the FRC as well as other institutions and bodies, the government announced certain reforms and changes in the FCR and gave it the title 'FATA Regulations 2009.

#### **FATA Regulation 2009**

Announced in 2009 strangely the regulations formal enforcement came after two years on August 14, 2011. FATA Regulation 2009 the provided residents of FATA various rights earlier denied to the ordinary residents of the tribal areas. Like if a person had been accused of a crime or wrongdoing, he would have to be produced before an Assistant Political Agent within 24 hours of the arrest, who would refer his case to the council of elders or *jirga* in 10 days. The *jirga* on its part had to submit its findings within 90 days thus catalyzing the process of justice delivery. Importantly under the FATA Regulation 2009, the Collective Responsibility Clause of the FCR was amended. It put an end to the earlier practice of subjecting the whole tribe or family for the crime and wrongdoing committed by one or a few of the members of a tribe.

It turned out that the FATA Regulation 2009 was not a desirous package of reforms and therefore, could not address the multipronged conflict and crisis in the region so as to result in extensive development there. Therefore, terming the 2009 regulations unsatisfactory various stakeholders called for bringing about fundamental transformation to the FCR or else to overthrow it. Whatever trivial reforms introduced became inconsequential altogether after federal government introduced the Regulation of 2011 (The Actions in Aid of Civil Power) for PATA and FATA in July 2011. This regulation gave sweeping powers to the military officials in FATA. The Actions in Aid to Civil Power was given ex-post-facto effect from February 1, 2008, to provide legal cover to the military operations conducted in the two regions since that date (Waseem, 2011).

#### **Reforms Failure and Compounding Conflict**

As the FRC recommendations and a few changes in the FCR thereof failed to reform the governance system and structure of FATA the economic, political and social problems got adverse while security situation further deteriorated and conflict become more convoluted. Because the state failed to provide a solid governance structure so that people could be given the much-needed multidimensional security, swaying the young men away from the militant and terrorist groups and

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<sup>7</sup> Akhundzada Chitan interview with Raza, Peshawar (April 2008)

preventing people from extending support or to have sympathy for these outfits. But when militant and terrorist attacks of Pakistan Taliban groups, the Al Qaeda and their foreign affiliates like the Islamic Movement of Uzbekistan (IMU), Islamic Jihad Union (IJU), East Turkistan Islamic Movement (ETIM) exacerbated in Pakistan and Afghanistan and the respective countries and regions of these groups, there was a vociferous demand from various countries and international organizations asking the Pakistani government to focus attention on the crisis and conflict in the FATA. Islamabad, already perturbed but failing to make headway, in response, for the first time in her history, deployed regular army troops in the FATA in 2004.

Meanwhile, military operations against the Al Qaeda and Pakistani Taliban were also started around the same time first from South Waziristan and later in other parts of the tribal areas. Consequently, more and more people fled the former FATA to take refuge in the adjoining KP province and rest of the country. There was a phenomenal rise in the number of terrorist attacks in the KP province especially its capital Peshawar and also in the entire length and breadth of the country resulting in colossal death and destruction. In order to restore the state writ a massive Operation Rai-e-Nijat was launched in October 2009 (Sheikh, 2014) resulting in displacement of more people from the FATA. The offensive was successful to a certain extent to stabilize South Waziristan but the TTP and the Al Qaeda militants fled to spread-eagle in rest of the former FATA districts particularly the adjoining North Waziristan. Thus NWA become the biggest redoubt of local and foreign militants and terrorists. However, Pakistan Army already having nearly one hundred thousand soldiers deployed in the FATA (Entous & Stewart, 2010), desisted from opening another front in NWA citing overstretching of the servicemen. Pakistan took this position for years despite consistent demands from the U.S. to do so. In the meanwhile Washington exacerbated unmanned vehicles (UAV) drones attacks inside FATA especially targeting militants and terrorists in the NWA (Khan, 2011).

As the crisis of governance, conflict and insecurity aggravated in the FATA more people fled the areas for safety to rest of Pakistan. In the meanwhile full attention of the government remained focus on fighting the militants and terrorists through military offensives. There has been little comprehension within the relevant governmental quarters that the crisis and conflict in the FATA had been due to the indeterminate political and legal status of the FATA and the resultant power vacuum and lack of service delivery, which provided conducive milieu to the local, national and international militants to come and have bases in the FATA. However, seeing the situation worsening Pakistan Army launched the biggest of all operations in the FATA, Operation Zarb-e-Azb, on June 15, 2014. In this period the efforts to reform the political and legal structures and institutions of FATA remained almost suspended whereas after the December 16, 2014 ghastly terrorist attack by the TTP on Army Public School Peshawar in which more than 150 people, mostly schoolchildren were brutally killed, the entire focus was shifted to fight the terrorist in FATA with full force by catalyzing Operation Zarb-e-Azb. The Operation has been extensively successful in purging the NWA from the militants and terrorists and restoring the state writ there.

#### **FATA Reforms Commission 2014**

With successful military operation on the ground there was increasing realization of political, constitutional and legal reforms in the FATA within the government circles and among the relevant tribal and civil society groups. However, there has been lack of consensus of how to go about introducing multidimensional reforms in the FATA and mainstreaming the area as well as annulling the FCR (Qureishi, 2015). Sensing the situation Governor KP, Mehtab Abbasi, constituted another

commission in May 2014 under former bureaucrat, Ejaz Ahmed Qureishi.<sup>8</sup> The vision statement of the commission read: “To transform FATA into a nationally integrated, socio-economically developed, politically empowered, and well governed region of Pakistan, where people can live peacefully, have access to basic human rights and needs, and can contribute positively towards a stable and prosperous Pakistan.” The terms of reference of the Qureishi-led commission included: a) To set clear strategic objectives in line with the aspirations of the people of the FATA; b). To revisit and redefine state – citizen relationship; c) Identify key reform areas for institutional development and strengthening for good governance in FATA; d) To review the effectiveness of FCR in changing governance paradigm in FATA. Noticeably, there was no mention in unequivocal terms about the exact determination of political-constitutional status of FATA.

The commission produced an interim report after one year of working but it made a half-hearted attempt to come up with recommendations for political and legal reforms to improve governance, trigger large-scale socio-economic development and mainstream FATA. The commission itself admitted half-hearted attempt for reformation in its interim report which stated that recommending reforms was a daunting task therefore the commission only suggested reforms in prioritized areas instead of coming up with a blanket reform agenda (Qureishi, 2015). Moreover, Qureshi in its report based on its recommendation to reform the system and environment in the FATA failed to address the underlying issues of indeterminate political and constitutional status of the FATA and replacement of the FCR with another set of laws. (Ali, 2015) Interestingly, Qureshi in its report recommended formation of a constitutional reforms commission for suggesting large-scale reforms in the FATA (Ali, 2015).

#### **FATA Reforms Commission 2015**

Acting somewhat upon the recommendations of the Qureshi commission, Prime Minister Mian Muhammad Nawaz Sharif (2013-2017) formed another commission with the same nomenclature—FATA Reforms Commission—under his Advisor on Foreign Affairs, Sartaj Aziz,<sup>9</sup> who basically hails from the KP. The commission was tasked to give final recommendations regarding future political and constitutional status of FATA. In particular to recommend whether the tribal areas should be given a status of a separate province or whether it should be merged into the KP province. In this context it was the most important body to determine the exact status of FATA within the federation of Pakistan. By July 15, 2016, this committee did not finalize its final recommendations while Sartaj Aziz informed in May, 2016 that the committee was about to give its final report very soon (Butt, 2016). The commission ultimately gave its recommendations the most important point was to merge the FATA with the KP. However, this merger was to be effected over five long years (Haq, 2017).

#### **Determining FATA’ Political-Constitutional Status: Analyzing Different Proposals**

Several proposals have been discussed by experts, academics, researchers, tribal chieftains, civil servants, FATA civil society leaders among others regarding determining the political, constitutional status of the tribal areas. Among these proposals the most debated and recommended have been: making FATA a new province; merging the FATA into the KP province; making a FATA Council *a la* Gilgit-Baltistan; maintaining the status quo.

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<sup>8</sup> Other members of the commission were Lieutenant General (R) Syed Sabahat Hussain, former civil servant Mir Laiq Shah; former provincial minister Mussarat Qadeem and additional secretary to the governor, Muddassir Riaz Malik.

<sup>9</sup> Other members of the committee are former governor of KP Sardar Mehtab Abbasi, Minister for the States and Frontier Regions Lieutenant General (R) Abdul Qadir Baloch, PM’s adviser on National Security Lieutenant General (R) Nasser Khan Janjua and Federal Minister Zahid Hamid.



**Merger with KP:** The merger of FATA with KP has been a long-cherished demand of Pakhtun nationalists led by the ANP. Subsequently, the Pakistan Tehreek-e-Insaf (PTI), which has an incumbent government in KP since 2013 and its coalition partner Jamaat-e-Islami (JI), also raised the same demand. But another main Pakhtun nationalist party, the PkMAP along with JUI-F have been vehemently opposed to the merger. The demand and its opposition have their cultural, political, legal, administrative and economic aspects. The ANP has been arguing that by making KP and FATA one territorial entity, Pakhtuns inside Pakistan could be brought together. This would increase their political weight within the state structure of Pakistan by increasing their number of parliamentary seats when the two regions are banded together.<sup>10</sup> The merger would also increase the economic and financial share of Pakhtuns in Pakistan like in the Federal Divisible Pool (FDP) and National Finance Commission (Ali, 2018). The PTI, which has a huge following in both KP and FATA, thinks merger is the only solution to addressing the woes of inhabitants of the tribal areas. Enamoured by the legal and administrative benefits of merging FATA with KP, General Pervez Musharraf regime had also indicated to gradually merge the two entities. In this regard the regime had publicly declared to give representation to tribesmen in the KP Assembly. However, the regime desisted from doing so after evaluating the problems and conflicts it would generate. But a strong perception created within the media by a 'loud' minority that there was no other option for mainstreaming FATA and give it a definite administrative status then to merge it with the KP province, compelled PM Sharif government in early 2017 to merge FATA gradually in five years into KP. A formal announcement was made on March 02, 2017 when the federal cabinet gave approval to the decision. The merger, as mentioned above, was finalized through the 31<sup>st</sup> Constitutional Amendment. The merger of FATA with KP would change the entire structure of Pakistani federation significantly increasing the area and population size of the KP. Furthermore, as in order to give effect to the merger several provisions of the state constitutions had to be amended but this could lead to many legal issues, which may not be quite easy to manage. Therefore, the decision to merge FATA with KP may backfire and instead the conflict and crisis in the FATA may exacerbate and may also spread. Already despite welcoming the merger inhabitants of the regions physically stopped police officials from KP visiting for the purpose of establishing policing infrastructure in erstwhile FATA districts. (TNN, 2018) This has raised questions whether the merger would be successful.

Many tribesmen and their representative bodies have also not been in favour of merging FATA with the KP. Innumerable important tribal elders and associations have strongly rejected the idea of merging their territory with the KP.<sup>11</sup> The opposition to the proposal of merger of FATA with the KP from within the tribal areas has been based on the argument that it would replace one corrupt system of political agent with a 'more corrupt' system of police and Pakistani courts. Instead they prefer reforms in their own system by saying that at least it ensures their freedom, the name which they give to practice their social customs. Independent analysts are of the view that the merger of FATA with KP would give rise to more conflicts on opportunities and resources between the residents of the two regions. Most importantly (as mentioned above) the FATA leaders themselves requested founder of Pakistan and first Governor General, Jinnah, to place them under central government. Noticeably while the public opinion has been divided in FATA on merger of the tribal areas with the KP, most of the people in the KP have observably been against merger of FATA with their province fearing unbearable burden, on the already in tatters, infrastructure of the province. People in the KP argue that the presence of four million Afghan refugees for the last 30 years has had insufferable

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<sup>10</sup> In May 2012 Khyber Pakhtunkhwa provincial assembly passed a resolution unanimously demanding merging FATA with KP.

<sup>11</sup> Although there is a miniscule civil society and its associations in the tribal areas but groups like Fata Lawyers' Forum and Grand Fata Alliance have vehemently criticized the merger.

impact on the province and therefore merging the FATA, where there is no infrastructure at all and have no resource contribution to the national economy, with its estimated 7-8 million people would be the proverbial last straw on the back of KP.

**Making FATA a new province:** The most important idea that has been circulating in recent years regarding political and legal future and mainstreaming of the FATA has been to make the areas a separate province. Keeping in view the objective conditions prevailing in the tribal areas the idea-cum-demand is plausible and has a lot of substance. The idea of making FATA a new province was even discussed on the floor of NA and certain federal ministers even gave favourable response to the idea. In May 2012 PML-N, then in opposition, had tabled a resolution on the floor of National Assembly to make FATA a separate province. The FATA parliamentary group in NA and the Senate had also made a collective demand for creating a FATA province.

Making FATA a province could be the soundest demand keeping in view the following advantages and outcomes in case it was implemented. By getting the status of a province, the decadent and archaic political agent model of governance could have been done away with; it would have brought to an end the special status of FATA and through it the power vacuum which had been a source of many of the problems like the region becoming a breeding ground of Al Qaeda and Islamic State (IS); it would have brought the tribal areas physically in the mainstream as a large section of FATA inhabitants were already in the mainstream having businesses, jobs and residences in Peshawar, Karachi, Lahore and many other parts of the country; would have ended the impression about the FATA that it had been the 'Wild West' of Pakistan and most importantly the border with Afghanistan, on which six of the seven tribal districts are located, would have got a defined and permanent status<sup>12</sup> Despite merging FATA with the KP, the demand-cum-solution of making FATA a separate province has not died down and would remain relevant in the future.

**Creating FATA Council:** There have also been voices that if FATA cannot be made a new province at once, an elected FATA legislative assembly or council, *a la* Gilgit-Baltistan region, could have been formed so as to establish a modern governmental apparatus there. Creation of a FATA Council has also been a viable option for plugging the legal and administrative vacuum in the region and so as to address the multidimensional crisis and conflict there.

**Maintaining the status quo:** This may be the wish of a small section of FATA population but is out of question due to the sweeping demands for reforms in FATA. Irrespective of various solutions for mainstreaming the FATA and putting an end to the crisis and conflict there, only by giving right of self-determination through referendum to residents of the FATA the best constitutional and political status of the region could be determined.

### Conclusion

Every crisis and conflict in and emanating from the erstwhile FATA has its roots in the indeterminate political, constitutional and legal status of the region. This is not only true for the TTP, Al Qaeda and other national and international militant and terrorist groups insurgency and attacks but for the extensive underdevelopment of FATA before and after the September 9, 2001 attacks and the presence of strong criminal gangs for ages there. Notwithstanding many claims and counter claims from the government and political parties of having taken measures to address the multipronged crisis and conflict as well as to mainstream FATA there has been no significant progress than the merging the region with the KP. However, this strategic policy decision may not be effective

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<sup>12</sup> This would go a long way to nullify the claims of Afghan government that Durand Line is a disputed border

keeping in view of the overall goal of putting an end to conflict and crisis in the region and at the same time developing and mainstreaming it. Islamabad with U.S. financial support set on an ambitious *FATA Sustainable Development Plan 2006-2015*. The aims of the \$2 billion programme were to bring the tribal areas into the national mainstream. The piecemeal approach of introducing certain so-called reforms in the FCR had not worked to address the crisis and conflict in the tribal areas. The reason has been that either there has been little understanding among the policymakers and relevant institutions that the undefined status of FATA has been the underlying cause of crisis and conflict there. Moreover, certain institutions particularly the civilian bureaucracy has been against giving a definite political and constitutional status to FATA. However, within the independent experts and civil society of FATA there is growing realization regarding redefining the status of FATA and making it a functional part of Pakistan. The merger and the desire to put an end to conflict and crisis in the tribal areas through it has many obstacles and even could have a rippling and contagious effect by extending the same crisis and conflict to the KP. Already due to the presence of millions of IDPs from erstwhile FATA in KP low intensity crisis and conflict started in the latter. Making FATA a separate province has been quite viable an option. Forming a FATA Council was equally acceptable in the short run but should have culminated in provincial status for the erstwhile FATA. But in order to address the multidimensional conflict and crisis in the former FATA giving a definite political and legal status to the region has become indispensable. Although almost a final decision has been made to merge FATA with the KP but it would not address the root cause of plugging political, legal and administrative vacuum giving FATA a definite status. A new tug of war for power between the elites and residents of tribal districts and mainstream KP would begin and both regions would suffer as a bigger province having more area and population with tribal regions comprising extremely underdeveloped and conflict-ravaged areas would aggravate the political and security crisis. The decision to merge FATA with the KP by the federal government of the PML-N, a party which got almost all its parliamentary seats from the Punjab province, can be described as a measure to somehow pass on the burden of tribal region to KP and to fulfil the desire of the country's security establishment. Such policies could not put an end to the crisis and conflict in former FATA.

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Received: Aug 4<sup>th</sup>, 2017

Revisions Received: Sept 12<sup>th</sup>, 2018