



**Law, Rights, and the Colonial Administrative System: A Critical
Note on the Frontier Crimes Regulation (1901) in the FATA,
Pakistan**

Noreen Naseer*

Abstract

This article focuses on the administrative and judicial system in the Federally Administered Tribal Areas (FATA) of Pakistan. These areas were once part of the battleground of the 'Great Game' of imperial domination in the 19th century. In that colonial period, for effective control of these areas, the British administrators designed a series of crime regulations, which had oppressive consequences for tribesmen. With these regulations, the colonial administration consolidated the long-term basis of their power and institutionalised an oppressive administrative-judicial system. For this purpose they also engaged local elites and customs. The administrative-judicial system introduced on the Northwestern border was different from the criminal and civil laws introduced elsewhere in British India. In 1947, when British colonial governance ended and the tribal areas became part of Pakistan, the oppressive colonial system of the Frontier Crimes Regulation (FCR) continued. It is still in force to the present day. In this article, I discuss the control structure of the administrative-judicial system that was imposed through these crime regulations in the FATA. I argue that these regulations are against fundamental rights prescribed in Pakistan's Constitution of 1973 and the UN Human Rights Charter. I also highlight the plight of tribal people suffering politically, socially, and economically due to these undemocratic and discriminatory regulations, which are unduly unjustified and defended by a group of people with vested interests.

Key Words: FATA, FCR, tribal control system, fundamental rights.

* Noreen Naseer, Lecturer in Political Science, University of Peshawar.
Email: noreennaseer22@gmail.com
www.reviewhumanrights.com

Introduction

The tribal areas of Pakistan are located in the mountainous region along the country's border with Afghanistan, and have recently been the focus of international security and the War on Terror. These areas, officially named the Federally Administered Tribal Areas (FATA), consist of seven 'Political Agencies' and six 'Frontier Regions' (FRs). The total area of the FATA is about 27,220 sq. km. It shares approximately 2,253.081 km (1400 miles) of international border with Afghanistan.¹

Although the geo-strategic location of the FATA gives an edge to the Pakistani state in regional politics, the people of the mountainous strip remain economically, socially, and politically impoverished. The officially estimated population of the FATA is 3.17 million. It is a small population in a country with over 180 million people. However, an unofficial estimate of the FATA population is 7 million.² Much of the FATA is infrastructurally and economically poor. In fact, it is one of the poorest and least developed parts of Pakistan. Today 66% of the tribal population lives below the poverty line. Its literacy rate is 17.42% compared to the national average of 40%. Amongst women it is 3% compared to the national average of 32%, while per capita income is roughly \$250, half the national average of \$500 with a growth rate of 2.19%.³ FATA's forbidding mountainous terrain further serves to isolate tribal communities from national and international markets, health and education services, and many other opportunities.

During the colonial period, the British accorded unique administrative and political status to the tribal areas (the present day FATA). The colonial power administered and controlled these tribal areas through their political agents, armed with draconian regulations known as the Frontier Crimes Regulation (FCR). The administrative system also included the local tribal elders by way of creating the institution of *Sarkari Jirga* (Government Council of Elders) and the implementation of *Riwaj* (Tribal Customary Law). The colonial intervention created an impression that tribal people wanted to freely practise their culture, traditions, and internal independence.⁴ However, the administration of the Northwestern frontier under the British took two shapes: administration of tribes to ensure the safety of the settled areas, and civil administration of the settled districts. By the turn of the century, the British demarcated an international boundary, the Durand Line, between British India and Afghanistan. The immediate inner side of the

boundary constituted the so-called “independent territories” of the tribal people. To exercise effective control over these territories, as well as to engage the tribes in geopolitical ventures, the British experimented with different policies such as the close border policy, the forward policy, and the moderated forward policy.⁵

In the beginning, establishing and maintaining control over these border areas was a challenge for the British colonial administration. In 1857-8, nearly twenty-three military operations/expeditions were carried out with hardly any fruitful results.⁶ Accordingly the administration thought to devise a different control mechanism with minimal involvement. This necessitated a two-tier system; an administrative setup in the form of appointed political agents who would enforce the FCR, and a political setup with local influential elites assisting the political agents in establishing and maintaining the colonial control. Moreover, the colonial administration established military stations on the frontier, which enabled them to gain tribal support for protecting the passes that led to Afghanistan.⁷ Generally speaking, in the border areas of the Northwestern frontier, British governance was a mix of the ‘Sandeman system’ and ‘Frontier School-thought’.⁸ The goal was to pacify tribal resistance, if possible, through allowances, but at times suppressing it through severe punishments.



Map. “The Federally Administered Tribal Areas (FATA), Pakistan.” 2015. FATA Secretariat Maps-Peshawar.

The Frontier Crimes Regulation of the British Colonial Administration

The FCR dates back to 1846 when British colonial administration nominated its first political agent in the Northwestern districts and the Punjab. In the beginning, the FCR was a simple civil and criminal law. It was re-enacted in 1871-2, and again in 1876 and 1887, each time with more modifications.⁹ Finally, Lord Curzon in 1901 separated the Northwestern districts from the Punjab and made them a separate province North Western Frontier Province (NWFP). The newly reformed FCR (1901) was specifically designed to counter and control any Pashtuns' opposition to British rule and to protect the interests of the colonial administration. With the FCR the British introduced a governance system that best suited their geopolitical interests. The system was designed to utilize local tribal power to attain maximum political gains at nominal costs, as these tribal areas had little economic significance for the colonial administration. Instead of overthrowing the local elite, the British engaged them and virtually transformed them into proxy administrators with limited fiefdoms.¹⁰

The FCR (1901) also provided for a special procedure for trials in both the settled districts and the tribal areas. Under the regulations, a commissioner, a deputy commissioner, and a political agent were given authority to decide upon both civil and criminal cases. The basic aim was to suppress crime in tribal and frontier areas, but in reality, it was to punish individuals and even tribes collectively who were guilty of acting in a hostile manner or unfriendly posture towards the colonial administration. A deputy or a commissioner and political agent could seize or confiscate property of a tribe or individual, detain persons, and/or deny them access to British India. They also had the power to impose fines on tribes or individual persons guilty of an offence against the colonial administration. In tribal areas, under the regulations a Council of Elders (*Sarkari Jirga*) could be formed, but its role was limited to recommending and advising. The Council could only give non-binding advice to a deputy commissioner and/or political agent. The FCR was a document provided to British appointed officials in different parts of the North West Frontier to pass sentence on crimes like adultery, theft, and murder. The officials could also grant pardons and/or refer a case back to the same or another Council. They could impose blockades on hostile and unfriendly tribes, and impose fines on communities and tribes. The FCR also provided for

preventive measures in order to regulate social gatherings at *Hujras* and *Chauks* (tribal community guest houses) and no such place in these areas could function or exist without the prior permission of the administration.

In the administrative setup established through the FCR the political agent played a dual role in civil and military affairs. He could force his decision on the border tribes and sub-tribes, and in cases of non-submission he could also take military action. On the other hand, he could pay or confer allowances on tribal elites. Through these allowances (*Muwajib*) for the tribal elites, and at times for the poor, he created incentives for successful negotiations. Later, other kinds of incentives were also introduced, for instance, for recruitment in the army service and tribal police (Levies/Khassadars). The latter served to provide a local security apparatus and guarded routes and passes opening into Afghanistan.¹¹ The British colonial administration also used allowances as a tool of political control. Political agents were authorized to use their discretion in granting allowances, and could stop allowances and/or blockade tribal people's access to revenue generating settled areas (*Allaqa-i-Sarkar*). Furthermore, political agents were authorized to confiscate both moveable and immoveable property—a practice locally known as *Bramta* or *Billga*.¹²

For political and economic gains, the British colonial administration intervened into and manipulated the tribal people's centuries-old code of honor and ethical life (*Pakhtunwali/Pashtunwali*). The colonial administration facilitated in creating a landlord class through the redistribution of property and land, and acted as proxy rulers. This intervention affected the existing social and economic setup. In principle, a political agent relied on *Jirga* to settle tribal disputes, but at times he exercised direct coercive power against tribes or individuals who challenged colonial authority. Thus, British colonial rule manipulated the *Jirga* system for local dispensation of justice for their own strategic purposes and used this institution as a tool of punishment for those who opposed or resisted them.¹³

In the late 18th century, the frontier region fascinated the East India Company's officials who started exploring the region. They were followed by Victorian explorers, administrators, and armed forces. A complex mythology was fabricated around its people. In reality, the British administration wanted to keep these areas semi-

independent due to poor revenues, and in return, they paid locals for free access to passes leading to Afghanistan, which at the time was a buffer zone between British India and Czarist Russia.¹⁴

Despite administrative neglect of the frontier region, the British colonial administration paid some attention to infrastructural development of the borderland to earn acceptance from the local people. This included building transportation links for access to remote areas, hospitals to treat both locals and the army, a few schools, and investment in agriculture for self-sufficiency and revenue. However, their interest in development was not equal to that in British India.¹⁵ A case in point is their support of a rebellion against King Amanullah Khan of Afghanistan, who tried to develop the Afghan side of the border. The British feared that if the border areas on the Afghan side developed, the tribal people might revolt against them and ask to join Afghanistan.

After independence in 1947, Pakistan inherited the tribal areas and the FCR, which has continued in force with slight modification to the present day. There are several reasons for the continuation of the old colonial system in the tribal belt. A major reason has been the troubled situation after the demarcation of the Durand Line that divided the Pakhtun tribes living across the border. On the other hand, the Pakistani state has continued to ignore economic, political, and social development, which is indirectly conducive to maintaining political control over these areas. These areas have never been given similar priority in development as the rest of the settled districts. Even minimum development initiatives and allocations in these areas have followed a compartmentalized approach i.e. the initiatives concentrated in selected places and benefited a few influential and politically active actors. This approach deprived large segments of the population from social uplift, economic empowerment, and fundamental rights. Even today, the idea of semi-independent tribal areas, with tribes practicing their centuries-old culture and tradition, is maintained under the façade of security discourse. The state has transformed these areas into a human rights violation space with impunity.

In the tribal areas (present day FATA), political agents, under the FCR, still exercise broad powers of judicial authority, including the magisterial powers to organize a *Sarkari Jirga* (Government Council of Elders) of appointed tribal elders. They have the power to establish or demolish entire villages as reward or punishment. Military force can be deployed by political agents to blockade tribes,

banish them in severe cases, and regulate their village guesthouses. Political agents under FCR can award punishment without the due process of law and the right to appeal. In criminal cases, the only right available to a defendant is to object on the members designated to a *Jirga*.¹⁶

Post-Colonial Period and the Constitutional Status of the Tribal Areas

The partition of India in 1947 brought the British-controlled Pashtun tribal areas to Pakistan. It is commonly believed by the tribal people that Mohammad Ali Jinnah, then Governor-General of Pakistan, had assured them that upon joining the state of Pakistan their autonomy would be respected and the state would not interfere with their internal affairs. Hence, several agreements were signed with the tribes on behalf of the Governor-General by his Political Secretary A.S.B. Shah with tribal elders promising allegiance to and cooperation with Pakistan in return for continuation of their semi-autonomous special status and allowances. To keep the tribal areas under the supervision of the center, Jinnah created the Ministry of States and Frontier Regions (SAFRON) and kept the tribal areas under the direct control of the Governor-General.¹⁷ This political arrangement however led to animosity between Pakistan and Afghanistan. Many Pashtun nationalists residing on both sides of the Durand line raised the issue of Pakhtunistan/Pashtunistan.¹⁸

Due to the threat of revolt, Pakistan continued with the colonial special status in the tribal areas. Only minor changes in the administrative setup were introduced. For instance, instead of a British Viceroy, a Pakistani Governor-General was given the authority and control over the tribes through his designated political agents.¹⁹ The first Constitution of Pakistan (1956) in Article 104 Section 10, Clause 3, defined the tribal areas as 'Special Areas' with special status and to be administered through the FCR. The President, by virtue of his office, regulated and made provisions for the tribal areas and secured tribal people's representation in different constitutional bodies. Under the constitution, five general seats were allocated to the tribal areas in the Federal Legislature. However, the Constitution was abrogated before it could provide representation to the tribal people.

The Constitution of the Republic of Pakistan (1962) introduced the presidential form of government through an indirect electoral scheme known as the Basic Democracy system. Article 223 (Section 1, 2, 3 & 4) of the constitution defined tribal areas of the North West

Frontier as 'Tribal Areas' and continued with the colonial setup. Thus, the tribal areas were kept outside of the jurisdiction of the central and provincial governments. The President of Pakistan governed the tribal areas through his governor. When the Basic Democracy system was extended to the tribal areas, one member each from an electoral college was granted representation in the national and provincial assemblies.²⁰ The 1962 Constitution was abrogated in 1969, and in the Interim Constitution of 1972, under Articles 260 and 261 the tribal areas were divided into the Provincially Administered Tribal Areas (PATA) encompassing Chitral, Dir, Swat Malakand, areas adjacent to Hazara and the state of Amb. The Political Agencies and the Frontier Regions were placed under Centrally Administered Tribal Areas (CATA). The President controlled both the PATA and the CATA.

The Political Status of the FATA in the Constitution of Pakistan 1973

In the Constitution of Pakistan, 1973, Article 246 relates to the federally administered tribal areas. The article reads:

"Tribal Areas" meaning the areas in Pakistan which, immediately before the commencing day, were Tribal Areas, and includes (i) the Tribal Areas of Baluchistan and the North-West Frontier Province; and (ii) the former States of Amb, Chitral, Dir and Swat. Part (b) are "Provincially Administered Tribal Areas" means (i) The districts of Chitral, Dir and Swat (which includes Kalam), [the Tribal Area in Kohistan district] Malakand Protected Area, the Tribal Area adjoining, [Mansehra] district and the former State of Amb; and (ii) Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai District, Marri and Bugti tribal territories of Sibi district. Part (c) Federally Administered Tribal Areas (FATA), includes (i) Tribal Areas adjoining Peshawar district; (ii) Tribal Areas adjoining Kohat district; (iii) Tribal Areas adjoining Bannu district; (iv) Tribal Areas adjoining Dera Ismail Khan district; [(v) Bajaur Agency; (vi) Orakzai Agency; (vii) Mohmand Agency;] created after 1947 (viii) Khyber Agency; (ix) Kurram Agency; (x) North Waziristan Agency, and (xi) South Waziristan Agency.

In the next article, the constitution reaffirms the special status of the Tribal Areas (FATA) and provides that neither central nor

provincial laws apply to them. The President controls and administers these areas through the governor and the Political Agents. However, only 27% of the area is State controlled and called *Allaqa-i-Sarkar*, while the rest of the area is administered through *Riwaj* (customary laws) and called *Allaqa-i-Ghair*. Parliamentary and provincial laws do not apply to the latter area unless the President so directs. However, the Frontier Regions (FRs) of the FATA are governed by a combination of the federal and provincial administrative systems. Only the President of Pakistan through an executive order can abolish the special status of the FATA. The judiciary cannot exercise its writ in the FATA. In this way, we can say that the President enjoys paramount executive and legislative powers over the FATA.²¹

At the time of independence, for the purposes of administration and justice in the FATA, the new state of Pakistan continued the oppressive colonial FCR and kept the tribes outside the ambit of fundamental rights. The Constitution of 1973, Part VII describes in detail the judicial setup in the settled areas of Pakistan, but omits any express provision regarding the judiciary's role in the tribal areas.²² In fact, Article 247 (7) of the 1973 Constitution bars the exercise of jurisdiction of the courts in the FATA. Due to this situation, the Political Agent and the FCR constitute the judicial apparatus. Although the Constitution protects the fundamental rights of citizens by giving them the right to approach the High Courts and the Supreme Court in the settled and federal districts, the tribesmen charged under the FCR cannot file an appeal against a political agent's judgment in the superior courts.²³ It is worth mentioning further that the FCR violates the following constitutional rights: Article 4, the right of an individual to be treated in accordance with the law; Article 8 that provides that any law or custom having the force of law shall be void if it is inconsistent with fundamental rights; Article 10 which provides the mechanism against arrest and detention; Article 13 that provide protection against double jeopardy and self- incrimination; Article 14 that addresses the inviolability of the dignity of man and the prohibition of torture for extracting evidence; Article 24 that handles protection of property rights; and Article 25 that is about the equality of citizens.

There are several other provisions in the FCR which make it conflict with the 1973 Constitution. For instance, Chapter IV of the FCR deals with penalties imposed on the tribal people charged with different crimes. The Regulation authorizes to use the power of

seizure and confiscation of property and arrest or detention of an individual without due process. It also debars a tribal man from entering a settled district if he is charged with a crime. The Regulation provides for the imposition of fines on an entire tribe if necessary for a crime committed by an individual tribesman. Section 36 of the Regulation provides the power of removal of a person from his residence, or any other place for certain crimes such as abduction and involvement in robbery. Sections 40 and 41 provide for preventive powers for the maintenance of peace and the guarantee of good behavior by tribesmen. If any person or tribe is accused of the violation of peace, he (or his tribe) can be punished with imprisonment for a term up to three years under Sections 43 and 44, without any right of appeal before a criminal court.

Selected Case Studies of Victimization under the FCR

For a long time now, tribal people have raised their voices against the FCR, especially with pleas for its abolition. On many occasions, the High Courts and the Supreme Court of Pakistan have given their legal opinions on the Regulation. For instance, in 1979 the Baluchistan High Court (Shariat bench) held that the FCR was a discriminatory and un-Islamic law. Similarly, the Peshawar High Court in the case of *Mohammad Irshad v Assistant Commissioner, Swat* struck down the PATA Criminal Laws (Special Provisions) Regulation I of 1975 and the PATA Civil Procedure (Special Provisions) Regulation II of 1975. The Court ruled that these regulations were against Article 25 of the Constitution.²⁴ Likewise, the Supreme Court of Pakistan passed a judgment in the case of *Superintendent of Land Customs Torkham, v Zewar Khan* ruling that the tribal areas were legally part of the territories of Pakistan, as several laws including the Customs Act were applicable to it. The Court observed that under both the international and municipal law, the tribal territories were part of Pakistan, and therefore were duly recognized as such by the international community.²⁵ Hence, the Court said that the judicial system of Pakistan should be extended to the FATA.²⁶ However, successive governments have not taken the required action to remove the FCR and extend the regular judicial system to the FATA. Again, in 2014, the Peshawar High Court in a case ruled that the FCR was contrary to fundamental constitutional rights. The court also commented on the jurisdictional powers of the higher courts.²⁷ Despite these rulings the FCR remains in operation with its oppressive character in the FATA.

Case 1: Qimat Gul (2002)

Qimat Gul was a resident tribal person of Bajaur Agency. The Political Agent of the Agency arrested and detained him in a case relating to land ownership. Qimat Gul claimed that he had only protested against a local *Malik* and some other influential tribesmen who had illegally grabbed his land. On July 29, 2002, the Lahore High Court ordered the release of Qimat Gul. However, by then he had served a period of two-and-a-half years without any right to defense.²⁸ Under the FCR, a political agent can also punish a tribal person to serve an extended sentence for the non-payment of a fine or bail. The amount of bail for theft can range from Rs. 10,000 to Rs. 100,000.

Case 2: Rahimullah (2007)

In April 2007, on hearing a writ petition by a tribal prisoner, Rahimullah, the Peshawar High Court Bench consisting of Chief Justice Tariq Pervaiz Khan and Justice Qaim Jan Khan directed the FATA Secretary to check the “unbridled” powers of political authorities and the human rights violations that entail. An Assistant Political Agent (APA) had thrice sentenced Rahimullah under Section 40 of the FCR, first on 15 December 2003, and then on 14 January 2005 before the completion of his first jail term. Then, on 25 May 2006, the APA charged and convicted Rahimullah for another three years for the same crime. Unfortunately, the High Court could only record its opinion on the style of administration in the FATA, as its jurisdictional power does not extend to the FATA.²⁹

Case 3: Gul Haji Plaza (2007)

Tribal people residing in settled districts can also be charged under the FCR and punishments can be awarded to them. This was exemplified in the 2007 Gul Haji Plaza case. Local officials closed down Gul Haji Plaza, a multi-story shopping center, owned by three brothers from the FATA, because their fellow tribesmen had kidnapped two former employees of the Pakistan Tobacco Company. The local officials resorted to the provision of collective responsibility to punish the tribe.³⁰

Case 4: Dr. Shakil Afridi (2011)

In May 2011, Dr. Shakil Afridi, a tribal person and a doctor by profession, was charged for espionage for a foreign intelligence agency (CIA) about Osama Bin Laden’s whereabouts. He was tried before a *jirga* and convicted of treason under the FCR. It is interesting to note that Shakil committed the offence of spying in

Abbotabad, which is a settled district with a regular court system. However, he was taken to his native tribal area and tried against for the offence under the FCR.

Case 5: Jamila Bibi (2016)

As there are no inbuilt protection mechanisms in the FCR for women, they are the most vulnerable in the tribal areas. Recently, in Kurram Agency, a tribal woman, Jamila Bibi, was blamed by her brothers-in-law for murdering her husband Naib Ali. Her husband was killed at his house and she was present there. However, no weapon was found or motive for killing established. A case was registered under the FCR and the political agent formed a *jirga*. The *jirga's* members decided that her presence in the house was sufficient evidence to make her guilty of involvement in the murder. Because in the *riwaj*, there is no provision/tradition for imposing the death sentence on women, the *jirga* decided that she and her children should not inherit the family's property. The political agent, using the FCR and his discretionary powers, endorsed the decision of the *jirga*, stating that there was no clause in the FCR to deal with women involved in murder cases. Jamila filed an appeal with the Deputy Commissioner Kohat, but the latter also endorsed the *jirga's* decision stating again that in the FCR there was no mechanism to deal with women charged with murder.³¹ It proves how the FCR plays its role in manipulating certain situations against women to deprive them of property.

The Human Rights Commission of Pakistan, religious scholars, and jurists often term the FCR a 'black law', contrary to Islam and the 1973 Constitution of Pakistan, as well as international human rights conventions. The FCR does not even fulfill the basic requirements of a system of justice. There are no proper courts under it where cases can be heard and witnesses and evidence presented. The only mechanism is the *jirga* appointed by the political agent. As the state has ignored to take interest in the socio-political uplift of the tribal areas, the *maliks* and tribal elders are left to carry out local affairs through the *riwaj*, which involves their discretion in dealing with criminal and civil disputes. Oftentimes the customary laws are manipulated against women, the weak, and children. As a result, the tribal areas face such injustices as the honor killing of women, pedophilia, human trafficking, and land grabbing.³²

Mal-governance and the quasi-judicial system in the FATA have often led to unrest and militancy. In fact, the FATA has transformed from a restive borderland into a war zone. Part of the reason for this

transformation is the criminal justice system under the FCR, which has discriminated and oppressed the tribal people for a long time. In South Waziristan, for instance, certain groups of tribal people revolted and formed the organization of the Taliban (TTP). They wanted to be the custodians of justice but committed heinous crimes against their own tribal people as well as Pakistani citizens. They then challenged the writ of the state. If the FCR was not unjust, then the local people would not have looked to the Taliban for dispensing justice.³³ Similarly, in Khyber Agency, Mangal Bagh, a militant with no understanding of religion or the justice system posed himself as a messiah of the people. Later, he even expanded his so-called “speedy system of justice” to the FR Peshawar, which alarmed the administration. A local media person, Taha, quotes a spokesperson of Mangal Bagh: “We believe in terrorism and instilling fears in the hearts of the unbelievers and those Muslims who do not follow true Islamic way of life”. On the other hand, a local scholar writes that if there were a system of justice and accountability in place, then the FATA would not have suffered at the hands of militants.³⁴

The FCR: Looking to the Future

In my formal interviews and informal conversations with young men and women, especially those who are studying at different universities in Peshawar, I have noted that a majority of them want to see the FCR either amended or completely repealed. They believe that this regulation discriminates between people living in the tribal belt and Pakistan citizens living in the settled areas. The Constitution of Pakistan guarantees equal rights such as freedom of expression, association, and development to its citizens living in settled districts, while the FCR has taken away these rights from the tribal people. This regulation was formed during colonial times, but it exists in the present day, which has made it anachronistic for the over half century since the colonial times. Neither democratic lawmakers nor bureaucratic administrators have taken interest in improving this regulative system. However, recently in 2016, representative members of FATA have proposed a bill in the Parliament to end the special administrative status of the FATA and to merge it with the province of KP.

Similarly, my interviews with some progressive and educated tribal elders and other intellectuals have also yielded this finding that the FCR needs to be changed. My interviewees propose that a new set of regulations or laws should be implemented in the FATA, informed by present-day human rights standards and local

sociopolitical conditions. They also propose that the jurisdiction of the high courts should be extended to the FATA, and that the judicial responsibilities of administrators and magistrates should be separated from the executive. Moreover, they propose that collective punishment should be abolished and the fundamental rights prescribed in the constitution be extended to the FATA.

Apart from the recent initiative taken by elected members of FATA, the Pakistan People's Party (PPP) government led by P.M. Yousaf Raza Gilani had earlier taken a similar step. In a speech in the National Assembly, P.M. Gilani called for the abolition of the FCR, which he described as the only way out of the unjust form of government in the FATA. His speech was appreciated and supported widely. However certain local elites, *maliks*, and bureaucrats had their reservations. Similarly, the representative of the FATA (the political elite) in the National Assembly objected to the prime minister's ambition. They said that the proposed change had not been discussed with them. They argued that the FCR had nothing to do with the increase in militancy in the tribal areas. They suggested rather that certain oppressive sections in the FCR should be abolished. It is to be noted that tribal *maliks* who receive benefits (allowances and scholarships paid to their kin and kith) have been against the complete abolition of the FCR, because they think that the judicial and administrative system, in vogue with other parts of the country if extended to the FATA, would not be able to work there.³⁵ Later when political pressure on the local elites increased, and when they were also denied funds, they instead began to demand that the FATA be converted into provincially administered tribal areas (PATA). However, this demand again denies the right of the local people to take part in the democratic political process and improve their lives.³⁶

Since 2007 several efforts have been made to amend or abolish the FCR. However, it still remains in force. On 15 August 2011 a number of amendments were introduced in the FCR at the recommendations of the PPP government reform commission. Under these reforms, tribunals for FATA were created and their powers were made equal to those of the High Court. The collective responsibility clause was amended, thus entire tribes were exempted from punishment. Now only the accused is punished for his crimes.³⁷

Conclusion

The British colonial administration introduced an indirect governance model through the FCR in the Northwestern borderland of India in the late 19th century. Rather than politically integrating this borderland with the rest of India, the colonial administration treated it as a periphery of the Raj. The introduction of the FCR was based on the pretext that it corresponded with local tribal traditions. However, as I demonstrated, this was not the case. The FCR was a strategic and cost-effective tool for the colonial administration to control the borderland and maintain peace on it, rather than serve the ends of good governance. Certain Pakhtun codes of conduct were manipulated, and through the encouragement of the local elites, the egalitarian basis of tribal society was violated. Through the FCR, powers were concentrated in the hands of the Political Agent who was not answerable to the elected government. There was no mechanism of democratic accountability introduced in the FCR. After 1947, the Pakistani state re-enforced the FCR and redeployed colonial tactics with more paternalistic rhetoric. Recently, some reforms were introduced to the FCR. However, because of political misgivings about tribal people and the ongoing War on Terror, national governments have not been able to come up with a comprehensive reform package or integration plan for the FATA.

Notes:

- ¹ Government of Pakistan Civil Secretariat FATA, "FATA Sustainable Development Plan, 2007-2015," 17.
- ² Shinwari, "Understanding FATA"; Government of Pakistan Civil Secretariat FATA, "FATA Sustainable Development Plan, 2007-2015."
- ³ Government of Pakistan Civil Secretariat FATA, "FATA Sustainable Development Plan, 2007-2015," 18-24.
- ⁴ Spain, *The Pathan Borderland*, 114-122.
- ⁵ *Ibid.*, 346-420.
- ⁶ Caroe, *The Pathans With An Epilogue On Russia*, 370-389.
- ⁷ *Ibid.*, 390-95.
- ⁸ Bangesh, *Political and Administrative Development of Tribal Areas: A Focus on Khyber & Kurram*. Unpublished Ph.D. Dissertation, 225.
- ⁹ Nichols, *The Frontier Crimes Regulation*.
- ¹⁰ Schofield, *Afghan Frontier Feuding and Fighting in Central Asia*, 62-112.
- ¹¹ Caroe, *The Pathans With An Epilogue On Russia*, 348-350.
- ¹² Hussain, "Federally Administered Tribal Areas (FATA): A Modern - Day Anachronism?," 67-70.
- ¹³ Mohammed, "Justice Denied."
- ¹⁴ Schofield, *Afghan Frontier Feuding and Fighting in Central Asia*, 62-112.

- ¹⁵ Bangash, *Political and Administrative Development of Tribal Areas "A Focus on Khyber and Kurram"*. Unpublished Ph.D. Dissertation.
- ¹⁶ Ibid.
- ¹⁷ Khan, "Special Status of FATA: Illegal Become Licit," 69.
- ¹⁸ Pashtun nationalists held a *Jirga*, chaired by Khan Amir Mohammad Khan at Bannu (present day district of Khyber Pakhtunkhwa) on 21st June 1947, in which they announced to establish an independent Pashtun state. *Pakhtano Da Khapal Azad Hukumat Faisala Okra*, 1.
- ¹⁹ Khan, "Special Status of FATA: Illegal Become Licit," 19.
- ²⁰ Khan, "Special Status of FATA: Illegal Become Licit," 69.
- ²¹ Bangash, *Political and Administrative Development of Tribal Areas "A Focus on Khyber & Kurram"*. Unpublished Ph.D. Dissertation. Ali and Rehman, *Indigenous Peoples And Ethnic Minorities Of Pakistan Indigenous Peoples And Ethnic Minorities Of Pakistan*.
- ²² Mahmood, *Constitutional Foundations Of Pakistan*, 922–951.
- ²³ Ibid.
- ²⁴ *Mohammad Irshad v Assistant Commissioner, Swat*, PLD Peshawar 51 (1990).
- ²⁵ *Superintendent of Land Customs Torkham v. Zewar Khan*, PLD SC 485 (1969).
- ²⁶ Human Rights Commission of Pakistan, "FCR A Bad Law Nobody Can Defend," 60–61.
- ²⁷ *Abdul Bari v. Director Livestock Dairy Development FATA Secretariat*, W.P No. 1741-P of 2012, Peshawar High Court (2014).
- ²⁸ "FCR Is No More a Law: LHC."
- ²⁹ "PHC Asks FATA Security Secretary to Check Administration's Powers."
- ³⁰ Yusufzai, "Rights-Pakistan: Harsh Colonial Law Set to Change."
- ³¹ Bibi, Jamila. (Tribal woman), in discussion with the author. September 2015.
- ³² Naseer, "Fata Women Voiceless/Invisible Entity: Victim Of Cultural Structure and State System," 77–89.
- ³³ Mehsud, Farooq. (journalist), in discussion with the author. November 2014.
- ³⁴ Siddique, "Inside Khyber Agency- V: Lashkar-e-Islam Promised Justice, Delivered Violence," 5.
- ³⁵ Ali, "FCR or Not," 6.
- ³⁶ Naseer, "Fata or Pata?"
- ³⁷ "Major Changes Made in FCR."

References

- Abdul Bari v. Director Livestock Dairy Development FATA Secretariat*, W.P No. 1741-P of 2012, Peshawar High Court (2014).
- Ali, S.S, and J Rehman. *Indigenous Peoples And Ethnic Minorities Of Pakistan Indigenous Peoples And Ethnic Minorities Of Pakistan*. Surrey, UK: Curzon, 2001.

- <http://insidelibrary.com/download/Indigenous%20Peoples%20And%20Ethnic%20Minorities%20Of%20Pakistan%20Indigenous%20Peoples%20And%20Ethnic%20Minorities%20Of%20Pakistan.pdf>.
- Ali, Y. "FCR or Not." *The News International*, April 13, 2008, sec Special Report.
- Bangash, A. M. *Political and Administrative Development of Tribal Areas "A Focus on Khyber and Kurram"*. Unpublished Ph.D. Dissertation. University of Peshawar, 1996.
- Bibi, Jamila. 2015. (Tribal woman), in discussion with the author. September.
- Caroe, Olaf. *The Pathans With An Epilogue On Russia*. Karachi: Oxford University Press, 1983.
- "FCR Is No More a Law: LHC." *Dawn*. July 31, 2002. Accessed November 15, 2015. <http://www.dawn.com/news/50462/fcr-is-no-more-a-law-lhc>.
- Government of Pakistan Civil Secretariat FATA. "FATA Sustainable Development Plan, 2007-2015." Peshawar, KP: Civil Secretariat FATA, 2007. Accessed November 10, 2015. http://urban.unhabitat.org.pk/Portals/0/Portal_Contents/FATA/Landi%20Kotal/FATA%20Sustainable%20Dev%20Plan%202007-2015.pdf.
- Human Rights Commission of Pakistan. "FCR A Bad Law Nobody Can Defend." Lahore: HRCPC, 2005.
- Hussain, M.R. "Federally Administered Tribal Areas (FATA): A Modern – Day Anachronism?" *Journal of Political Studies* 57, no. 6 (2007): 67–70.
- Khan, Sarfaraz. "Special Status of FATA: Illegal Become Licit." *Area Study Center* 63 (2009).
- Mahmood, S. *Constitutional Foundations Of Pakistan*. Lahore: Jang Publisher, 1990.
- "Major Changes Made in FCR: FATA People Get Political Rights." *Dawn*, August 12, 2011, sec. Pakistan. Accessed November 14, 2015. <http://www.dawn.com/news/651369>.
- Mohammad Irshad v Assistant Commissioner, Swat*, PLD Peshawar 51 (1990).
- Mohammed, Amir. "Justice Denied." *NewsLine Magazine*, 2004. Accessed November 18, 2015. <http://newlinemagazine.com/magazine/justice-denied/>.
- Naseer, Noreen. "Fata or Pata?" *The News International*, September 10, 2015.
- . "Fata Women Voiceless/Invisible Entity: Victim Of Cultural Structure And State System," *Pakistan Journal of Women's Studies: Alam-E-Niswan* 22, no. 2 (2015).
- Pakhtano Da Khapal Azad Hukomat Faisala Okra*. Bannu: Suba Sarhad Loya Jirga, 1948. Pamphlet on file with the author.
- Nichols, Robert, ed. *The Frontier Crimes Regulation: A History in Documents*. Karachi: Oxford University Press, 2013.
- "PHC Asks FATA Security Secretary to Check Administration's Powers." *The Daily Times*, April 13, 2007.

- Schofield, Victoria. *Afghan Frontier Feuding and Fighting in Central Asia*. London: I.B. Tauris, 2003.
- Shinwari, Naveed Ahmad. "Understanding FATA: Attitudes Towards Governance, Religion & Society in Pakistan's Federally Administered Tribal Areas." Islamabad: Community Appraisal & Motivation Programme, 2010. Accessed November 25, 2015.
<http://www.understandingfata.org/files/Understanding-FATA-Vol-IV.pdf>.
- Siddique, Taha. "Inside Khyber Agency- V: Lashkar-E-Islam Promised Justice, Delivered Violence." *The Express Tribune*. March 28, 2012. Accessed November 25, 2015.
<http://tribune.com.pk/story/356186/inside-khyber-agency-v-lashkar-e-islam-promised-justice-delivered-violence/>
- Spain, James W. *The Pathan Borderland*. 1985th ed. Karachi: Indus Publication, 2014.
- Superintendent of Land Customs Torkham v. Zewar Khan*. PLD SC 485 (1969). *The Federally Administered Tribal Areas (FATA), Pakistan* [map]. 2015. Scale not given. "FATA Secretariat Maps-Peshawar." FATA Secretariat Official Website. <<http://www.fata.gov.com>>(15 February 2015).
- Yusufzai, Afshaq. "Rights-Pakistan: Harsh Colonial Law Set to Change." *Inter Press Service*, April 9, 2008.