

## Constitutional Status of FATA: Pre & Post Merger Comparison of Legal & Administrative System

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**Abstract:** FATA, located in northwestern Pakistan, was once a battlefield for nineteenth-century imperial domination. Soon after Pakistan's independence, various tribes admitted allegiance to the state. There was a separate political and administrative system in FATA; this system retained the traditional way of 'JIRGA' system in these areas, which were included in the 1973 constitution of Pakistan. After the 9/11 terrorist attacks on the world trade center and the pentagon, FATA became the front-line region in War on Terror, which greatly affected the area. The people of FATA faced exploitation of their rights in the past. The government of Pakistan in 2018 took a great step towards the development of FATA by its merger into KP, which was a great change in the status of the area, supported by different political parties.

**Key Words:** FATA Merger, Reforms, Constitution, Administration, Legal System

### Background

The Federally Administered Tribal Areas (FATA), located in the north of the western border of Pakistan with Afghanistan, covers about 27,220 square kilometres of area. These areas consist of seven Agencies and six other small-sized pockets like regions known as frontier regions (FR). (Khokhar, Abbasi, Jafar, 2014). FATA is composed of two regions, i.e. Tribal agencies (tribal districts now) and frontier regions (FR). The tribal areas were administered directly from the central government, but now after the 25<sup>th</sup> amendment in the constitution in 2018, control of FATA is transferred to Khyber Pakhtunkhwa. FATA was once a battlefield for 19<sup>th</sup>-century imperial domination. For the Protection of Indian possession of the British Empire from Russian expansionism, FATA served as a buffer zone between the two empires (Britain and Russia). The British Empire implemented a series of Laws, including Frontier Crime Regulations (FCR) and the appointment of Political Agents in these areas. (Parveen, 2016).

After the 9/11 terrorist attacks on the world trade center and the pentagon, FATA became Front Line Region in War on Terror. Since then, the people of FATA have faced exploitation of their rights. (Iqbal, 2016) The government of Pakistan in 2018 took a great step towards the development of FATA by its merger into Khyber Pakhtunkhwa (KP), which was a great change supported by most political parties of Pakistan. (Ullah, Hayat, 2018).

FATA has been facing the exploitation of rights since the beginning. The government of Pakistan was unable to give a proper legal and administrative system to FATA, as well as to address many issues of tribal areas. That's why FATA remained backwards, and due to the political vacuum, it provided a field for terrorism.

The FCR was introduced in tribal areas during British rule, which acted as an engine of oppression and subjugation. FCR was a draconian law to the FATA habitants. (Khan, 2008). Taking the above problems into account, the government of Pakistan, on May 02, 2018, approved reforms regarding the FATA merger into KP. Before the FATA merger, various strategies were implemented in FATA by different governments of Pakistan, as various strategies for providing a proper status to FATA as the people of KP are enjoying. The new political strategy that has brought about the FATA merger into KP is an excellent step that would lead to a big social change and political development in the right direction. Due to its merger into KP, the tribal peoples would enjoy the same status as the peoples of KP are enjoying. (Ullah, Hayat, 2018).

This study is planned to highlight the various strategies implemented by the governments of Pakistan for FATA and to make a comparative analysis of the constitutional status, legal and administrative system of FATA pre and post-merger. This study will also make certain suggestions to the government for bringing positive reforms in tribal areas, including social, political, and economic reforms. National Finance Commission formula regarding the distribution of revenues among the federating units will also be highlighted in this study. Government strategies to provide the people of FATA legal opportunities in various fields of life and for the reconstruction of infrastructure, rehabilitation of internally displaced persons (IDPs) and to provide constitutional protection to the FATA people will be a part of this study.

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## The Strategic Importance of FATA

The FATA has remained strategically important since the times of "the great game". Imperial domination that took place in the 19<sup>th</sup> century, FATA served as a buffer zone between the British colonial government of India and Tsarist Russia. During the Cold War, FATA also got importance strategically. In 1938 Lahore agreement was signed between exiled Afghan prince Shah Shuja and the Sikh Government through the efforts of Mr. Macnaughton, a British official. Through this agreement, the Sikh Ruler got right in those areas which are at present a part of Pakistan. This agreement was countersigned by the British-Indian rulers ([Wakman, 1985](#)).

It is strategically important for the rival states of Pakistan who wants to create chaos in Pakistan for its own interest and to create more hurdles for Pakistan; that's why the rival states of Pakistan are raising their concerns towards the tribal areas who are conservative in their nature, superstitious, less educated and they can easily come under the grip of the rival states of Pakistan. ([Khan, 2008](#)).

## Pre-Merger: Constitutional Status of FATA

### Constitution of 1973

Article -1(c) of the 1973 constitution includes FATA in Pakistan. Article 51, 145, 246, 247 of the 1973 constitution have been defined the tribal areas.

- Article 51 (6): The election system could be extended to the tribal vicinities under the authority of the president.
- Article 145: this Article authorizes KP governor was assigned to be a representative of these vicinities to the president.
- Article 246: the president of Pakistan is not only the constitutional head of the state but also the chief executive of the tribal areas.
- Article 247: this Article clearly lays down the presidential powers to abolish tribal areas without any constitutional amendments. The president also has the authority to decide which law has to be applied to tribal areas. ([Raza, 1973](#))

According to the 1973 constitution of Pakistan, the FATA was assigned a special status in the 1973 constitution, but the citizenship rights were not given to the people of FATA. Article 8- 28 of the constitution of 1973 deals with the basic rights of the citizen of Pakistan, and the judiciary will protect it from violation if any of these rights are violated, but FATA citizens have been deprived of all these basic rights, and FATA has been ruled under the British made draconian' law Frontier Crime Regulation (FCR) 1901, which offends the basic rights of the people of FATA. ([Ali, 2018](#))

## Post-Merger: Constitutional Status of FATA

According to the 25<sup>th</sup> amendment, formally known as the FATA reform bill, the Ex FATA merger was finalized, which is a historic constitutional Amendment and a good move by the state for the people of FATA.

- Removal of paragraph "c" of article 1 will ensure the merger of FATA into KP, as article 1 in the constitution explains the territories of Pakistan.

And FATA is defined as a separate territory under paragraph "c" of article 1.

- To reduce the seat number, it is advised to replace the authority that distributes the seats between federal capital and provinces; an amendment should be done in Article 51 that defines the seat distribution; the new number would be 326 seats.
- Another change in Article-59, by omitting sub-clause "b" from clause-1 was advised, to limit the member of the senate to 96, which originally were 104 at the time.

Amendment in Article-59, clause-3 by the omission of sub-clause (b) under which the elected senate members from FATA were to retire after 3 years.

- New clauses 1A and 1B were added to the Article-106, which defines the provincial seats; the arrangement was out of 21, sixteen for general, 4 for female and 1 for non-Muslim. Election for these seats should be held within one year.
- Clause "C" from Article-246 was omitted on the basis of which these tribal vicinities were named.

The law should remain applicable unless replaced by authority, which was inserted in Article-246 as clause "d".

- Article-247, which administers the tribal vicinities were demanded to be omitted from the bill.

## Comparison of Pre & Post-FATA Constitutional Status

1. Before the FATA merger into KP, the 1973 constitution had provided a unique status in a letter but a legally inferior status. According to Article -1, FATA was placed as a separate vicinity of the country like the four provinces.
2. According to 25<sup>th</sup> Amendment, the FATA merger into KP was finalized. After its merger, the merged vicinities have no longer a unique status.
3. According to Article 246, the president of Pakistan is not only the constitutional head of the state but also a chief executive of the tribal areas. After its merger into the KP clause, "C" of Article-246, which deals with the tribal areas, is omitted.
4. Article 247 provided discretionary power to the president of Pakistan.

Now, after its merger into KP, the Article-247 of the constitution is omitted.

## Pre-Merger: Administrative System of FATA

In Pakistan constitutional order 1947 amended the government of India Act 1935 in which the tribal areas were regulated by Frontier Crime Regulation (FCR) and were mentioned as excluded areas. Thus, from 27 June 1950, the tribal vicinities became altogether independent and were left to the tribesmen. In November 1947, the political agent of tribal Agencies secured or recorded agreements of tribal chiefs (*Maliks*) in which they annunciated as follow:

- We promulgate that we are part of Pakistan.
- It was promised that if the state required any sort of help, we would provide our service to the nation to the best of our ability.
- We will try our best to participate in peaceful and friendly interaction with the state, the people of settled districts and will obey every law.
- Pakistan will provide benefits to the FATA residents if they comply with the above conditions.
- The tribal culture and tradition should remain the same as before. ([Iqbal, 2016](#))

### Administrative Division of FATA

In the 1956 constitution of Pakistan with the formation of one units' system, the tribal areas were therefore declared as:

- ✓ FATA
- ✓ PATA
- ✓ PATA of Baluchistan

FATA was controlled by the central government of Pakistan because of security reasons. These areas are linked to Afghanistan through the Durand line. That's why the Durand line was administered directly under the central government.

PATA and PATA of Baluchistan were under the jurisdiction of both NWFP and Baluchistan. These areas are not in a position to run their affairs independently.

Since independence, the administrative pattern of tribal areas has changed from 14 August 1947 till 14 October 1955. At that time, the NWFP Governor was an Agent of the Governor-General of Pakistan for the administration of tribal areas. His secretariat was headed by the chief secretary, and the government of NWFP dealt with all the matters relating to the administration of FATA. After the creation of Pakistan, the authority and policy making of FATA was left to the federal government, which will govern the FATA areas. These arrangements continued till 1958.

In 1958 the administrative setup of FATA was reviewed and was considered as an imperative system of administration; from November 1959 to August 1960, tribal areas were administered by the resident commissioner. The system was removed in 1960 as an economic measure because the area was controlled by both the central government and provincial government. ([Raza, 1973](#))

### Agencies of FATA

The 1973 constitution of Pakistan defines the "federally administered tribal areas" as follow:

FATA consists of seven semi-autonomous agencies or administrative units, six additional small pockets of tribal areas known as frontier regions. (FR). Miran Shah is the tribal capital in these seven agencies; south Waziristan is the biggest agency in FATA in terms of the area being 6,619 km<sup>2</sup>, comprising mainly of the Wazir and Mahsud tribes, while the second-largest agency is North Waziristan, where many people belong to the Dawar and Wazir tribes along with the pack- Afghan border, known as Durand line. There are seven tribal agencies stretching from north to south along the Durand Line. 1. Bajaur Agency. 2. Mohmand Agency. 3.

Khyber Agency. 4. Orakzai Agency. 5. Kurram Agency. 6. North Waziristan. 7. South Waziristan. According to the election commission of Pakistan, the federally administered tribal areas are further divided into subdivisions and tehsils. ([Anwar, 2017](#))

### Frontier Regions

There are six other additional small pockets of tribal areas known as frontier regions (FR) are named Frontier region Peshawar, Frontier region Bannu, Frontier region Kohat, Frontier region Tank, Frontier region Lakki marwat, Frontier region Dera Ismail Khan. The administration of the frontier region is carried out by the DCO/DC of the neighboring named district. The overall administration of the frontier region is carried out by the FATA Secretariat, based in Peshawar and reporting to the governor of Khyber Pakhtunkhwa. ([Anwar, 2017](#))

### The Role of Political Agent

The political agent plays the role of supervisory comprising of various government officials in the development of each tribal agency. The political agent also holds executive, judicial, and revenue powers. The tribal Levies performed the function of maintaining law and order under the command of political Agents. Political Agent, Assistant political Agent, Tehsildars, Naib Tehsildars and Khassadars (local police)

### The Role of Maliks

Historically pakhtun society was shaped by hereditary tribal chiefs (Maliks) along with the traditional code of honor (pakhtunwali). The British colonial administration tried to control the pakhtun by various methods, but they failed. British built roads and infrastructure with the help of local Maliks. Pakistan retained the Malik system, which the British introduced to control the tribal areas. Maliks (tribal elders) plays a major role in the Jirga system of tribal council, resolving disputes among the tribal people according to their custom and tradition. It is the conflict resolution mechanism in the tribal vicinities, maintaining peace and in general supporting the government. The political agent exercises his authority with the help of Maliks. ([Qazi, 2018](#))

### FATA Secretariat

In 2002, the president of Pakistan, Pervaiz Musharraf (the military government), set up a new FATA Secretariat in Peshawar. Until 2002, the improvement planning in tribal regions was taken with the aid of the FATA phase of KP; in that year, the FATA secretariat was set up, headed by way of the secretary FATA. Frontier vicinity is named after their adjacent settled districts in KP. The administration of the FR is dispensed by way of the DCO; the overall management of FR is performed by the FATA Secretariat, based in Peshawar and reporting to the governor of KP. ([Anwar, 2017](#))

### Civil Secretariat

In 2006, the civil secretariat was mounted to take over the decision making a feature with an additional leader's secretary, four secretaries and some of the directors. The assignment implementation is now executed by the civil secretariat FATA. The governor's secretariat of KP

performs a coordinating position between the federal and provincial government and the civil secretariat, FATA. ([Anwar, 2017](#))

## Departments

There are 6 departments of the FATA secretariat, which are as under:

- Finance department
- Law and order department
- Administration, infrastructure and coordination department
- Planning and development department
- Social sectors department
- Production and livelihood development department

## Directorates

In addition to departments following directorates are:

- Education
- Health
- Fisheries
- Forestry
- Livestock and Dairy development
- Irrigation
- Agriculture
- Minerals and Technical education
- Social welfare
- Sports
- Roads and other infrastructure development

## Post-Merger: Administrative System of FATA

The administrative system is then changed after its merger into KP. The colonial legacy in the form of political administration under the discretionary powers of the political agents is no longer there. The office is renamed as Deputy Commissioner and Assistant commissioner. The draconian law Frontier crimes regulation (FCR) is no more in the field.

Before the merger, the executive authority of FATA has been exercised by the governor of KP; now after its merger into KP, the executive authority shifted to the chief minister and his cabinet. The merged areas have no longer special status. All the provincial laws shall equally be applicable to these areas, and the due representation about 16 general seats out of 21 in which 4 seats for women and 1 seat for non-Muslim shall be given to FATA in the provincial assembly.

## Comparative Analysis of Pre & Post-Merger FATA Administrative Set-Up

1. Federally administered tribal areas were regulated under the draconian law known as frontier crime regulation (FCR). Now, after its merger into KP, it would be dealt with by the same Administration of KP.
- 1] At the provincial level, the political agent plays the role of supervisory for the development of each tribal agency. While at the Federal level, the Governor of KP plays the role of an Agent to the president for the Administration of FATA.

After its merger into KP, it would be administered by the KP government. The role of the political agent is no longer there. The executive Authority of FATA shifted from the Governor of KP to the chief minister and his cabinet.

## Pre-Merger: Legal System of FATA

Against Russian expansionism, the tribal vicinities were used as a buffer zone. British introduced a legal system known as Frontier Crime Regulation (FCR) in 1901. The political agent was appointed who always collaborated with local tribal elders. There was no check over the decisions of Political agents and tribal elders. This system was then retained after the creation of Pakistan. The rule of law, as enshrined in the constitution of Pakistan, was not guaranteed to the people of FATA. The region has had no law-making body that could make laws for the Tribal people. This situation produced a legal vacuum in the tribal areas. Constitutionally the 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 the Governor of NWFP (now KP). Legally the fundamental rights were not given to the FATA by the constitution of Pakistan. In the national assembly, 12 members represent tribal vicinities while 8 members are selected through election indirectly in the senate; these members have the right to withstand or oppose any issue or demand in other regions of Pakistan, but not in their home region where their opinion will only matter if the head of the state specifically calls upon them for any suggestion. (Praveen, 2016)

## Levy Force

Levies are atypical forces locally recruited by the political agent and are armed by the government. The tribal paramilitary force was known as Levies, relied on the British for maintaining peace and order. There was no regular military or police system. (Praveen, 2016)

## Khassadar Force

Since the creation of Pakistan, the function of khassadar has been as the representatives of their tribes, not as individuals. Khassadar, a local force, is recruited from various tribes of a tribal Agency; they were regular forces and were paid by the political agent but are not a much-disciplined force. "Khassadar are the servant of the tribes, not the servant of the government." Their duty was to maintain peace, law and order at various check-posts established by the government of Pakistan in the tribal areas. (Praveen, 2016)

## Post-Merger: Legal System of FATA

The legal system is also changing after its merger into KP. Before the merger, Ex FATA has been regulated under FCR, but now it is no longer there. The people of FATA will be no more regulated under a separate judicial system. They will be regulated under the same rule of law, no one will be deprived of their legal rights and will enjoy the same status as the people of KP are enjoying. After its merger into KP, there will be a proper Jurisdiction of Peshawar High Court; the Supreme Court will be extended to FATA. Levies and khassadars will be replaced by regular police.

## Comparative Discussion

The pre and post legal systems of FATA in its comparative analysis are:

- 1) Before the merger, the federally Administered tribal areas have been regulated under frontier crime regulation. After its merger into KP, the FCR is no longer there.
- 2) The people of FATA have been regulated under a separate judicial system. They were part of Pakistan but were not regulated under the same law. After its merger into KP, there will be a proper Jurisdiction of Peshawar High Court; the Supreme Court will be prolonged to FATA.
- 3) Levies and khassadars were the local force recruited by the political agent from various tribes of a tribal Agency. Its function was to maintain law and order on various check posts established by the government of Pakistan in the tribal areas. They were not a disciplined force, which created more hurdles for the people of FATA. After its merger into KP, Levies and Khassadars will be replaced by regular police.

## Conclusion

This study makes a comparison of the constitutional status, legal and Administrative system of FATA before and after the merger, which concludes that the people of FATA were forgotten by the nation to provide them with basic human rights, including casting legal vote rights, freedom rights etc. The study also enlightens the effect on FATA after its merger into KP. This describes the improvement of FATA constitutional status by giving them the right of voting, administration and legal status by establishing proper courts, police stations, and development authorities to improve the infrastructure and to make FATA a functional, active area in the process of national development. Every government tried to bring positive changes to FATA by implementing many reforms, but these reforms didn't achieve their goals; in the end, the possible solution was to merge FATA into KP; this will assure the development of FATA by improving the constitutional, legal and administrative

status. The people of FATA will experience equal rights as the people of KP are enjoying it will bring new hope and will encourage the people of FATA to improve their lives and to make Pakistan a great nation.

## Recommendation

The above study leads to the following recommendation:

### Constitutional Status

It is recommended that the government should take such measures to win the confidence of the people of FATA. In essence, the government should revise the seat allotment in the KP assembly to assure the political rights of the FATA people.

### Administrative System

The administrative system is the key to organizing the social life of the people. It is recommended that

1. The government of Pakistan should organize a good administrative system for the people of FATA to create roads and proper infrastructures for the FATA region
2. To provide jobs, education, to establish proper schools, colleges and universities to increase the literacy rate in FATA.
3. Allocation of funds for the people of FATA is the most important step for the development of this area. The National Finance Commission (NFC) should be requested to make an allocation of three percent on an annual basis for ten years for FATA.
4. The policymakers should adopt such a vibrant and viable policy for the reconstruction of infrastructure, rehabilitation of internally displaced persons (IDPs)

### Legal System

Jurisdiction of Supreme Court and Peshawar high court should be extended to FATA. Levies and khassadars should be replaced by regular police.

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