Citation: Mahsud, N. H. K., Ahmad, M. S., & Wasai. (2021). Frontier Crimes Regulation (FCR): From Introduction to Abolition. *Global Political Review*, *VI*(I), 109-120. https://doi.org/10.31703/gpr.2021(VI-I).10

CrossMark Cite Us

Noor Hamid Khan Mahsud [*] | Mian Saeed Ahmad [†] | Wasai [‡]

Frontier Crimes Regulation (FCR): From Introduction to Abolition

Vol. VI, No. I (Winter 2021) URL: http://dx.doi.org/10.31703/gpr.2021(VI-I).10 Pages: 109 – 120

p- ISSN: 2521-2982 e- ISSN: 2707-4587 p- ISSN: 2521-2982 DOI: 10.31703/gpr.2021(VI-I).10

Headings

- Introduction
- FCR Undergoes Major Changes
- Collective/Territorial Responsibility
- The Institution of Jirga
- 2013 Onwards Developments and Abolition of FCR
- Conclusion
- References

Abstract *When the British arrived at the North-West Frontier, it adopted several special measures to crush the resistance from Pashtun tribes and safeguard colonial interests. One of these special measures was the introduction of FCR, which was introduced to increase the conviction rate in criminal cases without the requirements of due process of law. This paper tries to present a detailed account of FCR from its introduction to its abolition. It highlights the circumstances which led to the introduction of FCR. It further explains how the British revised the FCR from time to time to expand its scope to make it better serve imperial interests. Its review by various commissions/committees and higher judiciary's observations about it are also discussed in this paper. This paper is based on both primary sources like archival material and personal interviews as well as secondary sources.*

Key Words: FCR, Jirga, FATA, Territorial Responsibility, Collective Responsibility

Introduction

With the annexation of Punjab by the British in 1849, the responsibility for maintaining peace and order at the North-West Frontier (simply frontier from now onwards) transferred to British India (Baha, 1978). The British accepted Ranjit Singh's frontier and constructed a road with forts along with it. British India also tried to reconcile and bribe the chiefs of the frontier tribes (Gott, 2011). However, the pattern of rebellion continued under British rule as well. With the exception of Sepoy Mutiny (1857), the Second Anglo-Afghan War (1878-80), and Second World War (1914-18), there was barely a single year of the ninety-eight years (1849-1947) in which the government was not to send a military expedition to deal with revolts. The troops involved in each campaign ranged from a few companies to eighty thousand (Embree, 1977).

British policy on the frontier did not remain static; rather, it passed through various phases. One of the several policies adopted by the British at Frontier was the introduction of FCR in the early 1870s. It was a special legal and administrative code which provided for easy convictions of accused without the requirements needed for convictions in regular courts. It placed vast and arbitrary powers in the hands of British officers serving on the frontier.

Introduction/Promulgation of the FCR

In the beginning, British Indian Government extended ordinary laws to the settled districts of the frontier. However, the peculiar nature of the society and cultural norms of its residents made it difficult for the administration to get convictions in

[*] Associate Lecturer, Department of Pakistan Studies, The Islamia University of Bahawalpur, Punjab, Pakistan. Email: nhkmaseed22@gmail.com

[†] Assistant Professor, Department of Pakistan Studies, The Islamia University of Bahawalpur, Punjab, Pakistan.

[‡] PhD Scholar, Taxila Institute of Asian Civilizations, Quaid-e-Azam University Islamabad, Pakistan.

criminal cases. Thus, the conviction rate was very low as compared to India's other parts (Khan, 2008). Peshawar valley persistently experienced a high rate of murders, theft and violence. The Pashtuns, inhabiting the frontier, actually resisted the ordinary laws applied elsewhere in the subcontinent. While recognizing *Pashtoonwali* as legitimate law, they did not consider the legal code introduced by the British as a fair law and thus would either overlook or dodge it (Nichols, 2013).

During the Close Border Policy, Frontier experienced a steady increase in violent incidents. This policy could not bring peace and order to the frontier and thus did not guarantee the protection of British interests (Groh, 2006). Thus, the Colonialists quickly realized that the laws applied to other parts of India were insufficient to check the perceived high frequency political and social volatility, which was defined as 'crime'. The situation was even more serious along the Indo-Afghan border (Nichols, 2001). Therefore, the British reviewed its policy options (Groh, 2006). and one of the special measures taken by the Government of Punjab with regard to the frontier was the modification of the Indian Penal Code's (IPC) application by formulation of Punjab Frontier Crimes Regulation of 1872 (PFCR) for the trans-Indus districts. Its aim was to deal with the border and tribal crimes not appropriately covered by the IPC (Nichols, 2001). The PFCR was introduced not to substitute the already existing legal code rather supplement it (Aziz, 2013). The regulation was aimed at making Pashtuns accountable for their deeds— an objective which could not be achieved through IPC. The new system was a hybrid of tribal customs and British legal codes (Groh, 2006).

The officers responsible for administration under the FCR were vested with vast powers to imprison people without review and to punish whole communities for the deeds of the individual(s). Similarly, Political Agents would get huge sums of money to buy loyalties of local elders (Ali, 2011). Basically, the FCR provided for the concentration of executive and judicial powers in the same hands (Wazir, 2007).

With the introduction of FCR, the need for political control outweighed the principle of fair trial and appeal (Nichols, 2013). Thus, due to its draconian character, it came to be known as "black law" (Ali & Rehman, 2001). FCR's harsh nature was even accepted by the Indian Office as it described it as "an exceptional and somewhat primitive" law (Baha, 1978). To Willard Berry, who is quoted by Francois Tanguay-Renaud (2002, 567), the FCR "cannot be conceived as an instrument of justice in either the traditional or the Western sense nor can it be considered a substitute for either." According to Jules Stewart (2007), unfair arrests, inhuman prison conditions, derogatory trials, and human abuses were among the common features of retributive justice under FCR.

The new legal and administrative system provided for a Council of Elders (Jirga) to be appointed by the administration for settling criminal as well as civil cases. The Deputy Commissioner (DC) was empowered to constitute Jirga for the trial of the accused when enough evidence was not available to convict him in a regular court. The concerned officers were authorized to implement the decision made on the recommendations of Jirga as it was a verdict of a regular court (Wazir, 2007). It authorized Jirga to deal with cases, but it did not act independently. It acted as a jury but was not bound by any law of evidence (Aziz, 2013) and was expected to arrive at a decision by its own method. Thus, the number of convictions considerably increased through this new system (Groh, 2006). The regulation, however, did not authorize the DC to sentence the accused to imprisonment. He could only impose a fine on those convicted under this Regulation (Khan, 2013).

While formulating the Regulation, British authorities borrowed from Pashtun customs, and it was designed in such a manner so it may appeal to Pashtuns' standard of justice (Groh, 2006). Pashtun customs were twisted in such a manner to facilitate the government in securing convictions (HRCP, 2005). Resultantly, there emerged a mixture of law and local customs without satisfying either. Actually, the British presented the regulation as a legal instrument based on Pashtun customs to justify its authoritarian rule (Nichols, 2013). The regulation provided formal legal recognition to punitive measures against tribesmen such as fines, blockade, collective punishment, destruction of properties and crops used by the British to deal with Pashtun

resistance to its authority (Sammon, 2008).

The regulation was a special legal mechanism as British policymakers thought that controlling these people required disproportionate punishment (HRCP, 2005). A letter was written by W.R.H. Merk (Deputy Commissioner Peshawar) to Commissioner and Superintendent Peshawar Division on September 9, 1892, clearly shows this British attitude towards the native people. The letter stated, "In short, admirable as they are, our civil law courts are unsuited to a semi-barbarous people as were the Roman laws to the Germans." It was such a Regulation that also provided for the transportation of prisoners convicted under its sections. British India would often transport these prisoners to Andaman Islands (Nichols, 2013).

According to Shaheen Sardar Ali and Javid Rehman (2001), the aim of formulating FCR by the British was the suppression of crime and resistance rather than the promotion of people's welfare. They add, "[t]he administration of justice is neither its aim nor purpose". The system was devised in such a manner to give the impression of non-interference in tribes' affairs, but the real objective was to keep these people away from universally accepted norms of justice and deprive them of the fundamental right of equality before the law and legal protection.

FCR Undergoes Major Changes

The first regulation was twice revisited in the 1870s, and minor changes were made to it (HRCP, 2005). After some time, the British officers serving on the frontier once again felt that the regulation was not fully serving colonial interests. They would recommend amendments in the system to their seniors (Aziz, 2013). Therefore, the regulation was revised in 1887 under Viceroy Lord Dufferin (Stewart, 2007), and its scope was expanded with new offences and acts being added to it (HRCP, 2005). The new code was called Punjab Frontier Crimes Regulation 1887 (Wazir, 2007). The revised regulation was enforced in Kohat, Peshawar and Hazara districts in March 1887 while in Dera Ghazi Khan, Bannu and D.I Khan in July 1887 ((Nichols, 2013).

The new regulation contained two types of sections: general application and specific application. Out of 54 sections of the PFCR 1887, 21 were of general application while 33 were applicable only against Balochis and Pashtuns and such other sections of society which the Local Government could, in official Gazette and with prior approval of Governor-General in Council, notify (PFCR, 1887, section 4). This regulation gave wide-ranging and diverse powers to the administration. A major difference between the Regulation of 1887 and the earlier ones was that under the new regulation, DC was authorized to sentence the accused to seven years imprisonment on the recommendation of Jirga (Khan, 2013). Section 8 of the Regulation provided for the whipping of persons convicted for offences punishable under certain sections of the Indian Penal Code. However, women, men more than 45 years old and those sentenced to transportation or imprisonment exceeding five years were exempted from whipping (PFCR, 1887, section 8 &14).

Under this regulation, in case a tribe, sub-tribe or an individual acted in a hostile manner either towards the administration or residents within British administered districts, the DC, with the approval of Commissioner, was empowered to order arrest and detention of all persons belonging to that tribe, seize and confiscate properties of persons belonging to the tribe, debar the tribe from access to British India and stop people living in British India from any interaction and communication with such tribe. The regulation also empowered the DC to impose fines on whole communities in case it seemed that the residents of such communities had abetted criminals, failed to recover the criminals or facilitate their arrest, assisted offenders to escape or suppressed evidence. Furthermore, in case a dead body or a fatally injured person was recovered from an area, it was deemed to be killed/injured by the community from whose area the body/injured person was recovered unless the headmen of the village/community convinced the administration that the community had no opportunity to stop the murder or arrest the culprits and it used all means to bring the culprits to book (PFCR, 1887, sections 23-25). Under section 31, if a person was found

carrying arms in such conditions to provide enough grounds for doubt to assume that he intended to use the arms for illegal activities and that he tried to elude observation, he could be sentenced to five years imprisonment or fine or both.

The regulation banned the construction of new residences, settlements, villages, walled enclosures or towns within 5 miles from British India's external border without prior approval of administration. Commissioner was authorized to sanction permission or refuse it. Similarly, the government was authorized to remove, on the military ground, any settlement located close to India's external border to any other place (PFCR, 1887, sections 33 & 34). The DC also had the power to ask an individual, who is DC's opinion, was a perilous fanatic, or dangerous alien, or was believed to have a serious dispute which could cause bloodshed, to live at such place to which this regulation did not apply or any other site which the DC thought desirable (PFCR, 1887, section 35).

Furthermore, this regulation authorized any individual, especially pro-government clans, to apprehend any person who had been concerned in any cognizable offence, against whom a reasonable complaint had been filed, or credible information had been received, or there existed a reasonable suspicion of his having been so concerned. Such arrest did not necessarily require an order from the magistrate. This section even authorized a person to cause the death of an individual against whom the specific sections of PFCR 1887 could be enforced (PFCR, 1887, section 37).

The new regulation empowered the DCs to discern cases of disputes, on police reports or information received otherwise, and refer such cases to Jirga for settlement even when no party had filed a suit in this regard (Aziz, 2013). DC was further authorized to ask a person for surety bond's execution as a guarantee for good behaviors. In case of failure, the administration was empowered to imprison him for three years, extendable by three more years. (PFCR, 1887, sections 39-44).

The regulation gave discretionary powers to DCs and Commissioners to refer a case to Jirga or regular court (Aziz, 2013). Likewise, **s**ection 16 of the PFCR 1887 authorized Commissioners and DCs to withdraw a case from the session court at any stage before the accused had been convicted or acquitted, so that it may be referred to Jirga (through which it was much easy to get someone convicted even without enough evidence). Under section 12 of the regulation, civil courts had been barred from taking cognizance of any claim with respect to which DC had acted. Similarly, the accused had no right to appeal against the decisions under this law. Only Commissioners exercised revisionary powers if they deemed that a decision was against "public policy" or "good conscience" (PFCR, 1887, section 21).

The regulation also fixed five years imprisonment or fine or both for adultery. But the section was biased against women as it mentioned punishment only for married woman in case her husband or another person, having care of the woman in the absence of her husband, launched a complaint in this regard (PFCR, 1887, section 32). Though sex is something that involves two parties, the regulation fixed punishment only for one side (women). It may be noted that the researchers could not find any record of this section is implemented.

Second Phase of Major Changes in FCR (FCR OF 1901)

Few years after the implementation of the 1887 Regulation, the administration at the frontier started realizing that the regulation was not sufficient to effectively protect its interests. Thus, in the 1890s, there were repeated calls from British officers responsible for administration under the PFCR for changes in the Regulation (Nichols, 2013).

In January 1899, Lord Curzon assumed charge as Viceroy of India (Embree, 1977). The goal of Curzon's frontier policy was to maintain law and order on the borders between settled districts and Tribal Areas (Baha, 1978). Therefore, he brought the tribal areas directly under the central government and separated frontier settled districts from Punjab and constituted North-West Frontier Province (NWFP) in 1901. Curzon also revisited the loosely organized set of Regulations and organized them into FCR (III) of 1901 (Embree, 1977; Akins, 2017). A four-member committee

tasked to present recommendations for changes in the regulation in the light of suggestions of officials serving on the frontier, under C. L. Tupper started working in Lahore on October 27, 1899. The committee held seven meetings before presenting its report (Nichols, 2013). Thus the new Frontier Crimes Regulation came into force on April 24, 1901 (Chaudhry, 2013).

The main theme of FCR 1901 was the same as that of PFCR 1887. Its scope was further expanded with the increased powers of DCs. Punishment for murder was increased from seven to fourteen years (FCR, 1901, section 12). Under the Regulation of 1887, men and women above 45 years of age and people sentenced to five years imprisonment or transportation were exempted from whipping. The 1901 Regulation did not mention any exemption from whipping (Stewart, 2007). Like the previous regulation, this one also provided for preventive detention under which the administration could ask an individual to provide a surety bond for good behaviour. Failure to do so, the administration could arrest a person for six years. It barred civil courts' jurisdiction as earlier (section 10). On the one hand, it denied the right to appeal to the accused against the decisions made by DCs, while on the other hand, proceedings and decisions made under FCR could not be challenged in any civil and criminal court (FCR, 1901, section 48 & 60).

As the British wanted to make roads secure for their movement, so the FCR of 1901 provided for the punishment of any crime taking place on roads. Thus the sanctity of roads was established. It meant that act of killing or kidnapping, even common people on government roads were to be punished. Firing across the road was considered a criminal act and punishable with a fine of 2000 rupees. The law required the tribesmen not to commit a crime on state property (such as a road) though they were free to kill each other at other places. For example, an Afridi tribesman was arrested after a gun battle with his rival family. As the bullets fired from his gun flew across the road, camel tracks, and railway line, he was fined Rs.6000 (Stewart, 2007).

Collective/Territorial Responsibility and Jirga: Basic Elements of FCR

Two very important tools which first the Britishers and later on Pakistani authorities used under the FCR are the *Sarkari* Jirga (FCR Jirga) and Collective/Territorial Responsibility.

Collective/Territorial Responsibility

Under the collective responsibility clause, the administration would take punitive measures against the whole tribe, sub-tribe or clan for the crimes committed by individuals. The method to punish the whole tribe/clan for individual acts was devised by Col. Coke, who was responsible for the affairs of Kohat Pass Afridis in the early 1850s (Khan, 2010, 68). Edward, who was appointed Commissioner of Peshawar in 1853, further advanced this system while dealing with Kuki Khel Afridis (Embree, 1977). With the introduction of FCR, this system of collective punishment was formalized. FCR also contained sections with regard to territorial responsibility. It means that in case a dead body or seriously wounded person was found without any clue about the culprits, the tribe/sub-tribe/clan from whose soil the body/wounded person was recovered was to be made responsible for the crime (FCR, sec, 1901, section 21-23).

These collective/territorial sections of FCR were formally in use till the recent past. For example, officials of Khyber Agency imposed a 120 million rupees fine on the Sipah clan of Afridi tribe for the attacks carried out by Mangal Bagh led Lashkar-I-Islam as Mangal Bagh belongs to the Sipah clan (Khattak, 2015). Though FCR has officially been withdrawn still local people complain that the administration and security forces still punish whole tribes and villages for crimes of miscreants.

The Institution of Jirga

Jirga is a centuries-old institution in Pashtun culture. When the British took control of the frontier, they realized that Jirga could be exploited easily for furthering their interests. Thus they provided legal cover to Jirga under the special regulation. It authorized the DCs to refer civil as well as criminal cases to Jirga for determining the question of innocence and guilt (Baha, 1978). However, the *Sarkari* Jirga is very different from the traditional one which existed in Pashtun culture (Spain, 1963). For instance, the FCR Committee 1899 observed, "the

normal or indigenous Jirga is a tribal assembly acting unanimously. No doubt we have modified the primitive institution in adapting it to our requirements" (Nichols, 2013).

This system empowered the British officials to bypass the regular court system and refer cases to Jirga for getting convictions without enough evidence (Nichols, 2001). Under the regulation, there was no fixed procedure for arriving at decisions, with the only requirement being that there should be an inquiry and that viewpoint of the accused should be heard (Renaud, 2002). The regulation authorized the DCs to accept the Jirga's opinion or remand the case for further inquiry to the same Jirga or refer it to another Jirga. It means that DC was at liberty to accept or reject the findings of a Jirga (Spain, 1963).

A letter addressed to Commissioner and Superintendent Peshawar by Chief Secretary to the Government of Punjab and its Dependencies in 1894 also puts a question mark over the fairness of the FCR Jirga proceedings. The letter stated, "[i]n several cases of convictions which the Lieutenant-Governor had had before him since he came to Punjab there was no definite finding by the Jirga of any facts constituting an offence……" (Nichols, 2013). Another letter, written by H. C. Fanshawe, the Chief Secretary to the Government of Punjab and its Dependencies to the Commissioner and Superintendent *Derajat* Divisions on 15th of August, 1896, stated, "[i]n one case which came up on revision, the magistrate had appointed the whole of the witnesses for the prosecution as Jirga, who, needless to add, convicted the accused. On recently holding temporary charge of the Peshawar Division, I found Magistrates appointing time after time the same men to serve on Jirgas whom I remembered as constantly employed in the same capacity in former years of my charge of the District…" (Fanshawe, 1896).

The situation did not change much even after independence. According to a survey conducted a few years ago, 80 percent of people believed in the credibility of traditional Jirga. On the other hand, more than 70 percent said they did not consider the FCR Jirga as neutral and credible (Shinwari, 2008). While responding to the researchers' question as to whether Maliks can be asked by the administration to sign blank papers so that decision could be written on it, later on, no Malik ruled out the possibility. Sang-I-Marjan Mehsud, former secretary to the governor and former head of FATA Tribunal who also served as Political Agent in Kurram, Khyber and Bajaur agencies, said that Maliks would take into account administration's desires while tendering their opinion as members of Jirga (personal communication, March 30, 2015). On the basis of interviews with leading Maliks, officials of administration and researchers' observations, it can be concluded that Maliks serving on FCR Jirga were under the control of the administration.

Amendments in FCR of 1901

The FCR of 1901 was amended in 1928, 1937, 1938, 1947, 1962, 1963, 1995, 1997, 1998 and 2000. These changes, however, were minor in scope and nature. It was in 2011 that, comparatively speaking, major amendments were made to the regulation by the then President Asif Ali Zardari. Through these amendments, the scope of collective responsibility was narrowed down, women, children below 16 years and men above 65 years of age were excluded from the application of collective responsibility section, an accused was to be presented before the magistrate within twenty-four hours after his arrest, some mechanism for officials' audit was introduced, an accused had to be informed about the charges levelled against him, and an accused could be released on bail (but no pre-arrest bail). Right of appeal to the FATA Tribunal (a three-member tribunal consisting of two retired bureaucrats and one lawyer) was also granted (Khan, 2013).

These amendments were highlighted as a great important step toward the mainstreaming of the tribal belt. However, after thorough scrutiny, it emerged that no substantive changes were made to the regulation. It seemed that the amendments were introduced to divert attention from Actions (in Aid of Civil Power) Regulation 2011, which contained even harsher and stringent provisions than FCR (Mehmood, 2013). Even after these amendments, the general character of the FCR remained harsh, and it was incompatible with the norms and standards of human rights (Arif & Raza, 2014).

The problem was not only of insufficient amendments but also of implementation of the ones introduced in 2011. Little changed on the ground with the 2011 amendments as these amendments were not properly implemented. The majority of the residents of the area were not even aware of the changes and their nature. For example, a leading Malik told one of the authors in March 2015 that amendments have been made to the regulation, but so far, the local administration has not received instructions with regard to their implementation. Similarly, a senior official of political administration with about 30 years of experience to his credit said that the 2011 changes in FCR were meant for the rest of the country and not FATA (while FCR was only operational in FATA).

FCR's Review by Various Commissions/ Committees

Several committees/commissions have looked into the working of FCR and put forward their suggestions. In 1921, North-West Frontier Committee examined FCR and criticized it on the ground that excessive use of some of its provisions had negatively affected the efficiency of the judicial system. Another committee, appointed in 1931 and headed by Justice Naimatullah, recommended that DC should not have the power to exclude ordinary courts' jurisdiction. It recommended that the provisions of the criminal procedure code should apply to the proceedings under the regulation and that the accused should be allowed to be represented by legal experts. After the creation of Pakistan, the Quetta and Kalat Laws Commission, headed by Justice Abdul Hamid of West Pakistan High Court, was formed by the government in 1958 to examine the judicial structure in Kalat and Quetta Divisions. The commission recommended withdrawal of the FCR from these Divisions, abolition of Special Areas, and extension of the jurisdiction of High Court to these areas (Wazir, 2007).

The Law Reform Commission of 1958, also known as Justice S. A. Rehman Commission, also looked into the working of the FCR. Though the commission, keeping in view the prevailing circumstances, a sanctioned continuation of the special laws to operate for the time being, also recommended the elimination of these special laws and their replacement by ordinary laws. (Khan, 2013). Again the Law Reform Commission of 1967-70, which was headed by former Chief Justice of Pakistan Hamood-ur-Rehman, examined the FCR and observed that the ultimate goal should be the replacement of special laws by ordinary laws in these areas (Wazir, 2007).

In 2005, FATA Reforms Commission, headed by former Peshawar High Court Chief Justice Mian Muhammad Ajmal, reviewed the FCR and suggested suitable and necessary changes. Though the report was not made public, the media, however, reported that the commission had suggested drastic changes in the FCR. In a personal communication with one of the authors, Justice Ajmal himself confessed that they recommended major changes, but that was not introduced (Ajmal, 2015).

Syed Yousuf Raza Gillani, after assuming charge as Prime Minister of Pakistan in 2008, announced that the FCR would be repealed. He also appointed a nine-member cabinet committee to study the FCR and propose recommendations for its repeal. The regulation, however, could not be repealed (Khan, 2013). The Human Rights Commission of Pakistan also prepared a report about FCR and compared life under the FCR to living like a slave (Chaudhry, 2013).

Superior Courts' Observations about FCR

As the 1956 Constitution of Pakistan did not bar the jurisdiction of the superior judiciary with regard to tribal areas, the FCR was challenged in the West Pakistan High Court on many occasions for being in violation of the spirit of the constitution and thus violating fundamental rights of people to whom it applied (Arif &Raza, 2014). Resultantly, Pakistan's superior judiciary, including Federal Shariat Court, passed judgments against the FCR and recommended that it should be repealed (HRCP, 2005). In cases like "Dosso vs the State," "Toti Khan Vs District Magistrate Sibi," "Abdul Akbar Khan vs. District Magistrate Peshawar," "Abdul Baqi Khan vs. Superintendent Central Prison Much," "Khair Muhammad Khan vs. Government of West Pakistan" and "Malik Muhammad Usman vs. the State," the superior judiciary declared FCR's

provisions to be in violation of fundamental rights and therefore void (Fair, 2014).

In the "Abdul Akbar Khan vs DC Peshawar" case, the provisions of the FCR only applicable to Pashtun and Baloch communities were challenged on the basis that they were in violation of Article 5 of the 1956 constitution, which ensured equal protection by law to all. Justice Kayani, in his Judgment, observed, "In the present case, the classification amounts to racial discrimination and is open to criticism as discrimination between a Negro and a white man" (Renaud, 2002). Similarly, In the Manzoor Elahi case, a Supreme Court bench observed that "[A] trial under the Frontier Crimes Regulation cuts at the very root of the principle of separation of the judiciary from the executive….”). In the same case, justice Salah Uddin Ahmad remarked that "since there were no rules guiding the reference of cases to the Councils of Elders, no rules of procedure or evidence, no possibility of being represented by the counsel and denial of any right of appeal to the superior judiciary, the FCR constituted ‘a denial of fundamental fairness shocking to the universal sense of justice." Similarly, Justice Anwar ul Haq observed that "a trial under the Frontier Crimes Regulation could not be regarded as a trial in accordance with the law" (Renaud, 2002, 572-73).

In 1979, the Shariat bench of Balochistan High Court concluded that it was more law of 'expediency' or 'convenience' than one ensuring justice. The court struck it down, stating that it was contrary to injunctions of Islam. Because of the limited jurisdiction of the bench, the decision only affected tribal areas in Balochistan. In a Balochistan High Court judgment in 1991, Justice Amir-ul-Mulk Mengal stated that "the object was to keep them away from a universally recognized system and instead give them a sugar-coated legal device" (Hussain, 2012).

Withdrawal of FCR from Khyber Pakhtunkhwa and Balochistan

FCR ceased to operate in the then NWFP after the enforcement of Pakistan's first constitution in 1956. Similarly, it ceased to be in operation in Balochistan except in certain parts with the coming into force of the constitution of 1973. It was withdrawn from Malakand in 1975. It was also withdrawn from the remaining parts of Balochistan after Balochistan High Court's Shariat Bench declared it as un-Islamic in 1979 (Afridi, 2004). Thus, it was only the erstwhile FATA where this colonial law remained enforced till 2018, when it was repealed through an executive order of the president of Pakistan.

2013 Onwards Developments and Abolition of FCR

Former Governor Khyber Pakhtunkhwa Sardar Mehtab Ahmad Khan in May 2014 constituted a five-member FATA Reforms Commission consisting of retired and serving civil and military officers and a former provincial minister. The commission was tasked with the responsibility to present a comprehensive reform plan within ten months (Ali, 2014). The commission recommended minor changes in the political and judicial system. It recommended the formation of a representative council to come up with recommendations with regard to the future role of FCR. It also recommended the formation of an agency-level council and Governor's Advisory Council having representation from all administrative units of the erstwhile FATA (Qureshi, 2015).

In November 2015, former Prime Minister Muhammad Nawaz Sharif constituted a high-level committee to put forward recommendations for reforms in FATA. Sartaj Aziz, the then adviser to the prime minister on foreign affairs, was made the head of the five-member committee (Manan, 2015). The people of FATA strongly protested this decision on the ground that the committee did not have even a single member from the area. However, the government went ahead with its plans. The committee presented four broader options with regard to reforms. They were: (1) retaining the statuesque in FATA, (2) making FATA a separate province, (3) merging it with Khyber Pakhtunkhwa, and (4) the formation of a FATA Council like that of Gilgit-Baltistan (Ali, 2018). Though the committee presented four options to the government, it suggested a merger of FATA with Khyber Pakhtunkhwa. (Noor, Hashmi & Bukhari, 2018).

Following the publication of the report, the

discussion about reforms almost totally remained focused on the two options of making the area a separate province or merging it with Khyber Pakhtunkhwa. People of FATA were sharply divided into these two options (Ali, 2018). Supporters of the two options organized workshops, seminars, protests, and social media campaigns. The researchers also participated in the gatherings of both sides to know their point of view. After the committee presented its recommendations, the government looked indecisive with regard to its implementation as some of the close political allies of Nawaz Sharif's PML-N had severe reservations over the merger option.

It was at the end of May 2018, days before the expiry of the term of National Assembly, that the 25th Constitutional Amendment was passed by the Parliament and signed into law by the president on 31st May to merge FATA with Khyber Pakhtunkhwa (Wasim, 2018) and abolish its special status. Through this amendment, article 247 of the constitution, the main constitutional obstacle barring application of laws made by federal and provincial legislatures and jurisdiction of higher judiciary to FATA, was also repealed, after which Supreme Court and High Court were enabled to exercise jurisdiction over the erstwhile FATA. Thus, the president's authority to promulgate laws for the area also ceased. Furthermore, it allowed for the extension of a complete set of the Pakistan Penal Code (Abbasi, 2018) to ex-FATA.

Before signing the bill into law to merge FATA with Khyber Pakhtunkhwa, the president on 29th May 2018 promulgated FATA Interim Governance Regulation (FIGR) (Awan, 2019). The constitutional amendment ending the special status of FATA was widely celebrated as the dawn of a new era for the people of the tribal belt. In reality, however, it made little difference as the repeal of FCR and extension of regular laws and courts to FATA were supposed to provide relief to the people, but the introduction of FIGR provided as many arbitrary powers to state's representatives as were provided under the notorious FCR. Promulgation of FIGR by the president was an unethical act as the Parliament, and the Khyber Pakhtunkhwa Assembly had already passed the merger bill, which, among other things, sought the abolition of special powers of the president with regard to FATA. Another factor that neutralized the impact of the FATA merger and abolition of FCR was the Actions (in aid of civil power) Regulation 2011. This regulation provided extensive powers to security forces operating in the tribal belt.

FIGR was challenged in Peshawar High Court, which on 30th October 2018 declared it as unconstitutional. The Supreme Court, in its judgement on 16th January 2019, upheld Peshawar High Court's decision. Thus, all the laws enforced in Khyber Pakhtunkhwa became applicable in the erstwhile FATA (Awan, 2019). It seems that policymakers are still not ready to effectively mainstream the area. After the striking down of FIGR by the Peshawar High Court, the vacuum was filled by the introduction of KP Continuation of Laws in Erstwhile PATA Act 2018 and KP Continuation of Laws in Erstwhile FATA Act 2019, which shows the state's intentions. These regulations were meant for the continuation of the laws applicable in FATA and PATA, like Actions (in aid of civil power) Regulation 2011, even after the merger of these areas with the province. These laws were also challenged in the Peshawar High Court ("Legislation for former Fata, Pata challenged," 2019). The court declared both of these laws as well as the Actions (in aid of civil power) Regulation 2019 as unconstitutional (Amin, 2019). The KP Government challenged the verdict in the Supreme Court. A three-member bench suspended the judgement and ordered the constitution of a larger bench (Iqbal, 2019). Thus the matter is still in court.

Conclusion

The introduction of the FCR was one of the special measures which the British took for suppressing resistance from the local people, especially Pashtun and Baloch. This special code put unprecedented powers in the hands of political administration. With the passage of time, the scope of the regulation was expanded by including new sections in it, making it more draconian. Objectively speaking, FCR served colonial interests in a better way. After partition, Pakistan should have abolished this colonial law, but it did not do so. Even though it was finally withdrawn from Balochistan and settled districts of Khyber Pakhtunkhwa, it continued to be the main

law in the erstwhile FATA till 2018. Thus, this draconian legal code kept deprived the people of this area of their fundamental rights for more than seventy years. Though legally it ceased to be the law anymore, the state still seems to be determined to retain this system under different titles.

References

Abbasi, W. (2018, May 31). FATA: abolished and merged. *Daily Times*. https://dailytimes.com.pk/246758/fata-abolished-and-merged/

Afridi, L. (2004). The Impact of FCR. In S. Khan (Ed.), *Proceedings of Seminar on the Federally Administered Tribal Areas of Pakistan, December 7-8, 2004*. Peshawar: Area Study Centre, University of Peshawar.

Akins, H. (2017). FATA and the Frontier Crimes Regulation in Pakistan: The Enduring Legacy of British Colonialism. The Howard H. Baker Jr Center for Public Policy, Brief No. 5:17. http://bakercenter.utk.edu/wp-content/uploads/2017/11/PolicyBrief5-2017.pdf

Ali, I. (2018). Mainstreaming Pakistan's Federally Administered Tribal Areas: Reform Initiatives and Roadblocks. The United States Institute of Peace, Special Report 421.

Ali, S. S., & Rehman, J. (2001). Indigenous People and Ethnic Minorities of Pakistan: Constitutional and Legal Perspective. Routledge.

Ali, Z. (2014, May 2014). Another commission formed on Fata reforms. *Dawn*. https://www.dawn.com/news/1107498/another-commission-formed-on-fata-reforms

Amin, A. (2019, October 18). PHC declares extending police-like authority ordinance void. *The News*. https://www.thenews.com.pk/print/542752-phc-declares-extending-police-like-authority-ordinance-void

Arif, K., & Raza, M. (2014). Peshawar High Court Judgement Sheet on FATA in Abdul Bari and Others vs. Director Livestock, Dairy Development FATA Secretariat and Others (W. P. No. 1741 of 2012), Summary and Analysis: Implication for the Reform Process in Pakistan's Federally Administered Tribal Areas (FATA). http://www.slideshare.net/fatanews/peshawar-high-court-fata-judgment-analysis.

Aziz, Z. N. (2013). Anxieties of Empire: Examining Frontier Government in 19th Century British India. *Student Pulse*, 5(9), 1-25.

Baha, L. (1978). NWFP Administration under British Rule 1901-1919. National Commission on Historical and Cultural Research.

Chaudhry, G. M. (2013). The Frontier Crimes Regulation, 1901– As Amended on August 27, 2011: Summary of 2011 Amendments. *National Democratic Institute Islamabad*.

Embree, A. T. (1977). *Pakistan's Western Borderlands: The Transformation of a Political Order*. Carolina Academic Press.

Fair, C. C. (2014). *Fighting to the End: The Pakistan Army's Way of War*. Oxford University Press.

Fanshawe, H.C., (Esquire Chief Secretary of Punjab Govt). (1896, August 15). [Letter to the Commissioner and Superintendent of Derajat Division]. Directorate of Archives and Libraries, Khyber Pakhtunkhwa, Peshawar.

Gott, R. (2011). *Britain's Empire: Resistance, Repression and Revolt*. Verso Books.

Government of Pakistan. (2011). *Frontier Crimes (Amendment) Regulation No. III of 1901 as amended August 2011.*

Government of Punjab. (1887). *Frontier Crimes Regulation, 1887*. Lahore: Punjab Government Press.

Government of the Punjab. (1901). *Frontier Crimes Regulation (Regulation No. III of 1901).*

Groh, T. L. (2006). *Ungoverned Spaces: The Challenges of Governing Tribal Societies.* (Unpublished Master Thesis). Naval Postgraduate School Montere, California.

Human Rights Commission of Pakistan (HRCP)-Peshawar Chapter. (2005). *FCR: A Bad Law Nobody Can Defend*. https://www.google.com.pk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CBoQFjAAahUKEwjy5ea51pXJAhUHkSwKHSn_C8A&url=http%3A%2F%2Fhrcp-web.org%2Fhrcpweb%2Fwp-content%2Fpdf%2Fff%2F23.pdf&usg=AFQjCNHQZZu0QSRND0yo4_si2uoPdqrBNQ&sig2=iIznV16xfKFx5rM_3ywp1w&bvm=bv.107467506,d.bGg

Hussain, S. I. (2012) Conflict Management at the Grassroots in FATA. *Tigah: A Journal of Peace and Development,* I (1), 133-155.

Iqbal, N. (2019, October 25). Apex court suspends PHC order of holding KP's ordinance illegal. *Dawn*. https://www.dawn.com/news/1512789

Khan, A. A. (2013). Frontier Crimes Regulation: A contextual Analysis. *Journal of Law and Social Policy*, 2(1), 1-20.

Khan, A. M. (2008). The Dispensation of Justice in the Federally Administered Tribal Areas (FATA) of Pakistan: Its Application and Analysis. *Central Asia*, 62, 107-119.

Khan, S. (2010) Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia. Eurasia Border Review, 1, 63-74.

Legislation for former Fata, Pata challenged in high court. (2019, May 24). *Dawn*. https://www.dawn.com/news/1484218

Ali, M. (2011, December 2). Frontier Crimes Regulation: Centuries Old Law Will Take Time to Reform. Express Tribune. https://tribune.com.pk/story/301002/frontier-crimes-regulationcenturies-old-law-will-take-time-to-reform

Manan, A. (2015, November 9). Govt forms high-powered panel on FATA reforms. *The Express Tribune*. https://tribune.com.pk/story/987775/notification-issued-govt-forms-high-powered-panel-on-fata-reforms/

Mehmood, A. (2013) Child Rights in Federally Administered Tribal Areas (FATA) of Pakistan and a Way Forward. *Tigah: A Journal of Peace and Development*, 136-150.

Nichols, R. (2001). *Settling the Frontier: Land, Law and Society in the Peshawar Valley, 1500-1900*. Oxford University Press.

Nichols, R. (Ed.) (2013). *The Frontier Crimes Regulations: A History in Documents*. Oxford University Press.

Noor, S., Hashmi, A. S., & Bukhari, S. T. (2018). Fata Merger with Khyber Pakhtunkhwa: Prospects and Opportunities. *ISSRA Papers*, X (II), 17-37.

Qureshi, E. A. (2015). *Recommendations of the FATA Reforms Commission (FRC)* in Development Advocate Pakistan, 2 (3). Islamabad: United Nations Development Program.

Sammon, R. L. (2008). *Mullah and Maliks: Understanding the Roots of Conflicts in Pakistan's Administered Tribal Area*. (Unpublished Master Thesis). University of Pennsylvania, Philadelphia.

Shinwari, N. H. (2008). *Understanding FATA: Attitudes towards Governance, Religion and Society in Pakistan's Federally Administered Tribal Areas.* Community Appraisal & Motivation Programme.

Spain, J. W. (1963). *The Pathan Borderland*. Indus Publication.

Stewart, J. (2007). *The Savage Border: The History of North-West Frontier*. Sutton.

Tanguay-Renaud, F. (2002) Post-Colonial Pluralism, Human Rights and the Administration of Criminal Justice in the Federally Administered Tribal Areas of Pakistan. *Singapore Journal of Comparative and International Law*, 6, 541-596.

Merk, W. R. H., Esquire, C. S. I. Commissioner and Superintendent Peshawar Division (Nathiagali) to Chief Secretary to Government, Punjab (1892. Subject: "Procedure in Criminal Cases Referred to Jirgas under Section 13 of Regulation IV of 1887." Foreign (Frontier) Department, Directorate of Archives and Libraries, Khyber Pakhtunkhwa, Peshawar.

Wasim, A. (2018, May 31). President signs KP-Fata merger bill into law. *Dawn*. https://www.dawn.com/news/1411156

Wazir, M. M. K. (2007). FATA under FCR (Frontier Crimes Regulation): An Imperial Black Law. *Central Asia*, 61, 173-198.