

Exploring the Reforms Journey of FATA in Pakistan Through Various Regimes (1947-2018)

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Abstract

FATA is a less developed region in Pakistan due to the black and draconian law in the shape of FCR (1901) enacted during British rule in India. Since the creation of Pakistan, various governments made official attempts to significantly modify the political, legal, and administrative framework of FATA. The present study examines the historical evaluation of reforms in FATA during various governments of Pakistan since independence in 1947. The study highlights how these gradual reform efforts that different central governments had taken led to the FATA merger with Khyber Pakhtunkhwa. Inconclusive points, some fruitful recommendations are also given to implement and change the system practically according to the final reform effort of the FATA merger into KP in 2018. This study will be of great importance. It will provide comprehensive knowledge to academicians, scholars, and policymakers. For this study, data are mainly collected from books, reports, journals, and newspaper articles. This study is basically qualitative, and a descriptive-analytical technique is adopted.

Keywords: FATA Reforms, British Rule, Civilian Governments, FATA Merger.

Introduction

Federally Administered Tribal Areas (FATA) refers to Pakistan's northwestern borderland, which spans over 27220 square kilometers and is home to 5,001,676 people. It is divided into six frontier areas and seven political agencies. FATA's demographics show that most of the Pakhtun population lives in this hilly region. It was encircled by the provinces of Afghanistan in the west, Balochistan in the south, Punjab in the southeast, and Khyber Pakhtunkhwa in the north and east (Ullah & Hayat, 2018). Federally Administered Tribal zones were split administratively into "protected areas" and "non-protected areas." While the latter were run indirectly by the local tribes, the former were directly run by the federal government through its political appointees known as Political Agents. As an official selected by the federal government and occasionally by a province, the Political Agent kept a careful eye on the political agency in question, ensuring that it was run with the most significant possible power and administrative authority. In addition to maintaining law and order, he used a combination of executive, judicial, and revenue powers to suppress crime and criminal activity inside the relevant tribal agency.

The Deputy Commissioners of the corresponding districts had been in charge of the FATA frontier territories' administrative issues. Under the Governor's Secretariat's general administrative supervision, each of those officers carried out their specific responsibilities

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(Khan et al., 2022). The Federal Ministry of States and Frontier Regions (SAFRON) was tasked with closely monitoring specific management, development, and other relevant concerns throughout the FATA region (Sadiq et al., 2021). However, throughout the last quarter of the 20th century, many Pakistani governments made efforts to progressively introduce some constructive improvements in the political, legal, and administrative spheres of FATA. In fact, a lot of those attempts to enact reforms in these areas were unable to come to pass because of unavoidable conditions in the nation as a whole and the region specifically (Ullah & Hayat, 2018).

FATA under the British Rule

Ever since the British began to control the subcontinent, the FATA has attracted attention. Many writers, mainly from Britain, referred to it as a "black hole" and "no man's land". To further the covert objectives of the colonial overlords, it was purposefully hidden from the knowledge of developing cultures prior to the division. Conversely, though, it was kept isolated from the outside world and considered a separate region or sector within the country (Khan, 2011). After the Durand Line Agreement came into force, FATA continued to have a separate administrative structure and relationship with the national capital under the British Raj. Even after Pakistan annexed the tribal areas in 1947, this persisted. The Pashtun tribes, who had always opposed foreign authority, were granted autonomy over their internal affairs under the British Frontier Crimes Regulation, which was enforced by Maliks and designated political agents (Khokhar et al., 2014). The Indian Independence Act of 1947 nullified the agreements between the British Raj and tribal territories, compelling the newly established state of Pakistan to negotiate fresh terms tying Pashtun tribal areas to the central authority. Ghaffar Khan and Muhammad Ali Jinnah met in Delhi just before the state of Pakistan was proclaimed in June 1947 to work out terms of cooperation. Khan agreed to back Pakistan as long as the tribal regions were integrated with the populated parts of the then-Kashmir province, known as the North West Frontier Province (NWFP). Historical records state that in exchange for Pakistani assistance, a new deal was later negotiated with tribal chiefs to maintain the current arrangements in tribal areas.

The region agreed to be loyal to Pakistan in exchange for the Pakistani government granting them autonomy and the rights and benefits of Maliks. The administrative structure of the tribal areas and the political relations between FATA and the federal government were established through agreements, notifications from the Governor General of Pakistan, and orders. These were later reviewed and revised before being codified in the 1973 Constitution of Pakistan (Markey, 2008).

FATA Reforms Scenario under Initial Civilian Governments (1947-1958)

According to the partition plan, plebiscites and referendums were held in several regions of the British subcontinent to give the people a say in whether they would become a part of Pakistan or India in the future. In a similar vein, the Tribal Agencies hosted a Loya Jirga, at which the Tribals affirmed their allegiance to Pakistan. Therefore, the tribal areas became a part of Pakistan's territory when the country was divided in August 1947 (Khokhar et al., 2014). A tribal jirga of tribe members was called by Muhammad Ali Jinnah on April 17, 1948, at the Governor House in Peshawar. Jinnah expressed his gratitude to the Tribals for their contributions to the Pakistani formation movement during his first official meeting with them. As a result, Governor General Jinnah had complete administrative control over the newly formed Ministry of State and Frontier Regions (SAFRON), a special department for FATA. The tribe members took control of FATA after the army, which had been stationed there prior to independence, was evacuated (Khan, 2011). Many laws, such as the Passports Act of 1913, the Trademarks Act of 1940, the National Debt Act of 1940, the National Debt Act of 1944 on

public debt, and the Pakistan Control of Entry Act of 1952, have been extended to tribal areas since Pakistan's creation. The governmental structure for tribal lands was altered from August 14, 1947, to October 14, 1955, following independence. The NWFP Governor served as the Governor-General of Pakistan's agent at the time for the management of tribal regions. The chief secretary oversaw his secretariat, and the NWFP government handled all issues pertaining to the FATA administration. FATA's unique status was preserved in Pakistan's first constitution, which was ratified in March 1956. The FCR was given constitutional protection in the 1956 constitution via articles 103 and 104 (Ullah & Hayat, 2018). These arrangements continued till 1958.

FATA Reforms Status during Military Regimes of Ayub and Yahya (1958-1971)

During the Ayub regime in 1958, the FATA administrative setup was evaluated and deemed an essential system of administration; the resident commissioner oversaw the administration of tribal territories from November 1959 to August 1960. Since the region was under the jurisdiction of both the federal government and the provincial government, the system was abandoned in 1960 as a cost-cutting measure (Markey, 2008). The 1962 Constitution was enacted by General Ayub Khan, the military ruler at the time. As a result, FATA was maintained as an "excluded area" by Article 223. FATA was initially granted Supreme Court jurisdiction; however, a subsequent constitutional amendment revoked that authority. The West Pakistani governor was granted special legislative authority for FATA (Wazir, 2013).

Similarly, in 1962, the FCR was amended to include property seizure as a penalty for convictions under sections 302 or 306 of the Pakistan Penal Code (XLV of 1860). A crucial intervention during this period was the Pakistan Army Act of 1952. In 1965, this act was expanded to include FATA. The military's action cannot be contested in any court under this Act. Another significant rule is the 1967 Administration of the Basic Democracies (Tribal Areas) rule. In 1967, this act was expanded to include FATA. Local leaders and delegates chosen in accordance with this legislation, however, were to serve under the PA and hence needed more actual power (Khan, 2011). The same situation of FATA also continued during the second regime of Yahya Khan.

FATA Reforms during Bhutto Era (1971-1977)

Under Zulfikar Ali Bhutto's political leadership of the Pakistan People's Party (PPP), the FATA Development Corporation (FATADC) was founded, and the 1973 constitution effectively expanded FATA's federal government's jurisdiction. Bhutto's direct outreach to the populace and emphasis on development and economic reforms through the building of schools, colleges, hospitals, industrial facilities, and road networks undoubtedly contributed significantly to her position. Apart from infrastructure development, quotas were set aside for the region's residents in Pakistan's educational institutions, federal jobs, and civil service in an effort to mainstream FATA (Markey, 2008). In 1976, he took the lead for the first time in introducing political, administrative, legal, and economic changes in FATA. Under the leadership of Gen. (Rtd) Naseerullah Khan Babar, the governor of the province of KP at the time, he established an official committee. Three well-known committee members were Dr. Mubashar Hassan, Rafi Raza, and Hafeez Pirzada (Ullah & Hayat, 2018). The committee's primary goal was to create a plan for integrating these regions with KP, the adjacent province, before the 1977 elections. Unfortunately, this attempt was foiled by the military coup that occurred that same year. In addition to this, the Bhutto administration implemented other measures to end the backwardness of these regions. These included creating government offices, improving the quality of the current health and education facilities, and constructing new ones, such as Cadet College Razmak in the North Waziristan Agency of FATA, in order to provide employment opportunities for the tribesmen (Wazir, 2013).

FATA Reforms Status during Zia Military Regime (1977-1988)

Major development initiatives in FATA were not initiated by the military regime of General Zia. Rather, the US and Saudi Arabia helped to introduce Islamic radicalism into the area with the intention of advancing a proxy conflict against the Soviet Union. FATA became a haven for militants due to the army's intention to use the strategic significance of the area for the proxy war in Afghanistan, the lack of development plans, and the violation of fundamental human rights by the locals (ICG, 2009). The FATA was severely impacted on both an economic and humanitarian level when millions of Afghan refugees fled over the border into the most impoverished region of Pakistan as a result of the Soviet invasion of Afghanistan in 1979 and the occupation of the nation until 1989. As weapons, cash, warriors, and the concept of Jihad expanded, the area became a focal point for the Mujahideen assault against the Soviet Union. The tribes' social structure progressively gave way to religious extremism as Mujahideen leaders took control of resources and authority from Maliks and traditional clergy (Masaudi & Mustafa, 2022). The doctrines of Deobandi and Salafi gained popularity among many young, disaffected students who were fed up with protracted conflicts with the Soviet Army and the civil strife that followed in Afghanistan. Where there was no other option for the youth to obtain even a primary secular education, many madrassas in the area offered militant Jihadi propaganda in addition to religious instruction.

FATA Reforms during Civilian Governments (1988-1999)

Every individual in the modern state has the universal right to vote. However, in FATA, the Maliks, or tribal elders, were the only ones granted the ability to vote in national elections, depriving the regular tribe members of this privilege. As a result, the FATA elections relied on a system of selective voting. During her first term as prime minister, Benazir Bhutto expanded the Adult Franchise Act to include FATA, which allowed the tribal people to be included under the purview of the Parliament. In light of this, all adult tribesmen and women were given the ability to vote and choose their members for the National Assembly (GOP, 2016). The Act was put into effect right away, and new voter registrations were created in order to include the indigenous members of FATA. Giving people the ability to vote was a historic step, especially for the tribal populace. It eventually instilled a sense of Pakistani identity in the minds of these tribal people. In fact, the immediate result of the Adult Franchise Act of 1996's extension was the widespread involvement of tribal territories in the 1997 national elections (Markey, 2008). Unlike the rest of the country, though, the election was held on a non-party basis. This change in the FATA region's election procedure presented both a challenge and an opportunity. The procedure helped to eliminate FATA's underdeveloped state and offered a chance to spearhead the establishment of democratic institutions in the region.

FATA Reforms Status during Musharraf Regime (1999-2008)

President General Pervez Musharraf, during his lengthy term, implemented several reforms in the tribal areas through local government initiatives. A few of the reforms resulted in the establishment of organizations that supported the rights of the indigenous people. The KP Secretariat mediated the governor's FATA decisions, which were carried out by the provincial government's line departments, until the 2002 reform package (Ullah & Hayat, 2018). Nonetheless, the FATA Secretariat was founded in 2002 and changed its name to the FATA Civil Secretariat in 2006 in order to oversee the execution of various development initiatives. The KP governor acts as a mediator between the FATA Civil Secretariat and the federal government. In 2000, the creation of the Agency Council as a council of local representatives was another significant development. The Agency Council's tenure ended in 2007 with no declaration about its continuation, and its members were chosen and nominated by the political agent without any executive authority (Safi, 2013).

The Musharraf regime launched another effort to begin a reform process within the 100-year-old FCR. The FCR Reforms Committee was established by Khyber Pakhtunkhwa Governor Khalilur Rahman in April 2005, with Justice (Rtd) Mian Muhammad Ajmal serving as its head. The Committee's membership, which included journalists, FATA parliamentarians, attorneys, working and retired public officers, and tribal elders, guaranteed that people from a variety of backgrounds participated (Yousafzai, 2011). As part of its mandate to recommend essential changes to the FCR after gathering public opinion throughout FATA, the Committee visited the region. It held town hall meetings that individuals from various backgrounds attended. The Committee asked people what they thought about FCR and solicited their opinions. Experts, intelligentsia, lawyers, political workers, civil society organizations, and FATA legislators were among the people whose opinions were also included. After careful consideration and debate, the FCR Reforms Committee concluded that while some of the law's beneficiaries wanted to keep things as they were, the majority of stakeholders wanted significant changes made to FCR to make it a more compassionate law (Khan, 2011). The state authorities, in particular the newly appointed Governor of KP, Lt. Gen. (Retired) Ali Muhammad Jan Aurakzai, did not give the Committee's recommendations the consideration they deserved, ostensibly because of the supposedly precarious security situation in FATA. As a result, efforts to amend the century-old law were once again shelved. The government appointed Sahibzada Imtiaz Ahmad's Task Force in April 2006. Its two primary duties were to design a comprehensive strategy for the development of the entire region and to implement constructive improvements to FATA's administrative structure. In an official meeting chaired by then-President Pervez Musharraf, the Task Force presented its findings to the Government within the allotted time frame. The report concentrated on administrative changes and included a comprehensive overview of the current state of affairs in these areas (Shaikh, 2006). After taking office as the new governor of Khyber Pakhtunkhwa province on January 7, 2008, Owais Ahmad Ghani was briefed on the suggestions made by the FCR Reforms Committee (Khan, 2011). As a result, the FCR reform process gained pace once more. Even with all of these changes, FATA had unheard-of levels of unrest and instability throughout this time.

FATA Reforms during Zardari Era (2008-2013)

The PPP government made significant changes to FATA's political and legal-administrative framework. Soon after the 2008 general elections, the PPP government established the Cabinet Reforms Committee, led by Federal Minister for Law Farooq H. Naek, to review the recommendations made by the previous Committee. The Committee consisted of several parliamentarians, especially Hamidullah Jan Afridi, an Independent MNA from the Khyber Agency, and Zafar Beg Bhattani, Akhund Zada Chitan, Rahmatullah Kakar, and Najmuddin Khan of the PPP (Ullah & Hayat, 2018). The Cabinet Reforms Committee suggested several changes to the FCR. The Federally Administered Tribal Areas (FATA) Regulation, 2008, should take the role of the Frontier Crimes Regulation, among other notable proposals. To hear appeals against Political Agent judgments, a district or session judge should be appointed as a judicial official. The committee also recommended that a three-person FATA Tribunal be established, with a former High Court judge serving as its chairman and two more members, i.e., a lawyer and a bureaucrat, as the final appeal body for judgments made by judicial officers. The affected parties would choose Jirga members for arbitration, and the Political Agent's nomination authority should be revoked (Ahmed et al., 2021).

The accused shall be presented before a court of law within twenty-four hours of the allegation, in addition to the modification of the Political Agent's discretionary power under Section 40 of the FCR, which allowed him to keep someone for two years without justifying it. The Committee also suggested that this Regulation's "collective responsibility" phrase be excluded from women, children, and the elderly (Daily Time, August 30, 2008). President Zardari signed

the Extension of Political Parties Order (PPO) to FATA and the Frontier Crimes (Amendment) Regulation, 2011, on August 12, 2011. This was the first significant reform package given by the government in the 110-year history of the FCR. Significant alterations, substitutions, insertions, and omissions were made to the previous version of this Regulation by the Presidential Order (Ahmed et al., 2021). While the Frontier Crimes (Amendment) Regulation 2011 reform package for FATA received positive reviews from many parts of the nation, some intellectual and academic groups opposed the changes.

FATA Reforms during Nawaz Era (2013-2018)

In May 2014, Sardar Mahtab Ahmad Khan, the former governor of Khyber Pakhtunkhwa, established the FATA Reforms Commission, which consists of five members (Ali, 2014). The committee was tasked with a significant responsibility: creating strategic goals, strategies, and plans for the socio-economic, political, and legal-administrative development necessary to integrate tribal lands into a modern political democracy. In April 2015, the Khyber Pakhtunkhwa Governor received the entire report from the Commission. It suggested that Agency and FRs Councils be established, with 10% nominated and 90% elected members. The Governor was able to propose women in the community, technocrats, and minorities.

The following significant recommendation was the creation of an Advisory Council of Governors, which would include every member of the FR's Council and the Agency. While a substantial increase in the Frontier Corps was desired for border security and management, the Commission advised enhancing levy troops to strengthen overall security in tribal regions. It suggested strengthening Apex Committees even more to facilitate the coordination of civil-military activities in tribal areas (GOP, 2016). However, the deteriorating state of law and order in FATA was the main reason why the Commission's recommendations could not be implemented.

Another significant development occurred in 2016 with the publication in August of the committee on FATA reforms report. The committee's principal objective was to "propose a concrete way forward for the political mainstreaming of FATA" (GOP, 2016). However, after nine months of in-depth talks and considerations with different parties, it was decided that FATA would be fully integrated into the neighboring province of Khyber Pakhtunkhwa in five years. The Rewaj Act would take the place of the Frontier Crimes Regulation, and the Council of Elders (Jirga) would decide tribesmen's cases under this Act. In the 2018 general elections, the residents of these areas would choose their political representatives to the National and Provincial Assembly. A formal constitutional amendment would enable the arrangement of such seats. It would guarantee the TDPs' peaceful return and rehabilitation, as well as the repair of the region's infrastructure. FATA would come under the High and Supreme Courts' authority. A ten-year socioeconomic development strategy for these areas would be developed by a high-level group that would be formed.

To ensure that these reforms are implemented correctly, an enforcement directorate would be established. In the NFC Award, a three percent stake would be guaranteed for FATA. Levies would hire 20,000 local candidates, and the province government would be able to choose to keep levies as separate entities or combine them with the police force (Ahmed et al., 2021).

The historic 31st Amendment Bill, which the National Assembly passed on May 24, 2018, made it possible for FATA and the province of Khyber Pakhtunkhwa to merge. The Assembly approved this amendment with 229 votes in favor and only one vote against it. Political parties that supported the bill included the PML-N, PPP, PTI, Jamat-i-Islami, and MQM-P. JUI-F and Pakhtunkhwa Milli Awami Party protested the bill by staging a walkout from the Assembly. However, the following day, the Senate approved and successfully enacted the same amendment. The law now required a two-thirds majority vote in the related provincial assembly in order to be approved (Ghauri & Hussain, 2018). The KP Assembly then passed

the bill at its official session on May 27, 2018. JUI-F was the only major political party that opposed the merging of FATA with the province of KP and demanded a referendum to get the support of the tribal people in this regard. However, ninety-two assembly members supported the bill, while seven voted against it (Hayat, 2018). As a result, Pakistan's tribal areas (FATA) were integrated into the national politics, and the tribal population would have representation in the provincial assembly.

Conclusion

It is found out from the discussion that FATA denotes the former Federally Administered Tribal Areas located in the northwest of Pakistan. The areas have now been merged into Khyber Pakhtunkhwa Province, which is the achieved goal of the long reform journey of various regimes of Pakistan. This long journey was covered through agreements, notifications, committees and, reports, etc. The administrative, legal, and political frameworks in these areas have undergone significant changes and adjustments as a result of the efforts of the numerous regimes. However, some obstacles would prevent the governments from carrying out the FATA reforms. Despite all these hindrances, the reforms journey is completed in the form of the integration of FATA with KP that, mainstreaming the areas into national politics. However, many rights protected by Pakistan's constitution are still denied to the people living in this area. The majority of people in FATA are impoverished and lack access to public services. In order for the mainstreaming to be successful, Pakistan needs to keep its promises.

First and foremost, considering the low literacy rate and failing educational system in the area, funds should be allocated to the former FATA's education sector. The center ought to construct new colleges, universities, and schools and evenly staff them with teachers. Second, the government ought to ensure that the residents of the combined districts receive equitable financial shares. Thirdly, the federal government needs to make the process of releasing funds transparent and cease embezzling money intended for mainstreaming ex-FATA. Fourth, the health sector should be developed, and the federal government should establish the same laws and policies for the combined districts as it does for KP. Finally, Pakistan ought to give the security of the FATA region top priority because the state of law and order there is getting worse by the day.

References

- Ahmed, R. Q., Ishaq, M., & Shoaib, M. (2021). The changing political trends in erstwhile FATA: a study of the last three elections. *International Area Studies Review*, 24(4),335-348.
- Ali, Z. (2014, May 20). *Another commission formed on Fata reforms*. Dawn. Available at; <https://www.dawn.com/news/1107498/another-commission-formed-on-fata-reforms>
- Daily Time, (2008, August 30). <https://www.thedailytimes.com/>
- Ghauri, I & Hussain, D. (2018, May 25). Senate passes FATA-KP merger bill with 71-5 vote. The Express Tribune. Available at; <https://tribune.com.pk/story/1718734/ppp-pti-set-throw-weight-behind-k-p-fata-merger-bill-senate>
- Hayat, A. (2018, May 27). *KP Assembly approves landmark bill merging Fata with province*. Dawn. Available at; <https://www.dawn.com/news/1410351/kp-assembly-approves-landmark-bill-merging-fata-with-province>
- ICG (2009). "Pakistan: countering militancy in FATA." Asia Report No. 178, October 21st. International Crisis Group.

http://www.crisisgroup.org/~media/Files/asia/southasia/pakistan/178_pakistan_countering_militancy_in_fata.pdf

- Khan, A. (2011). FATA: voice of the unheard-path-dependency and why history matters. *Strategic Studies*, 31(1-2).
- Khan, B., Ali, S., & Khan, A. (2023). A historical overview of reforms in the erstwhile Federally Administered Tribal Areas (FATA), Pakistan. *Journal of Humanities, Social and Management Sciences (JHSMS)*, 4(1), 15-27.
- Khan, B., Khan, A., & Ali, S. (2022). Reforms in the erstwhile Federally Administered Tribal Areas of Pakistan: a critical analysis. *Journal of Humanities, Social and Management Sciences (JHSMS)*, 3(2), 104-115.
- Khokhar, N. I., Abbasi, M. A., & Shahid, S. (2014). FATA: Geography, History and Culture. *Evolving Dynamics of FATA: Reflections on Transformations*, 1.
- Markey, D. S. (2008). *Securing Pakistan's tribal belt* (No. 36). Council on Foreign Relations.
- Masudi, J. A., & Mustafa, N. (2022). The legal status of Afghan refugees in Pakistan. *Pakistan Journal of International Affairs*, 5(2).
- Sadiq, N., Mahmood, T., & Sohail, F. (2021). Historical and Systemic Overview of Federally Administered Tribal Areas (FATA): A Cultural Landscape. *J. Hist. Stud*, 7, 1-24.
- Safi, Z. S. (2013). "Failure of FATA development" [Fatareforms.org](http://www.fatareforms.org), October 25th. <<http://www.fatareforms.org/failure-fata-development-policy-zahir-shahsafi>>
- Ullah, A., & Hayat, S. U. (2018). The merger of FATA with Khyber Pakhtunkhwa: An historical analysis. *J. Pol. Stud.*, 25, 39.
- Wazir, A. K. (2013). FATA reforms: journey so far and the way forward. *Islamabad: Pakistan Institute of Peace Studies*.
- Yousafzai, R. (2011, August 16) "Some More Real Change in FATA", *The News*.