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# From Colonial Control to Constitutional Rights: Human Rights Implications of Abolishing the Frontier Crimes Regulation and Integrating the Judiciary in Pakistan

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## ABSTRACT

*When the Frontier Crimes Regulation (FCR) was finally repealed through the 25th Amendment in the constitution in 2018, it was a historic shift in the legal journey of Pakistan, and it concluded over a century of colonial governance in the Federally Administered Tribal Areas (FATA). For decades, the FCR operated in such a way that sidelined fundamental rights and enabled systemic injustice, which affected women, minority communities, and political voices most severely. This paper also assesses the effects of integrating FATA with Province of Khyber Pakhtunkhwa and subsequently the integration of the judicial system of Pakistan into the region, by analyzing that whether these constitutional reforms have truly improved the protection of human rights on the ground? By considering the legislative changes, the judicial, developmental and political challenges that are observed in the field, this study emphasizes that, although the legal framework now promises constitutional equality, there are still gaps in its implementation, i.e. the continuing influence of colonial era regulations, and socio-economic inequalities still hinder the significant progress. The paper also argues that genuine and lasting reform in the merged districts requires not only legal integration but it also requires stronger institutions, greater public awareness of legal rights, inclusive policies especially for women and monitoring or supervision of human rights so that constitutional promise of equality can be ensured and justice becomes a lived reality for people rather than just a formality. The foremost emphasis has been carried on obliteration of the Frontier Crimes Regulation (FCR), the establishment of the judicial system in the newly merged areas and the impacts of reforms on protection of Human Rights mechanisms.*

**Keywords:** *Frontier Crimes Regulation (FCR), Federally Administered Tribal Areas (FATA), fundamental rights, judicial system, unification*

## INTRODUCTION

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The Federally Administered Tribal Areas (FATA), located along Pakistan's northwest boundary with Afghanistan, held a unique and isolated political and administrative position within the country.

It comprised around seven tribal agencies and six frontier regions, covering an area of about 27,220 square kilometers, which stretched across nearly 2,253 kilometers of the Pakistan-Afghanistan border (Naseer, 2015). The FATA region, shaped by its tribal traditions, became significant in a strategic way during the British Raj when the Frontier Crimes Regulation (FCR) of 1901 was imposed to secure administrative control.Rather than integrating this area into the broader legal framework of British India, the colonial administration created a separate system that relied on collective punishment and limited judicial recourse, giving authority to selected local elites to maintain order (Naseer, 2015).

When Pakistan gained independence in 1947, the legal structure of colonialism was still not removed. Instead, the FCR continued to govern the region for decades, preserving a system that many people considered unequal and exclusionary.

Many scholars argue that the continuation of this colonial framework has slowed the political and constitutional integration of FATA into the rest of Pakistan and has also restricted residents from fully enjoying the fundamental rights guaranteed under the 1973 Constitution of Pakistan and international human rights commitments (Naseer, 2015). Although amendments were made, such as the Frontier Crimes (Amendment) Regulation of 2011, critics still argue that real power continues to remain with the political administration, resulting in little transformation and ongoing social and economic neglect (Ullah).

The events of September 11, 2001, and the War on Terror subsequently brought global attention to FATA, making this region central to international security operations, and for its people, daily life grew even more uncertain. Military operations, displacement, and insecurity intensified their grievances and left them vulnerable to further instability and violations of their rights (Waris, Fayaz, & Khattak, 2021).

In response to decades of political exclusion and structural inequality, Pakistan took a major step and introduced landmark constitutional reform in 2018 by merging FATA into the province of Khyber Pakhtunkhwa (KP).

The reform, which received broad political support, aimed to broaden constitutional safeguards, strengthen access to the judicial system, and open fresh avenues for development and political participation (Waris, 2021). However, a pressing question that still lingers is whether this structural shift has truly resolved the deeply embedded inequalities rooted in decades of colonial-style administration. Although the merger signaled a promising new beginning, many contend that real and lasting change requires more than formal legal reform. It calls for consistent institutional dedication, sustained economic support, and genuine involvement of local communities in determining their own future (Islamabad Law Review, 2017)

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**Legal Framework and Tribal Governance under Regulations of FCR**

The Frontier Crimes Regulation (FCR), a legal framework from the colonial era, governed Pakistan's Federally Administered Tribal Areas (FATA) for a century. Known for its repressive provisions and denial of fundamental rights, the FCR was widely criticized by both local and international human rights organizations. According to the 1973 Constitution of Pakistan, the representation of FATA in both houses of parliament was impractical because members had no right to legislate for FATA. For the last 70 years of its existence, the people of FATA had been treated differently than the rest of the country's laws and judicial system (Zubair, 2017).

In 2018, through the 25th Constitutional Amendment, FATA was integrated into Khyber Pakhtunkhwa (KP), and the jurisdiction of the Pakistani judiciary was extended to these areas.

The Regulation was established and made available to the Political Agent/Deputy Commissioner, who functioned under the supervision of the Provincial Government through the Divisional Commissioners. In the seven Political Agencies and six Frontier Regions (FRs), the Deputy Commissioners (FRs) and the Political Agents are generally required to act according to the advice and suggestions of the Council of Elders, the appointed jirgas in tribal areas.

Nonetheless, the ultimate decision rests with the presiding officer and not with the Jirga. Multiple reports, along with various Commissions and Committees, have urged successive governments to implement reforms in the tribal administration, particularly concerning the FCR. Some have suggested reinforcing the existing political administration to preserve the status quo, while others have called for either amendments to it or the complete abolition of the FCR, deeming it outdated, obsolete, and irrelevant. They have instead advocated for constitutional writ and a unified national legal system.This study reconnoiters the historic aspect of the FCR, its repercussions and effects on people's rights, and the transition to a new judicial system in the merged areas. It critically assesses whether this transformation has led to substantive improvements in access to fairness and the safeguarding of civil liberties.

The FCR was first introduced in stages in 1871 and 1876 and later extended to regions such as Khyber Pakhtunkhwa, Larkana, and Sargodha in 1901. After Pakistan's independence, its enforcement was confined to FATA. The Governor of Khyber Pakhtunkhwa, representing the President of Pakistan, held the authority to promulgate and improve the regulation for the region (Gunaratna & Nielsen, 2008; Ziad, 2009).Since the beginning of British rule over the subcontinent, FATA has drawn significant attention. Numerous critics, primarily from Great Britain, labeled it a "black hole" and "no man's land." In order to advance the hidden goals of the majestic regime, it was deliberately concealed from awareness of emerging philosophies before the partition. On the other hand, it was also kept cut off from global explorations and regarded as a divergent area or sector (Khan, 2011).

After the Durand Line Agreement was implemented, FATA maintained a detached managerial framework and connection with the federal administration.

The same continuity remained even after the occupation of the tribal areas by Pakistan in 1947. The clans of Pashtun, factually resilient to external governance, were afforded dominion in managing their internal matters through the British Frontier Crimes Regulation, imposed by Heads (Maliks) and employed administrative agents (Khokhar, 2014). The Indian Independence Act of 1947 invalidated the agreements between the tribal areas and the British Government, necessitating that the recently formed Government of Pakistan engage in new negotiations to connect Pashtun tribal areas with central authority. Just prior to the declaration of the state of Pakistan in June 1947, Ghaffar Khan and Muhammad Ali Jinnah convened in Delhi to discuss terms of collaboration. Khan consented to support Pakistan on the condition that the tribal regions were merged with the populated areas of the then-Kashmir province, now referred to as the North West Frontier Province (NWFP). Historical records indicate that in return for Pakistan's support, a fresh agreement was later arranged with tribal leaders to uphold the existing arrangements in tribal territories.

The region assured their loyalty to Pakistan in return for the government granting them autonomy and the privileges and rights associated with Maliks. The administrative structure for the tribal areas and the political dynamics between FATA and the federal government were created through notifications and agreements issued from the Governor General of Pakistan and directives. These frameworks were reviewed subsequently and updated before becoming part of the 1973 Constitution of Pakistan (Markey, 2008).

**Fcr: An Instrument of Oppression and its Ultimate Fate**

Under the FCR, legal and administrative supremacies were the prerogative of Political Agents or Deputy Commissioners. They operated with the support of tribal Jirgas, yet retained ultimate authority in dispute resolution. The system ignored the fundamental rights to a fair trial (daleel), appeal (apel), and legal representation (wakeel). Several commissions had urged the government to replace this outdated framework with the national legal and judicial system (Khan & Khan, 2012).

In the early years of colonial administration, the British attempted to apply ordinary laws to the settled areas of the frontier regions. However, they faced unfamiliar cultural dynamics and complexities, and low conviction rates under regular procedures, so they chose to implement the Frontier Crimes Regulation (FCR) instead. This shift shaped a system where maintaining political authority took precedence over delivering justice. The absence of due process and the denial of the right to appeal showed how deeply rooted these structural injustices were under the FCR (Khan, 2008; Nichols, 2013).

Over time, the FCR came to be known as a "black law" because of its harsh and arbitrary provisions. It curtailed the fundamental rights of people, bypassed fair trial guarantees, and disproportionately burdened tribal communities. Especially women were overall excluded from the formal legal processes, reinforcing both legal and social marginalization (Ali & Rehman, 2013; Baha, 1978).

Sections 11 and 8 of the FCR allow for the civil and criminal matters referral to a local level Jirga. This council, which consists of elders, is composed solely of men, with no representation for women. Consequently, the cases involving women that are brought to the attention of the political administration will be addressed exclusively by men, without any input from women. Due to this situation, Mariam Bibi, the founder of Khwendo Kor (Pashto for Sisters' House) and experienced as a member of the National Commission on the Status of Women, contends that if women can participate in the Loya Jirga in Afghanistan, why not in our tribal regions? (HRCP, 2005).

The practice of resolving disputes by offering girls to the affected family was made illegal in Pakistan by introducing the Protection of Women Law in 2006. In 2012, Pakistan's Supreme Court directed all provinces to prevent Jirgas from perpetuating this practice (UNGA, 1966).The administration under the FCR held the power to request that any individual deemed by the Political Agent as excessively fanatical, belonging to a frontier tribe without visible means of support, unable to provide an agreeable justification for themselves, or involved in a blood feud, relocate to an area where the Regulations are not applicable. In a similar vein, the Regulations empower the administration to prohibit all members of a tribe or sub-tribe from accessing the rest of the country due to the actions of one or a few individuals. These provisions grant the administration extensive authority to limit the movement of tribal individuals. According to the joint responsibility section, anybody who enters settled territories from tribal areas may be subject to arrest. Another tactic introduced by the politically administrated bodies is the issuance of a Rahdari (permission certificate for returning to one's native village).

Through current situations, inhabitants from the same tribal agency or from a different agency in any part or area of FATA might be required to show authorization in order to enter the tribal agency. For instance, individuals from North and South Waziristan cannot access their own regions without written approval from the administration. During the time of requesting approval, they must specify the reason or purpose of their visit and the duration of their stay. This rule is applied so strictly that even transporting a deceased person for burial (as tribal people prefer to inter their dead in ancestral cemeteries) necessitates obtaining permission in proper manner, which includes the details of those who are accompanying the body, from the deceased's relatives. The situation is even more critical for those lacking domiciles in the agency they wish to visit. Many individuals encountered during field research expressed that they were prohibited from traveling to specific areas.

Some people even reported that the government had issued a notification restricting the movements of human rights defenders and peace activists within FATA. Likewise, broadcasting personnel stated that the management generates obstacles for their movement in FATA (Mahsud, 2016). The FCR lacks any mention of minorities or the protection of spiritual liberty. Nevertheless, the Regulation has serious implications for minorities present in FATA. Non-Muslim communities have lived in FATA for over a century, yet they still do not possess many basic and fundamental privileges. Sikhs and Hindus have lived in the tribal regions for many centuries, while the Christian community migrated from Sialkot to FATA in 1914. Despite their long-standing connection to the land, they were not given permission to obtain FATA domiciles or to buy property there. The disowning of domiciles resulted in their loss of job opportunities. According to the administrative

framework of the FCR, verification by Local Heads that an individual is a legitimate member of a tribe is essential for obtaining a domicile.

Since minorities are not linked to any tribe, they were unable to secure domiciles. The FCR, which is the governing law, did not offer any relief in this matter. In 2015, the state signed a summary for the endowment of domicile for non-Muslims. This is an encouraging development from the government. However, the concern lies in its execution. Even the modifications to the FCR made in 2011 remain unimplemented. As a result, the prospects for this regulatory change seem bleak to me. Minorities have also encountered terrorization and violent actions from militant organizations functioning in the region. In more developed areas, individuals can file such complaints with the police and pursue their assistance. In FATA, the FCR doesn't really provide any such support.

The administration, guided by the FCR, lacks the resources and power to safeguard against militancy. Due to this dire situation, many non-Muslims, who had lived peacefully there, have migrated to other relatively safer regions. In summary, the FCR, along with the administration functioning under it, fails to protect the rights of minorities in FATA (Mahsud, 2016).While Article 19 of the ICCPR ensures the right to freedom of expression, this right is neither recognized nor defended in practice under the FCR. Journalists report significant limitations regarding this basic right. In 2014, one renowned journalist was arrested for revealing corruption in tribal governance. Prior to his arrest, he was coerced into ceasing his reporting or aligning with the system (Shahryar, 2015). Many journalists operate from outside the area due to threats, and those who report independently often face retaliation against their families or property (Rehman, 2015).In 2012, Khalid Aziz, a former bureaucrat, pointed out the lack of accountability for state violence in tribal regions and the media's silence on such fatalities (K. Aziz). Journalist Ibrahim Shinwari characterized the FCR as a mechanism for suppressing truth and stifling dissent (CAMP, 2008).

The FCR was never designed to function as a justice-oriented legal system in the true sense. Scholars such as Tanguay-Renaud and Stewart have observed that its purpose was not to ensure fairness; rather, it was just to suppress resistance and secure colonial control. It incorporated local customs merely to legitimize British authority, while at the same time denying universal legal protections and safeguards (Tanguay-Renaud, 2002; Stewart, 2007).

The FCR permitted collective punishment, such as property confiscation or even destruction, and people were often denied their right to legal representation. The structure of regulation was crafted in such a way that it could preserve or maintain colonial dominance. In practice, this system exploited and manipulated the customs of the Pashtuns to strengthen administrative control and fell far short of delivering meaningful justice (Groh, 2006; HRCP, 2005; Sammon, 2008).

Judicial scrutiny of the FCR further exposed its constitutional weaknesses. In landmark cases such as Mazhar Elahi v. Federation (PLD 1975 SC 66) and Government of Pakistan v. Azizullah Memon (PLD 1993 SC 341), the Supreme Court made it clear that cultural practices

cannot be used as a justification for denying fundamental rights. These decisions reinforced the principle that constitutional protections must prevail over administrative convenience.

The Baluchistan High Court declared the FCR un-Islamic in PLD 1979 Quetta 217, leading to its withdrawal from the region. The proposal to assimilate FATA and Khyber Pakhtunkhwa was espoused on May 25, 2018, by the Senate, making it the 25th constitutional amendment to be passed by the legislature. Khyber Pakhtunkhwa also passed a bill related to amalgamation on May 27, the penultimate day of the assembly session and the constitutional requirement. Most momentously, Pakistan's president signed the Twenty-Fifth Constitutional Amendment into law on May 31, 2018, officially amalgamating FATA with Khyber Pakhtunkhwa. This resulted in the oppressive and marginalized FATA, which had been governed by the FCR for many decades, being integrated with Khyber Pakhtunkhwa (Hayat, 2018).The 25th Amendment of May 2018 marked the formal abolition of the FCR and merged FATA with KP. It extended judicial supremacy to the region and removed Article 247, enabling residents to enjoy constitutional rights, including access to regular courts (Wasim, 2018; Abbasi, 2018). The notions of territorial integration and the leeway of law and judiciary re-designated the seven tribal agencies and six frontier regions of FATA as the Newly Merged Districts (NMDs) of the province.

**Controversy Surrounding Interim Regulations**

Before the merger, the president issued the FATA Interim Governance Regulation (FIGR), which reproduced many of the same arbitrary powers of the FCR. The High Court of Peshawar and the Supreme Court declared FIGR illegal, respectively, paving the way for full legal integration. Despite the merger, certain regulations like the KP Continuation of Laws in Erstwhile FATA Act 2019 and the Actions in Aid of Civil Power Regulation 2011 remained in force. These regulations later confronted the provincial High Court, which declared them unconstitutional, reaffirming the supremacy of constitutional rights in the merged areas (Amin, 2019).

**Steps towards Local Governance & Judicial Reforms: Assessing Practicability**

In 2019, local government provisions were introduced in the merged areas, giving residents a voice in governance. Resources were allocated for development and justice sector reforms. These steps, while promising on paper, faced significant implementation challenges (Ullah & Hayat, 2018; Anwar & Khan, 2017).

As a consequence of the bill regarding the FATA merger, seven constitutional provisions that concerned the tribal territories were amended. Article 51(1) was revised in light of the 25th Constitutional Amendment Bill. This clause governs the representation in the Lower House. The total number of seats was reduced from 342 to 326 in the National Assembly due to the revision of the proposal (Tribune, 2018).

The allocation of seats between the Federation and the federating entities was also updated as a result of the merger bill. For the general election in 2018, a new clause (3-A) was inserted into clause-3 so that representatives of FATA are given equal status constitutionally. Under this provision, the representatives of FATA must continue serving in the National Assembly until its

dissolution, and upon the dissolution of the National Assembly, Article (3-A) will expire automatically (Tribune, 2018).

The implementation of former FATA into Khyber Pakhtunkhwa is a major step taken by the government of Pakistan, marking a new chapter for the region. With this implementation, many opportunities have been introduced, including judicial, administrative, and other developmental opportunities for the residents.

The government's decision will result in the development of the newly merged districts and increased opportunities for progress and growth. The residents of Khyber Pakhtunkhwa's newly merged districts will have full access to their constitutional rights, and their legal cases will also be filed without any limitations or restrictions that existed before. However, the state must prioritize strengthening the administrative and judicial systems and invest in infrastructure.

## CONCULSION

The elimination of the Frontier Crimes Regulation through the 25th Constitutional Amendment marked more than just a legal reform. It was a symbol of a transition or a shift from a system that was a century old to the promise of constitutional equality for the residents of former FATA.The merger of FATA into Khyber Pakhtunkhwa has brought FATA formally under the jurisdiction of the superior courts, and residents were, at least on paper, included; however, the actual situation on the ground regarding the enforcement of human rights still remains inconsistent.

The lingering regulations of the colonial era, an insufficient judicial infrastructure, and socio-economic disadvantages continue to obstruct the complete realization of rights. Therefore, the change in governance for the merged territories cannot just stop at legislative reforms; it must also extend beyond such legal modifications. It requires a continuous commitment to strengthen institutions, promote legal awareness, and ensure inclusive governance.

Only through ongoing implementations, active community involvement, and accountability systems can the vision of equality, justice, and human dignity move from principle to practice, and these constitutional reforms be fully realized.

## RECOMMENDATIONS

The following steps are very important and essential to ensure that the spirit of the amendment is fully realized:

- Establish courts that are fully functional, legal aid centers should be made accessible, and gender-sensitive facilities should be provided in the merged areas to guarantee that justice is accessible to them.

- Training should be provided to police and judicial personnel on constitutional rights, human rights laws, and cultural sensitivity.

- Initiate campaigns to educate the residents, especially women and marginalized communities, about their constitutional rights and the legal remedies available to them.

- Take steps to protect religious minorities, which include issuing domicile certificates, securing their property rights, and ensuring their safety from militant threats.

- Facilitate and encourage the involvement of women in seeking justice from courts or alternative dispute resolution forums.

- The outdated laws and regulations should be reviewed and repealed accordingly, such as the Actions in Aid of Civil Power Act, which compromises constitutional protections.

- Create an independent monitoring entity to track the violations of human rights in the merged areas and ensure compliance with Pakistan's constitutional and international commitments.

- Integrate judicial reforms with broader development efforts, such as education, healthcare, and livelihood initiatives, to tackle the underlying causes of rights breaches.

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