

FATA's Merger with Khyber Pakhtunkhwa: An Historical Analysis

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Abstract

Nation-building is an evolutionary socio-political process. It not only provides security, dignity and ownership to a community, but also ensures democratic participation of people within the state to claim rights and perform duties. It enables a state to defend its sovereignty, achieve economic goals, and protect national interests at regional and global levels. Since 9/11 incident, terrorism has become a global challenge. To counter this menace Pakistan also aligned and provided land routes to foreign forces to get access to a landlocked Afghanistan. Across the Pak-Afghan border, through the tribal belt known as FATA, terrorism has spilled over Pakistan. The exclusive status of the Federally Administered Tribal Areas (FATA), in the past seventy years of Pakistan's history, had deprived fundamental rights to the people of FATA. These tribal areas were governed by a separate law known as Frontier Crimes Regulations (FCR) made by the British in 1901. This law has proved as the main obstacle in bringing FATA in to the mainstream of Pakistan.

After examining the historical and geographical aspects of FATA, the article shows how FATA remained outside the nation-building process in Pakistan. In this connection it seeks to see the position of FATA in the constitutions of Pakistan, including state initiatives to own this western belt and obstacles faced in merging FATA with Khyber Pakhtunkhwa (KPK). It narrates the events that led to the merger of FATA with the KPK and high lights future challenges as well. It recommends that FATA's merger would help establish a strong line of defence against terrorism.

Introduction

The northwestern tribal areas opted for Pakistan in 1947 with the demand of the protraction of old governance and judicial system. These areas were, therefore, ruled by the federal government and named as Federally Administered Tribal Areas (FATA). Though the people did not wish to integrate their region within an appropriate state system, they decided to remain loyal citizens of Pakistan. Fundamental rights of the citizens, as

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determined by the constitutions of Pakistan, were not applied to them; they, as such, remained outside the mainstream.

When the Soviet forces entered Afghanistan, FATA played the role of a frontline against the alleged expansion of communism. The Soviet forces announced their withdrawal in 1988 but with the signing of the Geneva Accords militancy in this region could not come to an end. In the decade of the 1990s, FATA struggled hard to restore pre-1980s order but that remained an illusion. World focus after the 9/11 incident turned towards Afghanistan again and the tribal belt of Pakistan had to replay the role of a frontline; this time against extremism and terrorism. As a neighbour Pakistan faced the brunt of the US initiated war against terror. FATA's landscape and governance system protected non-state actors; consequently, it became a breeding ground of militancy.

In 2014 two terrorist incidents brought all the political parties of Pakistan on a single page. They agreed on a National Action Plan and FATA was also included in this plan. Gradually a consensus developed among all the major political parties of Pakistan, and the people of FATA also realized, that it would be in the greatest interest of Pakistan to end FATA's isolation by merging it with the province of Khyber Pakhtunkhwa.

Nation, nationalism and creation of Pakistan

The modern concept of nation and nation building emerged in Europe in the 17th and 18th century. Formation and evolution of nations have been under specific historical conditions. Whereas a nation is a political community that binds people of common heritage, language, religion, culture, race, ethnicity, or ideology into a cohesive body over a shared territory, the idea of a nation is linked with the notion of an independent state free to fulfil its citizens' aspirations.¹ This idea came to India with the Europeans, the people of the subcontinent who had a long history of peaceful coexistence (despite vast lingual, historical, cultural, and religious differences) began seeking their identity under the definition of nation. The core elements behind the development of nationalism among the Indians were religion and cultural diversity.

Nationalism refers to loyalty towards a nation. The US philosopher Hans Kohn defines nationalism as: 'A state of mind in which the supreme loyalty of the individual is felt to be due to the nation state'.²

¹ Mohammad Qadeer, *Pakistan—Social and Cultural Transformation in a Muslim Nation* (New York: Routledge, 2006).

² Mark Juergensmeyer, *The New Cold War? Religious Nationalism Confronts the Secular State* (London: University of California Press, 1993), 14.

The sentiments of nationalism lead to support state actions and decisions. On the basis of the two-nation theory, presented by a Muslim scholar, Sir Syed Ahmed Khan, Muslims of India demanded a separate nation from Hindus. Mohammad Ali Jinnah said, in his presidential speech of 23 March 1940, that Muslims of the subcontinent were a separate nation according to every definition of nation and nations need separate territory to grow. This objective was achieved within a short period of seven years. The growth of nationalism, after the creation of Pakistan, however, remained dormant. This was because Pakistan failed to live up to its identity as a federal and democratic state. Moreover, the social set up of the Federally Administered Tribal Areas owing to its British administration and judicial system, continued to remain tribal even after 1947; supreme loyalty was for ones tribe not to the nation state.

State efforts to own FATA

The Federally Administered Tribal Areas, a long narrow strip in the northwest of Pakistan, has an area of 27,200 square kilometres. In the east it borders Khyber Pakhtunkhwa and in the west it has a 350 km border with Afghanistan. Over four million people live there spread over seven agencies.³ The tribal belt had some unique features and the most important one has been its administrative system, known as Frontier Crimes Regulations. Made by the British in 1901, it was based on Pakhtun tradition (*rewaj*), which has two core pivots — revenge and collective responsibility. It was not the wish of the state but the demand of the tribal people to regulate their lives according to *rewaj*, as incorporated in the terms of accession of tribal areas to Pakistan. It is generally believed that tribal societies do not accept change easily, there re-adjustment has, therefore, been gradual.

Role of maliks: After the creation of Pakistan a tribal council (*jirga*) met Mr. Jinnah in 1948 and requested that the status of their areas should not be changed. The government of Pakistan, thereafter, tried to control FATA by installing heavily supported landlords, empowering them to distribute government contracts for construction projects and to grant permission for migration outside FATA and Pakistan. Such moves often proved to be counterproductive, since most members of tribal *jirga* came to regard such *maliks* as corrupt and nepotistic.⁴ High unemployment

³ Ministry of Foreign Affairs, *Report of the Committee on FATA Reforms* (Islamabad: Ministry of States & Frontier Regions, 2016).

⁴ See *South Asia in the World: An Introduction*, ed. Susan Snow Wadley (New York: Routledge, 2015), 221.

rate, low literacy, poor health facilities and a badly underdeveloped infrastructure set FATA apart from other areas of Pakistan.

Pakistan Citizenship Act 1951: In the fourth year of the independence of Pakistan Citizenship Act of 1951 was enacted. The act has been amended a number of times, the last amendment was made in 2000. It has 23 sections, each encapsulates a different provision of citizenship. Section 3 specifies the definition of citizenship of Pakistan:

Every person shall be considered to be a citizen of Pakistan who or whose parents or grandparents were born in the territory now a part of Pakistan and who after the August 14, 1947, has not been permanently resident in any country outside Pakistan.⁵

Persons or any of their parents or grandparents who were born in the territories now included in Pakistan before the commencement of Citizenship Act, 1951 are also citizens of Pakistan. The Directorate of Immigration & Passports, Government of Pakistan, also says the same regarding the citizenship of Pakistan.⁶ The people of FATA come under the citizenship definition of Pakistan under these documents.

FATA in the constitutions of Pakistan: In the over seventy years of Pakistan's history, three constitutions have been made. All of these constitutions maintained FATA's separate identity due to the desire of its own people. In the formative phase of Pakistan, the tribal people decided to join Pakistan, with the condition of state's non-interference in the local system based on *rewaj* (as preserved in Frontier Crimes Regulation). The spirit of this understanding was incorporated in the terms of accession of tribal areas to Pakistan approved by the then Governor General, Mohammad Ali Jinnah. Later on it was followed in all the constitutions of Pakistan.

The Act of West Pakistan 1955 replaced four units with one-unit scheme but the tribal areas remained under the jurisdiction of the central government in the constitutions of 1956 and 1962. One unit was dissolved on July 1, 1970 by Yahya Khan,⁷ but in the constitution of 1973, FATA retained the same status. The 1973 constitution is divided

⁵ The Pakistan Citizenship Act, 1951 (11 of 1951), <http://www.refworld.org/pdfid/3ae6b4ffa.pdf>

⁶ *Ministry of Interior*, Directorate of Immigration & Passports, *Government of Pakistan*, <http://www.dgip.gov.pk/files/immigration.aspx>

⁷ *Pakistan Year Book, 1971* (Karachi: National Publishing House, 1971), 284.

into twelve parts. Its Part XII, Chapter 3 deals with tribal areas. Article 246 in this chapter stipulates:

Tribal areas mean the area in Pakistan which immediately before the commencing day, were Tribal Areas, and includes the Tribal areas of Baluchistan and the NWFP province.⁸

A subsequent article deals with the administration of the tribal areas. The parliament can not pass any bill for FATA unless the president so directs. The state's apex courts has no access in those areas.⁹ The governor of the province, therefore, administered FATA in his capacity as an agent to the president of Pakistan, under the overall supervision of the Ministry of States and Frontier Region.

State initiatives: An overview (1976-2015)

Being ruled by the British law after 1947, it was in the best interest of Pakistan to absorb FATA in to the state system. The due process was delayed owing to prolonged political instability and authoritarian rule. The state took first initiative towards assimilation of FATA after the bitter experience of the separation of East Pakistan in December 1971. Former Prime Minister, Zulfikar Ali Bhutto, in 1976, formed a committee under Major General (retd.) Naseerullah Babar, the Governor of NWFP (1975-77), which included Hafeez Pirzada, Rafi Raza and Dr Mubashir Hasan to create a framework to merge FATA with the then NWFP for the general elections in 1977. Unfortunately this initiative could not succeed because of military coup in July of the same year.¹⁰

The second such attempt came twenty years later after the dissolution of the government of Benazir Bhutto in 1996 by the then President, Farooq Ahmad Laghari. He introduced significant reforms when Malik Meraj Khalid was the caretaker Prime Minister. The government made a historical decision by extending the right of adult franchise to FATA.¹¹ The Act of Adult Franchise was passed in 1996-97. The people of FATA who were eighteen or more in age became eligible by this act to cast vote in the general elections held in 1997. For the National Assembly independent candidates were elected directly by the

⁸ *The Constitution of the Islamic Republic of Pakistan*, edited & introduced by Barrister Makhdoom Ali Khan (Karachi: Pakistan Law House, as amended up to March 1988), 205.

⁹ *Ibid.*, 206.

¹⁰ Khalid Azia, "Fata Reforms: an opportunity", *Dawn*, 30 November 2015.

¹¹ Hilary Synnott, *Transforming Pakistan: Ways Out of Instability* (London: Routledge, 2009), 113.

people of FATA. Earlier FATA members to the National Assembly were elected by *maliks* and elders who were around 1% of the population. However, this important step did not increase self-governance partly because of Article 247 of the constitution.

The third step was taken in 2002 during the period of President Musharraf who believed in devolution of power to the grass roots in all the four provinces and the tribal areas of Pakistan. A special cell was established to recommend reforms for FATA. The first step was the introduction of local government system in the tribal belt. The first draft for local government regulation was a comprehensive plan including *nazims* and *naib nazims* at the tehsil and agency level through direct elections on the basis of adult franchise, representation of women and conversion of Levies Force into police.¹² It was a good plan but Pakistan's strategic alliance with the US in the war against terrorism became the main hurdle in its execution. In the phase of implementation, instead of holding local bodies election, the then governor of NWFP, Syed Iftikhar Hussain Shah, announced setting up of nominated, rather than elected councils at the agency level without giving any legal or constitutional cover. As per executive directive in 2004 each tribe was given authority to nominate members for these councils. In each agency 70 per cent of the council seats were filled by the respective tribes through nomination. The rest (30 per cent) members were nominated under the aegis of respective political agents.¹³

In another such effort, President Musharraf constituted a committee led by the former Chief Secretary of NWFP and a member of the National Security Council, Imtiaz Sahibzada, on 4 April 2006, to suggest recommendations for the improvement of administrative system in FATA.¹⁴ The final report of this committee provided an depth analysis of the prevailing situation in FATA. The report, however, did not propose any major constitutional reforms which deviated from the existing system. The committee in principle agreed to mainstream FATA with the then NWFP as the best option. Furthermore, it also suggested that it could be mainstreamed after the end of war in Afghanistan. The report did provide a basis for having a structured administrative set up for FATA. An independent Ministry of State and Frontier Regions (SAFRON) was established in 2006. It was mainly responsible for issues of FATA and frontier regions of Pakistan. The overall administrative

¹² Zulfikar Ali, "Fata reforms in footsteps of predecessors", *Dawn*, 30 August 2009.

¹³ *Ibid.*

¹⁴ *Business Recorder*, 10 May 2006.

control of FATA at the federal level falls under this ministry. The FATA Secretariat, established in 2006, was responsible for planning, implementing and monitoring development activities in the region. The administrative head of the secretariat is the additional chief secretary FATA, who reports to the governor through the chief secretary, Khyber Pakhtunkhwa.¹⁵

During the electoral campaign in 2008, Pakistan People's Party called for FATA reforms. After assuming office it formed a cabinet level committee led by Law Minister, Farooq Naek. The committee had to examine modifications in the FCR in consultation with stakeholders and propose recommendations. In the same year, 10 political parties agreed to work for political and legal reforms in FATA. In 2010, these parties' joint committee on FATA reforms worked together to demonstrate the shared commitment of political parties to promote debate and call for the enactment and implementation of reforms in the tribal areas.¹⁶ The federal government prepared a Local Government Regulation, 2012, to hold local body elections in FATA. However, the regulation was not promulgated due to inappropriate security conditions and this second efforts to introduce local bodies system in FATA again failed.¹⁷

The FATA Committee, comprising 10 political parties, continued its efforts to create awareness of the needed reforms and put pressure on the government. As a result of its consultations, in December 2013, it approved eleven recommendations for urgent action to guarantee equal rights for tribal people. The extensive work of the FATA Committee was funded by the National Democratic Institute (NDI), from the US and the British High Commission. The NDI has been actively engaged in supporting democratic development in Pakistan. It worked with political parties and civic groups seeking to strengthen democratic institutions.¹⁸ The American members of NDI and British High Commission official used to attend the meetings of FATA Committee. Although they did not interfere with its work,¹⁹ but the impact of funding agencies in decision making process cannot be ignored.

¹⁵ <http://www.safron.gov.pk/safron/userfiles1/file/Report%20of%20the%20Committee%20on%20FATA%20Reforms%202016%20final.pdf>

¹⁶ <https://fatareforms.wordpress.com/2014/04/16/11-point-fata-reforms-recommendations/>

¹⁷ <http://www.safron.gov.pk/safron/userfiles1/file/Report%20of%20the%20Committee%20on%20FATA%20Reforms%202016%20final.pdf>

¹⁸ <https://www.ndi.org/asia/pakistan>

¹⁹ Rahimullah Yusufzai, "Ten Political Parties, eleven recommendations", *The News*, 29 November 2015.

The representatives from all political parties agreed upon the recommendations, but the FATA Committee members wanted to take formal endorsement from the heads of all political parties.²⁰ The recommendations had to be presented and debated in the National Assembly but an opposition party charged the newly elected government, in 2013, for rigging the elections. The party demanded recounting of votes and in protest a sit-in began in Islamabad in August 2014 which continued till 16 December 2014. The FATA Committee continued its work till 2015 even though it was overtaken by events, and new initiatives made, to bring reforms in FATA.

FATA: a conflict zone (1979-2014)

The Federally Administered Tribal Areas came under the limelight of regional and global politics when Soviet military intervention began in Afghanistan. The development that raised serious concerns for the British in the 1840s, due to Russian advancement towards the east, finally materialized in 1979 when the Soviets physically entered Afghanistan, ostensibly to assist their ruling ally as per the treaty of friendship signed in December 1978.²¹ Since then FATA has been treated as a strategic space. It is noteworthy that before the Soviet invasion, mullahs did not have an individual support base in FATA. They were dependent on the landlords who controlled large tracts of land. But the Soviet invasion and the US involvement changed the situation. As the war was given religious colour, the mullahs became more important than landlords. They were given massive aid by Saudi Arabia to open religious seminaries to train the holy warriors. The US also provided them aid to fight the Soviets and the Afghan regime. FATA, a semi-autonomous region, having borders with Afghanistan and the then NWFP, became the centre of jihadi activities²² and a covert staging ground for jihad in Afghanistan.

The Afghan insurgency carried by these warriors compelled the Soviets to withdraw from Afghanistan in 1989. After the 9/11 incident, in 2001, the Americans physically entered into Afghanistan to capture al-Qaeda leadership and overthrow Taliban regime that refused to hand over the al-Qaeda culprits.²³ Unable to counter the US might both al-Qaeda and the Taliban retreated into the most suitable, connected and

²⁰ Amir Wasim, "PML-N, PTI chiefs' assent awaited on Fata reforms", *Dawn*, 16 June 2014.

²¹ Susan, 221.

²² Ibid.

²³ Ibid.

mountainous areas of FATA. This is how the so called terrorists entered FATA and its geographical anomalies provided safe heavens to them. There are many potential infiltration passes along FATA-Afghan border from where the infiltrators could enter and exit to carry out the designs of terrorism.

Pakistan's security forces had to enter FATA in the year 2003 to counter spill over effects of operations from Afghanistan into Pakistan and stop miscreants, deny use of territory for terrorist activities, open up no go areas.²⁴ The people of FATA used to respect Pakistan Army but when it aligned with the US in the war against terrorism and allowed foreign forces access to Pakistan's land routes to enter Afghanistan it lost such respect. It was difficult for the natives to realize the constraints Pakistan had to face after 9/11 incident. However, the focus of the military operations remained on two southern agencies — North and South Waziristan. FATA faced serious security challenges after the security forces launched operations, from 2004 onwards, against the militants, due to which people in large numbers left for the settled areas as Temporarily Dislocated Persons (TDPs).

The government of Pakistan bore a heavy economic burden and military personnel sacrificed their lives in these operations, but their efforts remained unsuccessful to prevent the easy movement of al-Qaeda and Taliban fighters in Pakistan. The operations infused a feelings of retaliation among the militants and they began attacks on the supply routes of the US and NATO passing through Pakistan to Afghanistan. As the attacks turned out to be more frequent, the US military adopted a new technique of striking with unmanned planes on Pakistan's tribal belt.²⁵ The drone strikes by the U.S. Central Intelligence Agency (CIA) began in Pakistan's tribal areas in 2004. An understanding was developed between both countries high ups that it would be a very selective programme for eradicating terrorist leaders.²⁶ Those strikes intensified the anger of the natives.²⁷ The drones, equipped with hellfire missiles, targeted al-Qaeda and Taliban fighters in the tribal regions bordering Afghanistan aimed to halt cross-border attacks against the US and NATO forces in Afghanistan.

The US justified drone strikes on Pakistani's soil by extending the reference of Military Forces Resolution passed by the US Congress

²⁴ <https://www.pakistanarmy.gov.pk/AWPReview/TextContent.aspx?pId=366>

²⁵ *Time*, 16 February 2009, 19.

²⁶ Mark Mazzetti, "A Secret Deal on Drones, Sealed in Blood", *The New York Times*, 6 April 2013.

²⁷ <http://www.npr.org/templates/story/story.php?storyId=100131283>

in September 2001. The resolution authorized the US to enter any area to attack state or people involved in the September 11 attacks. An eminent American scholar, Stephen Cohen, defending the drone strikes on Pakistan's soil, opined that the drones do not strike Pakistan's territory but attack militant hideout in a lawless area. He further argued that the government of Pakistan does not exercise sovereignty over the tribal belt and FATA is an open territory. As per international law, 'ungoverned territories can be subject to attack'.²⁸ Cohen's justification is absolutely contrary to the ground realities of FATA and its governance.

There was a precarious development in 2005 when various factions of Taliban in Pakistan formed an alliance on the lines of Afghan Taliban under Baitullah Mehsud, the one who had signed the South Waziristan peace agreement in the same year. The alliance was named the Tehrik-e-Taliban Pakistan (TTP).²⁹ Many members from Mehsud and Wazir tribes had served Taliban in Afghanistan since 1990s.³⁰ Mehsud tribe, a large warrior Pushtun tribe of South Waziristan, has been known for its opposition to the British forces who fought them for several years in the nineteenth century.³¹ The TTP established effective control over Pakistan's tribal areas. Waging a fierce war against the army and police the alliance challenged the writ of the government by running parallel institutions.³² In 2008 the US President George Bush labelled FATA the most dangerous region of the world.³³

An ultimate consequence of the drone attacks was that the al-Qaeda, Taliban and other militants repositioned themselves from FATA to the congested cities of Pakistan, making it harder for the security forces to catch the terrorists and stop terrorist attacks.³⁴

Terrorism and the National Action Plan

The year 2014 brought major acts of terrorism in two cities of Pakistan. One was in Karachi and the second was in Peshawar. On 8 June 2014, the cargo terminal of Jinnah International Airport, Karachi, was sieged

²⁸ *Herald* (July 2008): 52.

²⁹ Marc Grossman, "Challenges to Diplomacy and the U.S. State Department", *The Impact of 9/11 on Politics and War*, ed. Matthew J. Morgan (New York: Palgrave Macmillan, 2009), 93.

³⁰ *International Herald Tribune*, 31 December 2007 - 1 January 2008.

³¹ *Herald*, (July 2008): 52.

³² Anwar Iqbal, "Bush calls FATA most Dangerous Region of the World", *Dawn*, 13 April 2008.

³³ Aqil Shah, "Drone blowback in Pakistan is a Myth. Here's Why", *The Washington Post*, 17 May 2016.

³⁴ *The Express Tribune*, 27 June 2014.

by militants that left 30 dead, including all 10 militants. The Tehrik-e-Taliban Pakistan claimed responsibility for the attack.³⁵ In an immediate response to the incident the government of Pakistan directed the armed forces to launch a comprehensive operation against foreign and local terrorists who were hiding in sanctuaries in North Waziristan Agency and Khyber Agency. The operation named, *Zarb-e-Azb* that began on 14 June shifted over a million people to other areas.³⁶ The terrorist made a strong foothold in North Waziristan and used this agency to initiate a war against the state. Such developments disturbed all aspects of national life and terrorized the peaceful, loyal and patriotic indigenous people.³⁷

When the operation was in progress, and the military was successfully eradicating the terrorist hideouts, another horrendous act of terrorism was carried out at the Army Public School (APS), Peshawar, on 16 December 2014. It killed 141 people, 132 of them were children. The responsibility of the attack was claimed by the TTP which said that the attack was in retaliation to the military operations in North Waziristan and Khyber tribal agency.³⁸ Again the connection of the worst terrorist attack was linked to FATA. A Taliban spokesman justified the attack at APS, by saying on BBC news channel, that it was in response to military operations as the school run by the army, have major enrolment from the families belonging to the armed forces. Hundreds of Taliban fighters have died in the offensive in North Waziristan and the nearby Khyber area.³⁹ The former Chief of Army Staff, General Raheel Sharif, said that the militants were not only enemies of Pakistan but enemies of humanity. They hit at the heart of the nation.⁴⁰

There was a national uproar that prompted the government to move against terrorism in a more forceful and integrated manner. The National Action Plan (NAP) against terrorism was launched by the prime minister on 25 December 2014. It contained a comprehensive and

³⁵ <https://www.ispr.gov.pk/front/main.asp?o=t-zarb-e-azb-archive> (June 15, 2014)

³⁶ Press Release, No PR-124/2014-ISPR, Dated 15 June 2014. https://www.ispr.gov.pk/front/main.asp?o=t-press_release&id=2574#pr_link2574

³⁷ Tahir Khan, "TTP Claim Responsibility for the Peshawar School Attack", *The Express Tribune*, 16 December 2014.

³⁸ Pakistan Taliban: Peshawar school attack leaves 141 dead, BBC News. <http://www.bbc.com/news/world-asia-30491435>

³⁹ *Dawn*, 16 December 2014.

⁴⁰ National Counter Terrorism Authority Pakistan (NACTA). <http://nacta.gov.pk/NAPPoints20.htm>

integrated list of steps that were needed to be taken by the state and law enforcement institutions to control terrorism and extremism in the country. Paragraph 12 in the 20 points plan require: administrative and development reforms in FATA with immediate focus on repatriation of IDPs.⁴¹ FATA has figured prominently in the narrative of terrorism and has been described as the most dangerous place and the factors that led to the lawlessness and the absence of writ of the government were critically felt. Thus reforms in FATA were designated as a priority.

Assimilation of FATA with Khyber Pakhtunkhwa

The people of FATA who had always wished to retain their separate identity, finally agreed to forgo their separate status. On 7 September 2015, in an appropriate and legal way, 19 legislators from FATA (excluding the JUI (F) MNA from North Waziristan), jointly called upon the government to merge FATA with the province of Khyber Pakhtunkhwa. They presented the 22nd Constitutional Amendment Bill proposing amendments to Articles 246 and 247 of the Constitution to integrate FATA with Khyber Pakhtunkhwa.⁴² In November of the same year, FATA parliamentarians formally submitted a bill in the National Assembly asking tribal areas merger with the KPK. After a final meeting of all the political parties having presence in the tribal areas and the FATA, parliamentarians drafted a bill in this respect. In response, the prime minister constituted a five-member FATA reforms committee on 8 November 2015. The committee was headed by Sartaj Aziz, Adviser to the Prime Minister on Foreign Affairs.⁴³ Its members were Mr. Zafar Iqbal Jhagra, Governor KPK; Lt. Gen. (retd.) Abdul Qadir Baloch, Minister for SAFRON; Zahid Hamid, Minister for Law & Justice; Lt. Gen. (retd.) Nasser Khan Janjua, National Security Adviser, and Muhammad Shehzad Arbab, Secretary SAFRON. The committee was responsible for proposing a concrete plan for mainstreaming of FATA through political, social and economic development.

The members of the committee visited seven agencies of FATA and consulted with tribal *maliks*, elders, and representatives of all political parties and other members of the civil society. On 8 August

⁴¹ <http://www.safron.gov.pk/safron/userfiles1/file/Report%20of%20the%20Committee%20on%20FATA%20Reforms%202016%20final.pdf>

⁴² <http://nation.com.pk/editors-picks/01-May-2017/centre-losing-interest-in-fata-reforms-implementation>

⁴³ <http://www.safron.gov.pk/safron/userfiles1/file/Report%20of%20the%20Committee%20on%20FATA%20Reforms%202016%20final.pdf>

2016, it submitted its detailed report to the prime minister of Pakistan.⁴⁴ It was then discussed and approved in the federal cabinet, before being sent to the parliament for debate and legislation. From August 2016 to February 2017 there were several meetings of the cabinet and in every meeting it was expected that the FATA committee recommendations would be approved but, at the last moment, it was dropped out from the cabinet agenda.

The recommendations of the FATA Reforms Committee were finally approved by the federal cabinet on 2 March 2017. The six member committee's 24-point FATA Reform Bill included:

- The merger of the tribal agencies with Khyber Pakhtunkhwa.
- A 10-year reform package to align the tribal region with other developing areas of Pakistan.
- A package of about Rs110 billion for development.
- Introduction of local government (LG) system after 2018 general elections.
- Education and job opportunities for youth and upgradation of Levies Force.

The proposal was accepted by all seven agencies of FATA. The merger of FATA with KPK would be completed in five years and during this transitional period maintenance of durable peace would be the main focus.⁴⁵ During the transitional period following objectives were proposed to be achieved:

- To rehabilitate Internally Displaced Persons (IDPs).
- Reconstruct infrastructure, houses and shops.
- Launch a major programme for socio-economic development.
- Establish an elected local bodies.
- Introduce judicial reforms.
- Capacity building of law enforcement agencies, particularly Levies Force.
- Enable Levies Force to perform policing functions.
- Carry out land settlement and preparing GIS-based computerised land record.
- Capacity building of the Frontier Constabulary for efficient border management.
- Repeal of the FCR by a new *rewaj* regulation for tribal people.⁴⁶

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Syed Irfan Raza, "Cabinet Approves Steps for Fata's Merger with Khyber Pakhtunkhwa", *Dawn*, 3 March 2017.

The FATA reforms bill also dealt with the judicial system of these agencies. It proposed to extend the jurisdiction of Supreme Court and the Peshawar High Court (PHC) to FATA through an Act of Parliament so that FATA inhabitants can enjoy equal rights. The judicial reforms introduced a blend of state and local legal system to provide justice to the people.⁴⁷ As the debate over FATA Reforms Bill began in the National Assembly, the lawmakers from FATA raised their voice against the replacement of FCR from *Rewaj Act*.⁴⁸ A new bill to extend jurisdictions of the Supreme Court and the Peshawar High Court to the Federally Administered Tribal Areas was passed unanimously in the National Assembly.⁴⁹

After being approved by the cabinet, the FATA Reforms Bill was delayed by fifteen months owing to the two allies of PML-N in the federal government — Fazal-ur Rehman’s Jamiat-e-Ulema-e-Islam (JUI-F) with 13 seats in the National Assembly and Mahmood Khan Achakzai’s Pashtunkhwa Milli Awami Party (PkMAP), with 3 seats. Both parties stood against FATA Reforms Bill.⁵⁰ The last week of PML-N government, however, became decisive regarding constitutional amendments for FATA. From 24-31 May 2018, the long awaited FATA Reforms Bill was passed by the National Assembly, Senate, the KPK Assembly and finally endorsed by the president of Pakistan on the final day of the assembly.⁵¹

JUI-F and PkMAP walked out from the National Assembly when voting began on the bill on 24 May 2018.⁵² Both parties demanded the status of a separate province for tribal areas as per the wishes of the tribal people⁵³ and further called for referendum to allow the tribesmen to decide the future of the region. The JUI-F is one of the major political parties in FATA and it was apparent that the demands of this party were impractical; a delaying tactic to maintain party’s political domination in the region.⁵⁴ On the other hand, though the Pukhtunkhwa Milli Awami

⁴⁷ Riazul Haq, “Cabinet Meeting: New Law to Extend SC, IHC Jurisdiction to FATA”, *The Express Tribune*, 12 September 2017.

⁴⁸ Muhammad Anis, “NA Passes bill Extending SC, IHC Jurisdiction to Fata”, *The News*, 13 January 2018.

⁴⁹ Amir Wasim, “PML-N ally Fazl Opposes Fata Reforms in NA”, *Dawn*, 16 May 2017.

⁵⁰ *The Express Tribune*, 1 June 2018.

⁵¹ *The Nation*, 27 May 2018.

⁵² Khalid Kheshgi, “Except JUI-F all political parties in favour of Fata, KP Merger”, *The News*, 30 May 2017.

⁵³ *Dawn*, 31 May 2017.

⁵⁴ *The News*, 30 May 2017.

Party PkMAP has no organisational structure in the tribal belt, its demand would affect the PkMAP decade-long slogan for the unification of Pakhtuns and Pakhtuns territories which includes Pukhtuns of Balochistan, KPK, FATA and Afghanistan.⁵⁵ The leading political parties of Pakistan, the Pakistan People's Party (PPP), Pakistan Tehreek-e-Insaf (PTI), Jamaat-e-Islami (JI), Awami National Party (ANP) and Qaumi Watan Party (QWP) openly supported FATA reforms including its merger with Khyber Pakhtunkhwa.⁵⁶

Apart from the opposition and support of various political parties, it was observed that the tribal parliamentarians, who represent FATA in the National Assembly and Senate were not on the same page over the future status of FATA. The JUI-F MNA from South Waziristan was totally against the idea of merger, while Shah Jee Gul Afridi from Khyber Agency; Shahabuddin Khan, PML-N, MNA from Bajaur Agency; Sajid Tori, MNA from Kurram Agency, and Qaiser Jamal, PTI MNA from frontier regions carried a vigorous campaign for full implementation of tribal reforms including FATA's merger with Khyber Pakhtunkhwa. The rest of the parliamentarians from the area continued to change their position on reforms issue.⁵⁷

The passage of FATA Reforms Bill by the parliament brought certain amendments in the following articles of the 1973 Constitution of Pakistan: Part I Article 1, Articles 51, 59, 74, 106, 160, 240, 242. The most relevant Articles being 246 and 247 in Part XII.⁵⁸

Issues and challenges

The assimilation of FATA with the KPK has commenced theoretically, but it has to face many issues and legal and administrative challenges in the practical implementation of FATA reforms. The core issues of FATA are poverty, alarming low literacy rate, unemployment, poor infrastructure, lack of industrial growth and, most of all trust deficit.

Another issue is the rehabilitation of Internally Displaced Persons. FATA has witnessed mass displacement and destruction of houses owing to lawlessness and subsequent military operations. It has remained a challenging task to bring back the IDPs of FATA to their homes.⁵⁹ The civilians were forced to leave their homes when the security forces began an operation named *Rah-i-Nijat* against militants in

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ *Dawn*, 24 May 2018.

⁵⁸ Ibid., 12 June 2017.

⁵⁹ *The Express Tribune*, 10 December 2014.

Mehsud areas of South Waziristan in 2009. The IDPs could not return due to the fear of militancy in their areas and the nine years long absence caused massive damage to their properties, especially houses. Since the end of 2014, when the operation *Zerb-e-Azb* was in full swing, a comprehensive strategy was formulated to bring back the IDP in their respective areas.⁶⁰ The final phase of repatriation of South Waziristan Agency's internally displaced persons began on 25 July 2017, possibly marking the return of 71, 124 registered displaced families to their homes.⁶¹ Along with the implementation of reforms, reconstruction of houses and rehabilitation of the IDPs must be completed.

On the basis of the sixth national population census, held in Pakistan after 19 years, FATA's representation in the National and Provincial Assembly and its share in the National Finance Commission Award would be determined. It was a matter of concern in FATA how census could be carried in the areas where more than seventy per cent of the people had left their homes and migrated to different parts of the country. The national population census, a 70 days door to door campaign, was conducted in two phases. In the first phase, held from 15 March - 13 April, 63 districts were covered. While in the second phase, held from 25 April - 24 May, 88 districts were covered. The first phase included only Orakzai agency, while the other six were surveyed in the second phase. Those who had returned to their agencies were registered in the Disaster Management Authority (FDMA) for FATA. The National Database and Registration Authority (NADRA) verified a total of 71, 124 displaced families.

It would be a challenge to align FATA with the rest of Pakistan within 10 years. Transparent utilization of development funds in an area where FCR has expanded an undocumented economy would be a big challenge; the whole area is known for smuggling and drug trafficking. To start the process of industrialization in FATA would also be difficult because land there was owned collectively and no land settlements have ever taken place. After absorbing FATA with KPK, there would be the need to introduce a system of taxation so that the received revenues could be used for progress and development. The Chamber of Commerce and Industry for the whole area would also be required.

Recommendations and conclusion

As soon as the tribal belt completes its assimilation with the national mainstream and the people of FATA start enjoying fundamental rights

⁶⁰ *Dawn*, 23 July 2017.

⁶¹ *Ibid*.

given to all citizens of Pakistan, federal and the provincial government of the KPK will have to take measures to build the confidence of the people of FATA so that their assimilation become a step in nation building process. In this way Pakistan can fight the evil of extremism and terrorism in a better way. The proposed development projects should be initiated and completed on priority basis. Extraordinary efforts would be needed to accelerate them so that the region comes at par with the rest of Pakistan. A well-funded reconciliation programme should also be launched.

After becoming a part of KPK, FATA would no longer be considered an ungoverned territory or open territory, which became a justification for US drone strikes. The federal government must take strong measure against such strikes in the province. In 2013 the Peshawar High Court had already declared drone strikes as illegal.

Furthermore it should be a state policy to stimulate among students everywhere in Pakistan, specially in areas that are in the assimilation process, a sense of responsibility for rule of law and respect for national, ethnic and religious diversities. Moreover, a high degree of trust and confidence in a government that works for the interest of the people with a focus on reducing income inequalities through policies that are directed towards sustainable development is the need of the hour. Political stability is essential for planning and execution of the plans. The political system of Pakistan should be strengthened by giving space to democracy and civilian rule.